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HARM TO DEAD PERSONS

INTRODUCTION

In this article I discuss the limits and nature of personhood in dealing with the issue of the possibility of harming dead persons. My starting point is Truls Wyller's account of the relationship between humans and time. Given that we conceive of our own lives as taking place on a timeline, and that this timeline extends beyond our death, I ask: In what ethical sense can or cannot a person be said to live on after death? And further: If we do have moral obligations to treat dead people in certain ways – what is the justification for such obligations? Are they really justified by the interests of the dead person herself, or rather by the interests of the community of still-living persons? I present and discuss our conflicting intuitions on these matters, and several attempts at reconciling these intuitions in coherent descriptions. Based on my discussion, I argue that dead persons can be said to have interests, that posthumous harm is possible, and that harm to a person requires the presence and importance of moral relations – but not necessarily that the person is conscious. Thus we can be harmed while asleep, while in a coma, when dead, or when talked about behind our backs.

WYLLER ON TIME

Truls Wyller argues in *The Size of Things* (2010) that time relies essentially on our experience of presence and duration as bodily agents in the world. The duration of our acts provides the yardstick that makes all other durations meaningful. ›How long does a minute last?‹ a little girl might ask. We would give her an answer by pointing out some event she can relate to: ›Well, a minute is the amount of time it would take for you to run around that pond.‹ If we are unable to relate a given duration to our own experience, we would be at a loss to understand the meaning of this duration. A man might tell me that ›the time it takes Ingrid to run around the pond is exactly 17 heartbeats of the crocodile lurking in the water.‹ But his words would be of no use to me unless I could somehow relate to the timing of the crocodile's heartbeats.

More generally, Wyller argues, an omniscient being that has no experience of himself acting in the world would not experience time (*ibid.*, p. 150). Even if he knew all relations between, say the heartbeat rate of all animals and all objects orbiting ponds and stars, he would not be able to know time unless he could relate his knowledge of time relations to himself. *His* heartbeat could be the key to time experience, and would then be the primordial clock that would enable him to make sense of all the time relations he knew.

Time is an indexical phenomenon, Wyller says; we experience time as *the human now* in which we act (Wyller, 2011, ch. 7). Moreover, the possibility of change depends on the ever-changing time perspective of humans: For us, events are past, present, and future. Objects change position in time relative to the human now. We navigate in time as we are acting in the present, remembering the past, and planning the future. A moment in time can be successively in the future, in the present, and in the past – but keep its identity. This shows the ability of humans to separate future moments from the present. Wyller points out that our ability to fixate points in time allows for the possibility of a timeline, not only past and future aspects of the present (*ibid.*, p. 113). Our experience of a timeline makes the phenomena of time and change possible.

Humans live in the present, but are able to relate to events in the future independent of our interests in the present. We can make and keep promises – in contrast to other animals. A dog cannot agree to do something tomorrow. A dog can look forward to doing something fun, but cannot promise to do it. Humans can. Your promise to meet me tomorrow is valid even if your interests change. I can reasonably expect that you will tell me if in the meantime, you decide not to come. Otherwise, my disappointment with your failure to do tomorrow what you promised today would have no meaning.

At the end of *The Size of Things*, Wyller asks: ›What does death entail if time is a human phenomenon?‹ (Wyller, 2010, p. 150) His answer is that the death of *all* persons would result in some kind of noumenal world in the Kantian sense:

We cannot imagine this state, for in it, we would no longer be human beings, subject to constant change and individuated into our separate places in space. But in some respect or other, it *would* be the same world that we know from our human life in time and space. Conceiving of our world without human beings is to conceive of the same human world as it is *in itself*, as Kant said, independently of all perspectives in time and space. (*ibid.*)

When human beings – persons – die, their lifetime comes to an end. They cease to exist as conscious beings, as beings that experience events in time. Wyller suggests that on the brink of death, dying persons' time somehow collapses, since their ability to uphold time fades away:

Death must mean that *the same life that we live in the world occurs in a different form – devoid of time and change* (...) Perhaps this can shed light on the feeling that time stops, experienced by some people on the brink of death? (...) we experience *the same*

life that we have lived, only in a different kind of timeless way (...) the same world that we inhabit now, except -in itself. (*ibid.*, p. 151)

According to Wyller's perspective, death means that the time created by the life of the person vanishes. When someone dies, not only is *their* time out, but also – and more precisely: their *time* is out.

ORPHANED INTUITIONS

The close connection between persons and time means that when someone dies, others are needed in order to uphold that temporal person. If I continue to tell his story after his death, my grandfather's life does not collapse temporally: At first he was a sailor, and then he stepped ashore to become a family man. History is thus the overlapping maintenance of time by generations of humans. In this way the timeline of a person does not end at the moment of his death. In this way we would say that a person lives on through the remembrance and lives of others.

At the same time, we conceive of *our own* lives as being part of a timeline. This timeline extends beyond our death. A person lives his life according to this timeline. He can think about and have concerns for the future, as well as for the time after he is dead. In this way, he has an awareness of events he will and will not take part in. His life will include events that temporally lie beyond it.

In this article I invite the reader to dwell on the temporal existence of persons. I will pursue the following questions: In what *ethical* sense can or cannot a person be said to live on after death? Is a dead person a moral agent at all? Do dead people have rights – and do the survivors have any obligations towards the deceased? Furthermore: If we do have moral obligations to treat dead people in certain ways – what is the justification for such obligations? Are they really justified by the rights and interests of the dead person herself, or rather by the rights and interests of the community of still-living persons?

A few intuitions can serve as a starting point for my discussion of these questions. Firstly, we would say that a person is a being that has certain interests. A specific person could take an interest in activities such as cross-country skiing and open water swimming. This person would be harmed if someone hindered him from pursuing these interests. To imprison this person would be to harm him: In prison he could neither go skiing nor swim in the ocean.

Secondly, we would say that to commit murder is a condemnable act. We would say that generally speaking, dying is against the interests of the living. They would be harmed by dying. To murder a person would be to harm her. We would also say that to spit on someone's grave is disrespectful. But in what sense would we say that we harm the person lying six feet under by doing so? And, is it still a person – is it not, rather, only a corpse? I spit on someone's grave. My saliva does

not hit the corpse, and even if it did, the person/corpse would not feel a thing. The person will never learn of my insult. How can I possibly harm her?

›The dead can rest securely in their graves, they can no longer be harmed‹, we say. But on a moment's reflection, such a thought appears to be quite hazy. Is it not rather the case that the dead are *beyond* being harmed? They are like stones or waves. They are not like the person sailing a small boat caught in a storm, who manages to find a safe haven in the end. The dead man's ›rest‹ is but a metaphor, like eggs ›sitting‹ in the fridge. And again: If we hold that the dead can be harmed by posthumous disrespect, they are not out of harm's way even in their graves.

When is a person dead? In relation to the permissibility of organ donation, a person is defined as dead when they have ›irreversible total brain failure‹. The problem with this definition is that no matter how intellectually reasonable and convincing it is, we still find it difficult to trust it if the brain-dead person is mechanically ventilated:

Brain dead patients do not appear to be dead, and arguments that they really are dead do not inspire conviction. (...) Where do we go from here? We face an unsettled and unsettling situation characterised by the moral imperative to continue vital organ transplantation, the entrenched norm that doctors must not kill, and the increasingly transparent fiction that the brain dead are really dead. (Miller, 2009, p. 620)

As Franklin Miller points out, the definition simply does not accord with how we experience such a ›brain-dead‹ person: Warm and with natural skin colour, they seem to be asleep rather than dead. The idea that dead persons can no longer be harmed is similarly out of tune with our experiences, as described by Simona Giordano:

Given that there is no clear line of demarcation between mind and body, it could be argued that once dead, we have not ceased to exist in all relevant senses. If ›what I am‹ is a complex notion that includes what is said to be ›my body‹, then I am still in some sense me, when my body is still palpable to the significant others. What is left after the brain ceases to function is still, in some sense, a person – the dead person – and so we properly speak of ›dead people‹. (Giordano, 2005, p. 472)

In what sense is the brain-dead person still a person? Floris Tomasini suggests that the dead person is still a moral subject to be respected: ›[C]an an unloved and unknown person be harmed? For example, is it possible to harm an unidentified corpse? I believe, the answer, again to be ›yes‹ (...) The individuation of an unidentified corpse can sensitize us to the narrative trace of the particularity of a life lived, that we can identify with and respect.‹ (Tomasini, 2009, p. 448) Such a narrative trace is also emphasised by Malin Masterton and colleagues in their statement that ›In terms of the question ›Who is wronged after death?‹, our answer is the narrative subject¹ (Masterton et al., 2010, p. 345).

¹ It is somewhat difficult to make sense of the stance taken by Masterton et al. on the possibility of posthumous harm. On the one hand they state that ›The dead cannot suffer harm because there is

How do we accommodate the intuition of such a narrative subject? In an important sense, one cannot argue with people's intuitions. We may have different intuitions, pointing in different directions. If you hold that you have a ›right to be forgotten‹, or that when you die you completely cease to exist, there might be no knock-down argument to prove you wrong. But in my view, having intuitions does not fall into the same category as having irrefutable opinions. Rather, the former is a matter of having certain basic ideas of the way things are. I contend that the meaning and plausibility of such ideas depends on how they are interpreted by means of images and descriptions. Such images and descriptions can be analysed, improved, and replaced, and this will be my way of proceeding in this article. Thus, the moral discussion that follows aims to provide images and descriptions by which to interpret our intuitions and guide our understanding.

It is hard to let go or make sense of our conflicting intuitions. On the one hand, it seems obvious that the deceased can be harmed – that posthumous harm is about harming *them*, the deceased. On the other hand, it also seems obvious that the dead cannot be harmed, so posthumous harm is somehow about *us*, the survivors. Several attempts have been made at adopting each of these orphaned intuitions, to nourish them so that they can be strong and robust, to give them a home. In the following paragraphs I will briefly situate death in human life, and then examine some of these attempts, in order to prepare the ground for a further discussion of the issues.

IS IT A BAD THING TO DIE?

Is it a bad thing to die? If life has lost its meaning, is unbearable, or has somehow been brought to an end, death is not a threat. Death is not a threat to the living person who has lost interest in living. For the person thinking that our task in life is to let go of our ego and instead immerse ourselves into something deeper or higher, death is not a threat.²

no subject to suffer anything‹ (Masterton et al., 2007, p. 321); on the other hand, however, they say that ›The dead should be included in our moral sphere because some properties survive and these can be affected by actions made by the living, some of which are morally significant‹ (ibid.). These statements are slightly ambiguous. Do Masterton and her colleagues mean that the dead can only be *wronged* by us, but not harmed? Or do they mean that the dead can indeed be harmed because of their ›surviving properties‹, but that they cannot be *hurt*? I will return to these questions and distinctions below.

² In this article I set aside the possibility of dead persons enjoying an afterlife, say, in a spiritual realm. When people die, I take it that their bodies and minds permanently shut down. After all, the idea of an afterlife merely reiterates or avoids the issue of the possibility of posthumous harm, rather than solve it: Either entering into afterlife is an essential change that makes it relevant to question whether

Nonetheless, in everyday life, and in general, we fear death and seek to avoid it. Faced with death in the form of a pursuing tiger, we would run for our lives. We do not try to escape only in order to avoid pain; indeed, we would consider ourselves lucky if the tiger were to lose his appetite after devouring, say, only one of our arms. We would suffer serious harm as a result of the attack, but our life would be saved. Thomas Nagel puts it this way: ›It is sometimes suggested that what we really mind is the process of *dying*. But I should not really object to dying if it were not followed by death.‹ (Nagel, 1979, p. 3, note 1) Our fear for death, then, is not readily reducible to fear of the pain involved in dying.

Why do we want to avoid death? We are *living beings*. Unless we are suicidal, or old and full of days, we would like to go on living. We do not fear the state of being dead; rather, we fear going out of existence. Epicurus, however, argued that we should *not* fear death, because ›good and evil imply sentience, and death is the privation of all sentience (...) Death, therefore, the most awful of evils, is nothing to us, since when we are, death is not, and when death is, we are not‹ (Epicurus, 1926, p. 85). When I die, my experience-time collapses. I cannot fear death, since I cannot imagine being dead.

Our inability to relate to the state of being dead – to bring death into life – is somehow soothing. It echoes with Wittgenstein's § 6.4311 of *Tractatus Logico-Philosophicus*: ›Der Tod ist kein Ereignis des Lebens. Den Tod erlebt man nicht.‹³ (Wittgenstein, 1921) At the same time, this thought only makes it clear that fearing death is not a matter of avoiding an unpleasant experience associated with being dead; rather, fearing death is a matter of protecting one's life. We know that we are finite beings.

Death is a part of life, in constituting its negation, its limit. The awareness of death is integral to our life experience. Death colours life, as is suggested by the fact that Wittgenstein's § 6.4311 is a comment on the preceding § 6.43: ›Die Welt des Glücklichen ist eine andere als die des Unglücklichen.‹⁴ We experience life in the form of finitude. Our awareness of finitude is part of the meaning and importance of experiences and events. Moreover, as Heidegger emphasises, a person's own death is vital to his experience of living and leading his own, finite, individual, life (Heidegger, 1927, § 53). So – *contra* Epicurus – I hold that the fear of death is not confused; rather, it shows an awareness of a basic condition of human life.

or not the person is still susceptible to harm, or it is not a relevant change and the question simply does not arise.

³ ›Death is not an event in life. We do not live to experience death.‹

⁴ ›The world of the happy is quite different from that of the unhappy.‹

IT IS ABOUT THEM

The classic defence of the intuition that the dead *can* be harmed – that posthumous harm is about them – is the Feinberg-Pitcher account. In his article ›The misfortunes of the dead‹, George Pitcher points out that after a person has died, we can distinguish between the *ante-mortem* person (before he died), and the *post-mortem* person (after he died). I can describe the ante-mortem person as energetic, whereas such a description could not be applied to the post-mortem person. Now, Pitcher plainly argues that ›It is impossible to wrong a post-mortem person‹ (Pitcher, 1984, p. 184). A post-mortem person is nothing but a corpse, and a corpse cannot be harmed. The subject of harm has disappeared.

Nevertheless, Pitcher argues, a person can be harmed after his death. How? Joel Feinberg explains his and Pitcher's view this way:

Posthumous harm occurs when one of the deceased's surviving interests is thwarted after his death. The subject of a surviving interest and of the harm or benefit that can accrue to it after a person's death is the living person ante-mortem whose interest it was. Events after death do not retroactively produce effects at an earlier time, but their occurrence can lead us to revise our estimates of an earlier person's well-being, and correct the record before closing the book of his life. (Feinberg, 1984, p. 188)

What Feinberg and Pitcher are saying is that in harming a dead person, the subject of the harm is the same person before he died. How can this happen? Feinberg and Pitcher argue that we do not need an instance of backward causation to account for this; we simply need to allow for the possibility that a living person has interests that go beyond his lifespan and survive his death.

James Stacey Taylor has recently argued that the idea of posthumous harm advocated by Feinberg and Pitcher is merely a myth. Taylor argues, firstly, that even if one could show that someone is wronged, she is not necessarily harmed. He illustrates this thus: ›If Bill offers to drive Ben to his early morning lecture and fails to show up, Bill wrongs Ben. However, if Ben's neighbour Betty drives him instead, and if Ben were not inconvenienced or upset by this state of affairs, Bill did not harm Ben through wronging him.‹ (Taylor, 2005, p. 318) Distinguishing harming from wronging allows Taylor to hold that a dead person can be wronged without being harmed. A daughter promises to donate her father's body to medical research when he dies. In failing to keep her promise to her father, the daughter might be held to wrong him. But, according to Taylor, this would not necessarily imply that the deceased father was thereby harmed.

Secondly, Taylor argues that even if someone engages in wrongdoing against a person, that person is not by necessity wronged. Again, he provides an illustration: ›When John attempts to steal from David by putting his hand in his pocket, John engages in wrongdoing even if David's pocket is empty and John cannot steal from him.‹ (*ibid.*, p. 319) John is doing something wrong even if David is not

wronged. In failing to keep her promise to her father, a daughter would in fact not wrong him, Taylor argues. Rather, she would be doing something wrong that we would describe by including her father as a reference point. The father is betrayed, but not thereby wronged, Taylor claims.

But Taylor's descriptions seem to be inaccurate exactly at the decisive point they are meant to illustrate. Arguing against Taylor, it seems natural to say that Bill *does* harm his relationship to Ben in failing to show up, and that David *is* wronged by John's intrusion into his private sphere. There is more to being harmed and wronged than being stood up for a lift or losing a wallet.

Taylor appears to oppose what Walter Glannon has termed the *independence thesis*: ›the conviction that persons can be harmed by events or states of affairs that they do not or cannot experience‹ (Glannon, 2001, p. 127). Furthermore, Glannon calls the idea that ›something can be good (or bad) for a person just in case he can experience it‹ the *experience thesis* (*ibid.*, p. 131). According to the experience thesis, the deceased cannot experience any wrongdoing; consequently, it is impossible to cause them harm.

Pitcher, however, goes against the experience thesis, arguing that the idea that ›what you do not know cannot hurt you‹ is plainly false. To be harmed concerns more than the direct or indirect *experience of* being harmed. Pitcher's own view is clearly exemplified by Thomas Nagel: ›The natural view is that the discovery of betrayal makes us unhappy because it is bad to be betrayed – not that betrayal is bad because its discovery makes us unhappy.‹ (Nagel, 1979, p. 5) This seems to commit Pitcher to the independence thesis. But the paradox of the description provided by Feinberg and Pitcher is that in the attempt to defend the possibility of posthumous harm, they affirm the intuition that only the living can be harmed.

The major weakness of the account given by Feinberg and Pitcher is their shared premise: Only the interests of the living individual can be harmed. Given such a starting point, the most natural next step would be to say that posthumous harm might *refer* to the deceased, but that its *real* subjects are the survivors. The survivors are now the living individuals whose interests can be harmed.

Taylor takes this step, and explains our concerns about harming both the dead and the living as a matter of sociobiology. We simply want to avoid people acting in a way that is against the interests of ourselves and our family, be it while we are still alive or after we are dead. Given that posthumous harm is only a myth, Taylor argues that respecting the wishes of the dead should be justified by adopting a rule-consequentialist approach. Thus it becomes clear that we respect the wishes of the dead in order to promote living persons' interest in having their wills posthumously respected. Taylor's view brings us to the position discussed in the next section: Posthumous harm matters to the survivors rather than the deceased.

IT IS ABOUT US

The classic defence of the intuition that the dead *cannot* be harmed – that posthumous harm is, rather, about us, the survivors – is the account provided by Partridge and Callahan. In 1981, Ernest Partridge worked out a rule-consequentialist account of posthumous harm in the article ›Posthumous Interests and Posthumous Respect‹. He argues that the idea of post-mortem harm trades on a confusion of two viewpoints. Once we separate these, we see that our intuitions concerning harming the dead fall into place:

If one asked: ›Given the choice, would you prefer [say] posthumous fame to posthumous notoriety, not knowing, in any case, what your eventual reputation would be?‹ I would reply, ›Certainly, I would prefer posthumous fame!‹ But wait! Just what is going on here? In this very supposition we have utilized, simultaneously, two distinct points of view – that of the detached observer of good regard, and that of the subject of good regard. From the first perspective it is good, as such, to have a good reputation, even though unknown to the subject thereof. But then we neatly import this judgment into the subjective perspective and conclude that it is good for him to have a good reputation, even if he is completely ignorant thereof. (Partridge, 1981, pp. 257–8)

Our intuition that dead persons can be harmed is a kind of animism: Just as we may attribute feelings to a doll, we attribute interests to a corpse. In order to cut through this, we need to separate the subjective perspective from the objective one, Partridge says. In the subjective perspective, a living person experiences being harmed and helped. In the objective perspective, we identify a person's interests and observe when they are obstructed. In other words, from the subjective perspective betrayal is bad because its discovery makes us unhappy. From the objective perspective, on the other hand, the discovery of betrayal makes us unhappy because it is bad to be betrayed.

As we grow ethically mature, Partridge says, we understand that betrayal is bad for everyone, and that it is bad ›as such‹. We should be careful here, keeping the inductive nature of this judgement in mind, and resist the temptation to say: Betrayal is bad as such, and therefore betrayal is bad irrespective of whether the victim becomes aware of being betrayed or not. In Partridge's perspective, the harm of being betrayed rests ultimately on the possibility that the victim might realise that she has been betrayed. A dead person is categorically excluded from such awareness. Therefore, she cannot be harmed.

For Partridge, then, the meaning of our idea of harm done to dead persons depends on experiences of harm in overlapping human generations. Thus, he supports the abstract trans-generational moral category of harm:

Unaffecting and posthumous ›harms‹, then, make sense only from the point of view of the objective observer detached from the personal, time- and space-bound perspective of the immediate subject of experience. It is manifestly not from this latter (subjective) perspective that legal wills are drawn up, long-term promises given and accepted, and

other such moral and legal transactions made. (...) This extension of import beyond the span of one's lifetime is a consequence of the moral personality's being a spectator, in imagination, of events and circumstances according to abstract moral categories. (...) Thus we might better speak of the ›quasi-harm‹ to the subject of these ›wrongs.‹ (*ibid.*, p. 258)

Partridge's view is that speaking of ›harming the dead‹ is short for ›harming the interests we share and acknowledge as vital to our way of living‹. As the dead can no longer experience any harm, the moral obligation to treat them with respect stems from the survivors' interest in being treated with respect posthumously.

The interest of the survivors is the reason why we, for instance, take great care to respect the will of Alfred Nobel, Partridge argues: ›In truth, after his death, Alfred Nobel could not, strictly speaking, be »harmed«. But if his will had been violated on the rationalization that he was »beyond harm«, then those who violated the will would lessen their own expectations that their wills, in time, would be secure after their deaths; that is, that their posthumous ›quasi-interests‹ would be respected.‹ (*ibid.*, pp. 260–1) We, the survivors, shy away from the poor prospects of being betrayed and ridiculed when we die, and act from a sort of *golden rule* in the hope of avoiding such a tragic end.

Joan Callahan expands on Partridge's account of why we respect the dead, and why showing this respect is of great importance to us. The fact that the dead are unable to appreciate our behaviour suggests that our acts are motivated by an obligation that extends beyond the dead:

Suppose a friend has willed that his beautiful and beloved but perfectly healthy and contented dog be euthanized when he dies. Do we feel so thoroughly bound when what is willed is so shamelessly wasteful? I think we do not, and this suggests that part of why we tend to feel obligated to carry out the wishes of the dead is because those wishes usually coincide with other values we hold important. (...) some actions we are tempted to think are wrong because they harm or wrong the dead may instead be wrong because they involve the sacrifice of intrinsically valuable goods and/or significant failures in virtue. (Callahan, 1987, pp. 350–1)

Our respect for the wishes of the dead are motivated by upholding basic values in society, Callahan argues. Their wishes must accord with these values in order to be respected. Thus, respecting the dead is a matter of not doing wrongful acts rather than of not wronging someone.

The weakness of Partridge and Callahan's perspective is that while it avoids the problem of the disappeared subject, it is unable to explain our intuition that the subject of harm *is* the deceased. Feinberg touches on this problem in saying: ›It is absurd to think that once a promisee has died, the status of a broken promise made to him while he was still alive suddenly ceases to be that of a serious injustice to a victim, and becomes instead a mere diffuse public harm.‹ (Feinberg, 1984, p. 190) When Partridge and Callahan do away with direct obligations towards the

dead, they allow for the possibility that complete disrespect from the survivors is morally defensible provided that basic moral values are preserved.

As pointed out by Barbara Levenbook (Levenbook, 1984), without the notion of posthumous harm it seems hard to hold that murder is harmful to the victim. If I put a pillow over your face while you are asleep, you might never be aware that you were being strangled. Nevertheless, killing you would be illegal and immoral. But how – and when – by the account provided by Partridge and Callahan, can I be said to have harmed *you* under such circumstances? While alive, you had an interest in living, but at the very moment I killed you, you lost the ability to have any interests.

HARM AND AWARENESS

Having interests is an important factor in being susceptible to harm. I have no interest in pursuing ice hockey, and therefore will not be harmed if someone causes a nearby ice hockey rink to melt. A stone has no interests whatsoever. What about an embryo? If harm is frustrated interests, we would have to say that an embryo has interests in order to be susceptible to harm. What kind of interests does an embryo pursue? To say that it has an interest in growing into a child seems as attributive as saying that an acorn has an interest in growing into an oak.

What about a sleeping adult? What kind of interests does a sleeping adult pursue? She might dream of escaping a chasing tiger. Will her interests be harmed if, in her dream, she trips and the tiger hunts her down? We would say that she has an interest in waking up rather than being strangled by her sister who is armed with a pillow. She might, however, mistake her sister for the chasing tiger, or, if fast enough asleep, never be aware of being strangled at all. In what way does she differ from a tree or an embryo when it comes to having interests?

We could say that she is distinguished by the fact that she has the *capacity* to have interests. If we woke her up, the sleeping woman would be able to actively pursue all kinds of interests. Glannon argues against the experience thesis by saying that harm consists in the destruction of someone's capacity for awareness, rather than in their awareness of being harmed. To remove the mechanical life support of someone in a temporary coma would harm his body and mind even if he is unaware of it (Glannon, 2001, p. 131).

To allow this step, however, is to move away from the position that to harm someone is to go against their interests. The sleeping adult has the capacity to actively pursue interests if we were to wake her up, but the embryo likewise has the capacity to actively pursue interests if we let it grow into a child. As remarked by Daniel Cox: ›An unusable capacity in the sleeping adult is of no greater value than a lack of capacity in the unborn human.« (Cox, 2011, p. 3) Now, of course to say that something has a temporarily unusable quality is not the same as to

say that it has a future potential for the same quality. But how do we describe the difference?

We could describe the difference by saying that the adult *has* certain interests, while the embryo *might come to have* the same interests. A woman can say ›Tomorrow I'd like to go sailing‹, and you might lie awake all night pondering how to help her pursue her interest. You have told her that you own a sailboat, but this was a lie. She is nevertheless sound asleep beside you, expecting to pursue her interest when the morning arrives. If you cannot bear the thought of her finding out that you lied to her, you might decide to kill her before she wakes up. You might then say: ›She wanted to go sailing until the moment I killed her.‹ Does that mean that you harmed her wish to go sailing the next day?

An affirmative answer to this question would mean that you hold that a person is harmed even if that person is currently incapable of such awareness. You would further hold that a person's interests can be harmed even if she will never be aware of this having happened. You would hold that a sleeping adult, in contrast to an embryo, actually has an interest while asleep on the basis that both before and after her nap she is capable of being aware that someone is harming her. Or you would simply say that there is no difference between the embryo and the sleeping adult: They both have interests due to their human nature, so awareness of such interests is not essential.

On the other hand, to hold that no one is harmed unless they are aware of it would lead you to deny that you harmed her wish to go sailing by killing her. She never learned that the opportunity to go sailing was taken away from her. Therefore, she was not harmed. You would then also hold that if an embryo never grows into a child, it cannot be harmed. It will never be in a position to know. Moreover, you would say that if I sink your sailboat or kill your dog, but you die before you learn of these events, I have not harmed you.

The latter view – the experience-thesis that harm presupposes awareness – is expressed both in the ›Feinberg-Pitcher account‹ and the ›Partridge-Callahan account‹ of the possibility of posthumous harm. According to both of these accounts, you can only harm a person who consciously pursues his interests, and who will suffer if his interests are tampered with. A dead person can do neither. Therefore, ›posthumous harm to a person‹ is only possible if we can say that the person was harmed in some way while still alive. If we cannot, we would have to say that ›posthumous harm to a person‹ is about harming the survivors rather than the deceased. Harm attaches only to living persons.

To say that people are harmed if – at some point in time – they are aware of being harmed, or acknowledge that they are harmed, or even able to utter the words ›I'm harmed!‹, highlights an important aspect of being harmed. I crush a stone: it is not harmed. I chop wood: – it is not harmed. I smash a mosquito: – it is not harmed (I would say). But then a woman aborts an embryo. If we hold that an embryo has no awareness of being harmed, it cannot be harmed if harm

presupposes awareness. But we could still hold that the embryo was harmed if it were later to grow into a person capable of saying that he was harmed at the embryo stage.

Perhaps the utterance ›I was harmed at the embryo stage‹ could make sense, even if it sounds quite exotic – and involves all kinds of (non-)identity problems. For instance, such an utterance could make sense according to Elizabeth Harman's *ever conscious view*: ›A being has moral status at a time just in case it is alive at that time and there is a time in its life at which it is conscious.‹ (Harman, 2007, p. 220) In order to be harmed, then, a being has to be conscious at some point in its life.

In the present discussion, the ›ever conscious‹ view will have to be narrowed down to the principle – let us call it the *ever affected thesis* – that in order to be harmed, a person needs to be aware of being harmed at some point in his life. Now, is that so? Is Partridge right in saying that for the victim, the harm of betrayal ultimately rests on the possibility of her realising that she has been betrayed? Did I not harm but merely wrong my wife by betraying her? Is it true that what she does not know cannot hurt her? If it is true, it would mean that I have a moral obligation towards my wife to hide my betrayal – in order not to harm her. Such an obligation would then be balanced against the truthfulness obligation. And indeed, sometimes telling a white lie is morally required; and sometimes revealing the truth might be an act of cruelty.

It is possible to say that you should never have told my wife that I betrayed her, and thus have spared her from being harmed. In this sense harm presupposes awareness. This seems to be a rather impoverished sense of what harming a person implies, though. I would hold that I am immediately harmed by my wife betraying me. In order for me to be harmed, there is no need to wait for the moment someone brings to my attention that I have been betrayed. I would also hold that my wife harms *me* by her betrayal. She is not simply engaging in a wrongful act that is still morally neutral to me, since I am ignorant of her betrayal. Nevertheless, it seems, somehow, to be the case that at the same time that I am harmed by learning that I have been betrayed, I paradoxically realise that the moment at which I was harmed already lies in the past.

BODIES AND LIVES STILL AROUND

Adherents to the view that harm presupposes awareness hold that a dead person as such cannot be harmed. A dead person is ›just so much dust; and dust cannot be wronged‹ (*ibid.*, p. 184), as Pitcher puts it. Fred Feldman has termed the view that ›people go out of existence when they die‹ (Feldman, 2000, p., 98) the *Termination Thesis (TT)*. To assert the TT is to agree with Epicurus that when we die, we do not continue to exist in any sense. As Feldman remarks (*ibid.*, p. 102), the TT

makes the ›Here lies‹ of any gravestone a lie. There is no dead person – we only exist as living beings.

Feldman simply acknowledges a gulf in intuitions between himself and the adherents of the TT:

I think I am my body. I think I formerly was a foetus. I think someday I will be dead – just a corpse. (...) I am willing to grant that there might be some people who think of themselves otherwise. Perhaps when one of them uses the word ›I‹ to refer to himself, he means to refer to an entity that will go out of existence at death. I have no way to prove that they cannot be doing this. If they do this, they are thinking of themselves as things that are, in my view, mere parts of things like me. (*ibid.*, pp. 111–2)

Feldman links his existence to his human body, which will still be around after his death, unless he dies in an unusually violent way. David Mackie supports such an animalistic intuition by opposing the position that life is all that separates us from ›Lockean masses of matter‹ (Mackie, 1997, p. 235). Such a position would lead to the claim that any dead plant or animal is indiscernible from inorganic masses of matter.

This would further entail that no natural history museum has any animals in its collection, and that Tutankhamen's mummified body is no more related to him than, say, his favourite pair of sandals. In a way, this sounds like reasonable things to say; in another, it sounds absurd. Surely, my dead body is no longer me. The TT simply draws to our attention that we are *living* beings. So, I am dead and gone when my survivors gather round my corpse. In another way, it is obviously *me* who is lying there. Why deny it? The motivation could be to move on, to face the truth: I am gone. Just like the parrot of the Monty Python ›Pet Shop Sketch‹ I am neither stunned nor resting – but have dropped dead, passed on, ceased to be, gone to meet my maker.

The attempt of the TT to make things clear nevertheless leaves one with a nagging suspicion that matters are slightly more complicated than the TT allows for. For, surely, the real question is not whether I am still my dead body – but, rather, how we relate to ourselves and others, including our bodies. Am I my soulful body? In a way, yes; in another way, no. In a way my soulful body is all that I am; in another way it is far from all. What more is there?

In *Me and My Life*, Shelly Kagan asks if a person's well-being is all there is to how well her life is going. For Kagan, a person is her body and mind. Changes to a person's well-being must therefore affect her body or mind. But, since it seems reasonable to say that ›it is one thing for a person to be well-off, another thing for that person's life to be going well (...) it does *not* seem plausible to claim that a person's life consists solely of (intrinsic) facts about that person's body and mind. (...) a person's *life* seems to be broader and more encompassing than the person himself; it includes more within it‹. (Kagan, 1994, p. 319) As there is more to say about a person than what affects her, Kagan clearly struggles to place it in his scheme of things.

Kagan's solution is to say that we should distinguish between a person and her life. While a person is only affected in her body and mind, her *life* is also affected by further relational facts. Thus according to Kagan, we *can* say that the life of a woman who died content, correctly believing that she was helping the poor, was better than the life of a woman who died content, mistakenly believing that she was helping the poor. The bodies and minds of these two women were filled with the same happiness; nevertheless, the success of their lives differed.

Having accommodated his intuitions regarding a person's well-being and how well her life is going, Kagan is still puzzled about how a person and her life are connected, and writes that 'The precise nature of the relation is not clear' (*ibid.*, p. 323). Similarly, Glannon remarks that 'there is something paradoxical about separating persons from their lives. To say that something may be bad for my life but not bad for me is *prima facie* unpalatable'. (Glannon, 2001, p. 140) Despite this, Glannon agrees with Kagan that we should not confuse harm to a person and harm to her life, as the latter might not affect the person at all. But as James Stacey Taylor points out, the separation of harm to a person from harm to her life makes it hard to say exactly why we should care about harm to the life of a person (Taylor, 2008). If the person herself is not harmed, why care? If harm to a person's life is *our* concern only, any obligation towards the person in question falls away.

CONSCIOUSNESS AND SENSITIVITY

As we have seen, the idea that harm only attaches to living and conscious persons is problematic in a number of ways. The idea that post-mortem harm is inflicted on the ante-mortem person lacks clarity, and the idea that posthumous harm is not about the deceased is counter-intuitive. Moreover, it becomes difficult to say that sleeping persons have interests, and that to kill someone is to harm them. At the same time, these ideas – that we live on, be it in the form of our bodies, lives, ante-mortem selves or posthumous references – all seek to accommodate our conflicting and orphaned intuitions about harming the dead.

The root of the trouble with these ideas, I believe, is that they build on an image of doing harm as somehow lacerating the sensitive surface of a person. If I do not extend my sharp claws to scratch the skin of my victim, he is not harmed. If he is insensitive or indifferent to being scratched, he is not harmed. The decisive point of harming someone is the victim's awareness of being unpleasantly affected by the action.

Harm thus occurs when my claw touches another person's sensitive skin. A person is susceptible to harm through his awareness of physical pain, in contrast to inanimate things. Moreover, a person is susceptible to non-physical harm such as ridicule or being disgraced, in contrast to animals. My wicked tongue touching

another person's sensitive mind can cause non-physical harm. A person's lack of awareness limits the possibility of harming him.

This image is clear and simple. Persons are distinguished by virtue of their conscious pursuit of interests. Thwarting these interests is what harm is all about. Against such a neat image of harm even our intuitions look muddled if they do not fit into the picture. We suddenly have the urge to reinterpret our intuitions to make them fit. Alternatively, if we cannot make them fit, we should do away with them by declaring them to be illusions or myths.

We would say that a dead person cannot be *hurt*. In order to be hurt it has to hurt somewhere, or it would have hurt if the victim were not anaesthetised or unconscious. A dead person cannot be hurt, for two reasons, namely that she is unable to experience pain, and/or that her further acts in life are not impeded by her being hurt. ›She was hurt by your remark‹, we might say. ›She was severely hurt in the car crash: she went straight into a coma and they had to amputate her legs‹, we might say. But the remark or the car had to hurt a living person in order for it to make sense to describe it as hurt. We cannot say that a person is hurt by a remark that is made after her death, or in a car crash that occurs when she is already dead.

But there is more to harm than being hurt. Or, one might say that for a dog, to be hurt is all there is to being harmed. Not so for a person, since persons are beings that live their lives along a timeline that extends beyond their own deaths. Persons are able to have interests concerning themselves and others even after they have passed away. For instance, I have the ability to care about what will happen to me and my sons after I am dead, and they have the ability to care about what happens to me when my life has expired.

In order to account for harm to persons, we need a different image of the nature of harm. I suggest that we expand the definition of harm to include failure to treat a person with due respect. You harm someone if you transgress specific moral norms in reference to a specific person. Persons are distinguished by virtue of taking part in a moral universe. A stone is not expected to avoid hitting our window. A dog is not expected to do ›its share‹ of the housework. We could teach the dog how to mop the floor, and it might happily do so every Saturday morning. But we would still not say that the family dog had assumed responsibility for its share of the chores. A dog is simply unable to be a member of the moral universe of a family.

Respectful behaviour towards persons is an obligation that takes place within such a moral universe of mutual obligations and expectations. We teach our children to understand and become members of the moral universe of the family. We expect them to be able to take part – to be sensitive to the norms and internalise them. And as a child grows older, I am not only harmed by him knocking over the coffee cup so that its contents spill into my lap and onto the floor, but also by his refusal to take part in cleaning up the ensuing mess.

I would say to my uncooperative son that he should be ashamed of himself. In doing so, I ascribe to him an understanding of proper behaviour. Such behaviour and the corresponding understanding are relative to a social setting. As Charles Taylor notes, a person is more than an advanced conscious being that manoeuvres in a universe of interests and ends set by nature. A person is characterised not only by consciousness, but also by openness to the significance of cultural norms:

For a situation to be humiliating or shameful, the agent has to be of the kind that is in principle sensitive to shame. (...) We can see the essential place of significance conditions here when we note that shamelessness is shameful. In other words, there are conditions of motivations for avoiding shame, viz. that one be sensitive to shame. The one that does not care, who runs away without a scruple, earns the deepest contempt. (Taylor, 1985, p. 110)

My motivation not to bite off your ear has a different basis from my motivation not to pat you on your head. In order for me to do harm by patting you on your head we both need to acknowledge the significance of this act. Thus, harm is a relational concept. Concerning the ear it is the other way around: In order for me *not* to do harm you have to agree to my biting it off. If I simply bite it off without your consent, you are immediately harmed, even if we share no cultural norms. I would also harm a dog by biting off its ear.

POSTHUMOUS HARM

Humans are living beings. Our awareness of our death affects our lives. Humans are temporal beings. Our conceived timeline extends beyond our death. We care for our posthumous selves. Humans are social beings. We care for others. To care for others is part of caring for ourselves, part of who we are. Humans are cultural and moral beings. We are sensitive to and internalise norms. Our shared interest in avoiding posthumous harm is thus threefold: We have concerns beyond our own death, we care about the deceased, and we defend the norms that constitute us as morally sensitive beings.

Callahan's intuition is right: Our respect for the wishes of the dead *is* motivated by our need to uphold basic values in society. This does not, however, mean that posthumous harm only concerns the survivors. Posthumous harm concerns the deceased *and* the survivors, since our lives and concerns are essentially intertwined. Clearly, the death of a person is a fundamental change. The person can no longer be hurt, and can no longer respond or renew. As a consequence, she and her concerns will become vaguer, as she can no longer respond to our queries, or to the ever changing circumstances. She is a dead *subject*. Or, as we might opt to say: A dead *object*, but with dignity, intentions, cares and concerns.

Personhood is essentially a matter of being included in the community of human beings. We, the living, conscious and morally sensitive persons, are the arbiters of the moral status of beings. We patrol the border between life and death, and between the dead and the living. We decide who is susceptible to different kinds of harm. We say that a dog can be harmed, and that it cannot be posthumously harmed. We say that a baby can be harmed, and that it can be posthumously harmed. Harm to the deceased baby could also be ascribed to its parents. Pitcher's intuition that only consciously interest-bearing persons can later be posthumously harmed provides the clearest instance of the possibility of posthumous harm. However, this is not because in this case posthumous harm is ante-mortem harm to the consciously interest-bearing person, but because it is post-mortem harm to a person acknowledged to be sensitive to the moral realm.

Pitcher's description does not clarify exactly how a living person is harmed by events after her death, since the post-mortem interests alluded to are connected to the ante-mortem person in such a loose way. Judging by his description, it seems fairer to say that the subject of post-mortem harm is the ›reputational self‹ of the deceased. And it is not at all obvious that harming such a reputational self means harming the deceased rather than the bereaved. His description also fails to account for our intuition that in a sense, the dead are beyond harm, due to the presence and persistence of ante-mortem stakeholders.

A dead man is not harmed by a stone accidentally falling onto his body in the grave. In this sense ›a dead person is only so much dust‹ and ›can rest securely in his grave; he cannot be harmed anymore‹. But I harm him by spitting on his grave. By being an actor in the human moral realm, a person has rights and obligations in relation to others. A person can be posthumously harmed because there is a moral relationship between the deceased and still-living persons.

I agree with Partridges' intuition that posthumous harm is about the survivors. This is, however, only one aspect of such harm. The survivors care about what happens to the deceased. Likewise, moral actors care about what happens to them after their death. Posthumous harm concerns a relation between the survivors and the deceased. The possibility for being harmed depends not on being conscious, but on the presence and importance of moral relations. Thus we can be harmed while asleep, while in a coma, when dead, or when talked about behind our backs.

To say that a dead person can be harmed does not make it any easier to relate to the wishes of the deceased. It is complicated to respect and relate to the wishes of the living. Relating to the interests of the dead instead of, or in addition to, the interests of the survivors might not make things any easier. Holding that dead persons can be harmed does not as such commit one to holding that dead persons have certain posthumous rights. Death simultaneously changes and does not change the way we relate to a person in terms of rights: The obligation to respect the person persists, while the manner in which this is done has changed.

An obligation to respect the dead by remembrance has to be regarded as a dynamic rather than static enterprise. ›Forgetting is essential to action of any kind‹, Nietzsche emphasised (Nietzsche, 1997, p. 62). But remembering is likewise essentially to create, to move on. The aim of remembrance is not to determine once and for all what was said and done in the past. To arrive at such a conclusion would be tantamount to proclaiming the end of history – to saying that nothing new will ever happen that will allow us to see the past in a different perspective. We would no longer be able to make a difference in the world.

Just like people who are absent, dead people cannot be hurt. This creates an opportunity for the survivors to relate to them in a liberated way. A certain commitment to truth enters the picture. We are given extra space to be critical of the person. This allows us to learn from the ways of a person: she becomes a precious resource to a deeper understanding of her, of ourselves, and of people in general. Our ›obligation to the dead to remember *them* (...) entails finding out who they are‹, as Brecher puts it (*ibid.*, p. 117). Writing a critical biography of a person's life is a sign of respect. Talking truthfully behind someone's back is likewise an indispensable tool for deepening, and learning from, our friendships with others.

A refusal to harvest dead bodies for their organs out of respect for the dead can be viewed as deeply confused. We erroneously give a dead object – a corpse – primacy over a living person in need of an organ. In their discussion of this view, McGuinness and Brazier argue that it ›fails to recognise that death of the body is not the end of the biographical person. When a parent dies (...) we do not cease to regard her as *mother*. (...) With the baby or the small child, that physical memory may be all there is. The body is the baby.‹ (McGuinness and Brazier, 2008, pp. 303–4) Thus, to protect the corpse is not confused. This does not mean, however, that the protection of a corpse always takes precedence over the interests of the living.

McGuinness and Brazier point out that respecting the living includes respecting the dead. But saying that respect for the dead is *only* a matter of respecting the living seems to make the deceased the property of the surviving family members. The remnants of the dead have no intrinsic value, so the survivors can do whatever they like with them – as long as they do not illegitimately upset others. As McGuinness and Brazier briefly suggest, this view fails to account for the way in which respect for the dead means to respect the living. To argue that a person's wish not to donate organs is invalid once he is dead means that this person's wish was never respected. Such a view is better described as a program for moral change than a shattering of moral illusions.

Still, is it not so that the disrespect is *really* directed at the surviving family or the ante-mortem person in this case? Glannon would agree with such a view. His response to Nagel's comment that a ›man's life includes much that does not take place within the boundaries of his body and mind, and what happens to him can

include much that does not take place within the boundaries of his life« (Nagel, 1979, p. 6) is simply: »But insofar as what can affect the man pertains only to facts involving his body or mind, it is unclear how he could be injured or harmed by facts that obtain after his death, when there is no mind and thus no person.« (Glannon, *ibid.*, p.136

Nagel contends that »the impossibility of locating [harm] within life should not trouble us« (*ibid.*, p. 7). But it certainly troubles Glannon, and it troubles the author of this article. Nagel might be right, but takes too much for granted. Our intuitions can be somewhat confusing regarding posthumous harm. It is by no means easy to gain a coherent overview of the issues involved. The problem with the image of harm »pertaining only to facts involving a person's body or mind«, however, is that it explains *too much*. It goes one step too far. Not satisfied with the clarity of the phenomena, it dives deeper in its aim for clarity. The net result is that we get a crystal clear model image; however, the model obscures our view of the phenomena the image is supposed to depict and clarify. Restricting harm to living persons creates problems rather than solve them. With some kind of Occam's razor we should shave away this model image.

CONCLUSION

In this article I have argued that the idea that harm only attaches to living and conscious persons is problematic in a number of ways. The idea that post-mortem harm is inflicted on the ante-mortem person lacks clarity, and the idea that posthumous harm is not about the deceased is counter-intuitive. Instead of saying that persons are distinguished by virtue of their conscious pursuit of interests, and that thwarting these interests is what causing harm is all about, I have argued that harm also relates to the way persons are distinguished by virtue of taking part in a moral universe. Persons are beings that conduct their lives along a timeline that extends beyond their own deaths, and are able to have interests concerning themselves and others even after they have passed away. Thus, we have concerns beyond our own death, care about the deceased, and defend the norms that constitute us as morally sensitive beings. Personhood is essentially a matter of being included in the community of human beings. We, the living, conscious and morally sensitive persons, are the arbiters of the moral status of beings. We decide who is susceptible to different kinds of harm. Persons can later be posthumously harmed because they are acknowledged to be within the moral realm. Posthumous harm concerns a relation between the survivors and the deceased. Therefore, the possibility for being harmed depends not on being conscious, but on the presence and importance of moral relations.

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