

## THE MISFORTUNES OF THE DEAD

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I assume, as most people nowadays do, that one's death means the permanent end not only of one's physical life, but also of one's conscious life. Death, so conceived, has its obvious drawbacks, but also its benefits; for the dead are at least free from pain, grief, despair, and other unpleasant sensations, moods, emotions, and so on. But we have conflicting intuitions on the question of whether the dead can be harmed, on the question of whether an event that occurs after a person's death can count as a misfortune for him. (I shall, throughout, use the terms "harm" and "misfortune" so as to render these two questions equivalent). On the one hand, we think that if the business Mrs. White established and was proud of in her lifetime should collapse in ruins soon after her death, that really can't be a disaster *for her*. She is beyond disasters of any kind. On the other hand, we cannot rest quite content there: we think that in some way we do not wholly understand, it would have been better for Mrs. White if her business had not failed so soon after her death. We feel positively sorry for her when the employees are laid off, the petition for bankruptcy is filed, the windows are boarded up.

In this paper, I want to defend the thesis that the dead can be harmed, and to explain how this can be, and is, so. (I think the dead can also be benefited, but I shall concentrate on the gloomy side of things.) First, however, I shall discuss a second thesis about the dead—namely, that they can be wronged. ("To wrong someone" will be used as a generic term to cover such actions as being unjust to someone, maligning or slandering someone, betraying someone's trust, and so on.)

If we allow our unfettered intuition to operate on certain examples, it becomes abundantly clear that we think the dead can indeed be wronged. Bill Brown promises his dying father that he will bury him in the family plot when he dies. Bill instead sells his father's corpse to a medical school for

dissection by students. Our intuition tells us that Mr. Brown has been badly betrayed by his son. A second example: in the Olympic Games five years ago, End won the mile run and received the gold medal. He has since died. Now, an international panel of corrupt judges, all of whom hated End, falsely charge that he committed a foul on the third lap, and officially declare Red, who finished second, the winner. End, though dead, is the victim of a gross injustice, we naturally think. The dead, then, can be wronged: they can be the victims of injustice, slander, betrayal, and so on. (They can also be honored, justice can be rendered to them, and so on, but again I shall accentuate the negative.)

Notice, by the way, that the dead can be the targets of actions that may not count as wrongs committed against them, but that are anyway hostile to them. For example, suppose that after Mrs. Tisdale's death, her husband reveals all her secret vices, because he has always hated her (perhaps with good reason) and wants the good reputation she enjoyed in her church to be demolished. This deliberate wrecking of Mrs. Tisdale's reputation constitutes an act of vengeance against her. So we may say that the dead can be attacked, as well as wronged. To simplify matters, however, I shall not be concerned in what follows with the fact that the dead can be attacked.

Although we take for granted, in our unreflective moments, that the dead can be wronged, perhaps we shouldn't. The dead, if they exist at all, are so much dust. How is it possible for so much dust to be wronged? I shall maintain that it isn't possible for so much dust to be wronged, but that it is possible for the dead to be wronged, even though the dead are now just so much dust. Let me explain.

Consider the linguistic act of describing a dead person. There are two different things a person might do if he sets out to describe a friend of his who is now dead:

(a) he can describe the dead friend as he was at some stage of his life—i.e., as a living person.

(b) he can describe the dead friend as he is now, in death—mouldering, perhaps, in a grave.

In (a), we may say that there is a description of an *ante-mortem* person after his death, while in (b) there is a description of a *post-mortem* person after his death.

I maintain that although both *ante-mortem* and *post-mortem* persons can be described after their death, only *ante-mortem* persons can be wronged after their death. Suppose, for example, that Mrs. Blue, now dead, was not in the least anti-semitic, but that her spiteful neighbor now maliciously asserts that she was. This charge is a lie and since it is a lie about a person who is now dead, it may be said to constitute a wrong perpetrated against a dead person. Her neighbor wrongs the dead Mrs. Blue when he falsely states that she was anti-semitic. But he wrongs the *ante-mortem* Mrs. Blue, not the *post-mortem* Mrs. Blue: he falsely charges that Mrs. Blue when alive was anti-semitic, and so it is the living Mrs. Blue who is wronged. Her neighbor says nothing either true or false about Mrs. Blue as she is now, in death. Indeed, it would be nonsense to suggest that Mrs. Blue, after her death—the *post-mortem* Mrs. Blue—could be anti-semitic.

All wrongs committed against the dead are committed against their *ante-mortem* selves. Thus when young Brown sells his father's corpse to the medical school, he breaks a promise he made to his father before the old man died: so it is the living Mr. Brown who is betrayed by his son's action. Again, it is the End who actually won the race—i.e., the living End—who is wronged when the judges unjustly strip him of his victory. It is impossible to wrong a *post-mortem* person. *Post-mortem* persons, we said, are, if anything, just so much dust; and dust cannot be wronged.

Let us turn, now, to the first thesis about the dead—namely, that they can be harmed. We can see that just as there is a distinction to be made between a *post-mortem* person's being wronged after his death and an *ante-mortem* person's being wronged after his death, so there is a distinction between a *post-mortem* person's being harmed after his death and an *ante-mortem* person's being

harmed after his death. I take it that no one would want to argue seriously that a *post-mortem* person can be harmed after his death, any more than one would maintain that a *post-mortem* person can be *wronged* after his death. Dust can neither be wronged nor harmed.

A serious question can arise only over the issue of whether or not an *ante-mortem* person can be harmed after his death. The question is this: is it possible for something to happen after a person's death that harms the living person he was before he died? I want to urge that it is possible.

I shall construe harm, or misfortune, in the following more or less orthodox way: an event or state of affairs is a misfortune for someone (or harms someone) when it is contrary to one or more of his more important desires or interests. This very rough characterization could be endlessly refined, but I hope the intuitive idea is clear enough for our purposes. I think it does capture most of the cases that we would, upon reflection, consider to be cases of a person's being harmed (or suffering a misfortune). For example: if someone swears out a warrant against me, falsely accusing me of murder, I am thereby harmed, provided I have the usual desires to be well thought of, to be able to pursue my normal life, to be calm and free from anxiety and anger, and so on; for the accusation works against those desires.

There are, to be sure, certain ways in which a living person, after his death, cannot be harmed: it is easy to see, for example, why one can't, after one's death, be killed or wounded, or be caused to feel pain. But we all have desires and interests that can be thwarted (or satisfied) after we have died. Consider Mrs. White, for instance. Mrs. White, remember, was very proud of the business that she had established. We may assume that she had a strong desire that it should survive for a long time after her death, as a kind of monument to her industry and skill. This desire is defeated when the business collapses soon after her death. I maintain that the wrecking of her business thus harms Mrs. White—the living (*ante-mortem*) Mrs. White—even though it occurs when she is dead.

The view that an *ante-mortem* person can be harmed after his death is one that we all find, or can anyway be made to find, entirely plausible, if

we don't stop to examine it too closely. Consider, for example, two possible worlds. In World I, a philosopher spends his entire life working on a metaphysical system that he believes to be, and desperately wants to be, the Truth about reality. And it is! After his death, his system is universally accepted, endlessly discussed, and he is acclaimed as the greatest philosopher who ever lived. World II is exactly the same as World I up to the time of the philosopher's death; but in this world, a disgruntled neighbor burns the philosopher's house down the day after his death, and his writings are destroyed. We may imagine that he never revealed his metaphysical views to anyone; so his system is irretrievably lost, and the philosopher is remembered only by a few friends and the hostile neighbor. We would all, I think, judge that the philosopher's life in World I is better than his life in World II, and that the neighbor's vicious action in World II really harms the philosopher. What would be more natural than to feel sorry for the dead thinker? The labor of a lifetime, that for which he sacrificed everything, all reduced to a heap of ashes! Poor man!

The idea that the dead can be harmed goes back, in the philosophical literature, at least to Aristotle:

Since, then, a man's own misfortunes sometimes have a powerful influence upon his life, and sometimes seem comparatively trivial; and the same applies also to the misfortunes of all his friends alike; although it makes a difference whether a particular misfortune befalls people while they are alive or after they are dead—a far greater difference than it makes in a tragedy whether the crimes and atrocities are committed beforehand or carried out during the action; then we must take into our reckoning this difference too; or rather, perhaps, the fact that it is questionable whether the departed have any participation in good or its opposite. For the probable inference from what we have been saying is that if any effect of good or evil reaches them at all, it must be faint and slight, either in itself or to them—or if not that, at any rate not of such force and quality as to make the unhappy happy or to rob the happy of their felicity. So it appears that the dead are affected to some extent by the good fortunes of those whom they love, and similarly by their misfortunes; but that the effects are not of such a kind or so great as to make the happy unhappy, or to produce any other such result. (*The Nichomachean Ethics*, Book I, chap. xi. The translation is by J.A.K. Thomson.)

Aristotle obviously, and not surprisingly, has serious qualms about attributing misfortune (or good fortune) to the dead. He thinks it "questionable" whether anything good or bad can happen to them; but, in the end, he concedes that "it appears that the dead are affected to some (small) extent" by things that happen to those that they loved. I can understand Aristotle, here, only by construing him as claiming (to put it in my terminology) that an ante-mortem person can be harmed (or benefited) after his death. No doubt this is what he does mean.

But we still need something that Aristotle does not try to provide—an account that explains how, exactly, a living person can be affected in any way by things that happen after he dies. It might well seem that there could not, in principle, be any such account: once a person dies, his life is completed, and nothing can be added to it or subtracted from it. But that is an over-simplified picture of a person's life. For example, we have already seen that an ante-mortem person can be wronged after his death—and why should that not count as something new that happens to him? It can easily seem as though being wronged and being harmed are relevantly different, however. Being wronged, it might be thought, does not necessarily involve any change in one's intrinsic condition: if someone tells lies about me, he wrongs me—but that, in itself, leaves me just as I was. And so it is not difficult to see that an ante-mortem person can be wronged after his death. But being harmed, so this line of reasoning continues, is different. Just as damaging a vase changes its condition for the worse, so harming a person changes his condition for the worse. Therefore, if an ante-mortem person could be harmed after his death, this would mean that an event at a later time could actually change a person's condition at an earlier time—in other words, there would be backward causation, an altering of the past. But since the past cannot be changed, an ante-mortem person cannot be harmed after his death.

Certainly the main obstacle to accepting the thesis that an ante-mortem person can be harmed after his death is the disturbing notion that it would involve backward causation. I do not know whether or not there is such a thing as backward causation,

or backward quasi-causation, but fortunately there is no need for us to debate that issue—for harming a living person after his death does not involve any such process. The idea that it must involve such a process rests on the wholly misleading picture of being harmed as a kind of alteration in one's metaphysical state. To see how misleading this picture is, consider the following. Suppose that Mr. Black's son Jack is killed in an airplane crash many miles away. Given that his son's welfare is one of Black's strongest interests, the son's death harms Black (is a great misfortune for him). There should be no temptation to think that this harming of Black requires instantaneous causation at a distance—the plane crash sending out infinitely rapid waves of horror, as it were, diminishing Black's metaphysical condition. If that idea is absurd, so is the idea that if the son's death should occur after Mr. Black's, and should thus harm the ante-mortem Black after his death, it must do so by a process of backward causation.

Perhaps the picture of harm as a kind of diminishing of one's condition is abetted by the notion that if something harms a person, he must both know about it (“What I don't know can't hurt me!”) and mind it. But it is just false that in order to be harmed, the victim must be aware of the harm. To be sure, in most cases of misfortune, the victim is aware of the (for him) unfortunate state of affairs. But a misfortune can befall a person who is totally ignorant of it. If, for example, one has the usual desire to go on living, then it is a misfortune to be stricken with an incurable fatal disease, even though one is unaware that one has it. Consider, too, the man described by Thomas Nagel—let us call him Purple—who is “betrayed by his friends, ridiculed behind his back, and despised by people who treat him politely to his face” (p. 404). Nagel suggests, quite rightly, that this would be reckoned a misfortune for (or harm done to) Purple, even if he never discovers the horrible truth.

Once the misleading picture associated with the idea that an ante-mortem person can be harmed after his death—a picture that makes such harming seem utterly mysterious—is cleared away, the idea itself emerges with great plausibility and power. To see how plausible it is, consider the sad example

of Bishop Berkeley's son William, who was his treasure, and who died at the tragically early age of 14. Let us imagine, what I think was actually false, that Berkeley knew for the last few years of the boy's life that the lad was going to die when he was still very young. Let us imagine further that the contemplated death was not to be from a lingering illness: he had, let us say, a rare allergy to a certain virus and Berkeley knew that the child was bound to come into contact with the virus and to die quickly when he did. During those years, the fact that William was going to die young was surely a misfortune for Berkeley. He might have said at any time in that period, “The fact that William is going to die before he grows up is the greatest tragedy of my life”—and mightn't he well have been right? We must avoid the mistake of supposing that it was his *knowing* that William was going to die young that was Berkeley's only misfortune during the years before William's death. To be sure, his knowing that the boy was going to die young *was* a misfortune for Berkeley: it must have made him miserable. But it was not the only misfortune. Indeed, this knowledge was a torment to Berkeley precisely because he regarded it as a great misfortune that his son was going to die young. It would also be a mistake to think that the only misfortune for Berkeley, here, apart from the misery caused by his knowledge of William's fate, was the actual death of his son. If that were so, then if he hadn't known ahead of time that his son was going to die young, there would have been no misfortune in Berkeley's life until the boy actually died. But surely if his friends knew, though Berkeley didn't, that his son was fated to die young, they would have felt very sorry for Berkeley—and not just because there would eventually be the tragedy of his son's early death, but also because *then* (i.e., *before* his son's death) there was a grave misfortune in Berkeley's life. What was it? It was the fact that his adored and adoring child, so full of promise, was going to die young. This fact was one that Berkeley passionately did not want to exist, it was totally against his interests (whether or not he knew of its existence). Therefore, it was a very real misfortune for him.

William Berkeley's early death may be viewed as casting a shadow of misfortune backward over

the life of Bishop Berkeley (and over the lives of the others who had an important interest in William's living or dying). Within the shadow, the misfortune was that William was going to die young, not that William died young.

Before going on, we might ask how far back in the life of Bishop Berkeley this shadow of misfortune falls: how much of his life is darkened by the early death of his son William? It certainly seems wrong to say that when Bishop Berkeley was himself a child, he was harmed by the fact that the son, William, he would one day have was going to die young. Why? Because when he was a child, the long life of his own future children was presumably not one of his major interests. I'm not sure when this did become one of Berkeley's important interests. It surely was one from the time of William's birth, and no doubt for some time before that. But I doubt that there is any non-arbitrary way, or for our purposes any need, to fix the precise time at which a long life for William first became one of Berkeley's important interests and hence to fix the precise time at which the early death of William first harmed Bishop Berkeley.

To continue: if my account of our example is accepted, then there should be no further resistance to the idea that an ante-mortem person can be harmed after his death. To see this, let's change the example. Suppose now that although William Berkeley dies young, as before, Bishop Berkeley dies before him. The early death of the boy means, as it meant in the original example, that during the time before his death there was a misfortune in the lives of all who cared strongly about William—the misfortune, namely, that William was going to die young. For the part of this time that Bishop Berkeley was still alive, he was obviously one of those who had that misfortune (whether or not he knew that William was to die young). So the shadow of harm that an event casts can reach back across the chasm even of a person's death and darken his ante-mortem life.

It is important to see that the death of young William, on the view I am defending, does not mean that the ante-mortem Berkeley suffers the misfortune that his beloved son dies young. Only someone alive at the time of the boy's death can suffer that misfortune. No, the misfortune that dark-

ens the life of the ante-mortem Berkeley in virtue of his son's early death is the backward shadow misfortune that his son is going to die young. This is important to see because it is all too easy to suppose that any view committed to the proposition that the dead can be harmed must hold that when William dies, *his death* is the misfortune that the ante-mortem Berkeley suffers. Perhaps one reason why these views are so often dismissed is that they are thought to commit their defenders to such a judgment. But as we have seen, they are not so committed. The ante-mortem Berkeley is harmed by William's early death not because he therefore suffers the misfortune of that death, but because he therefore suffers the misfortune that his beloved son is going to die young.

Incidentally, this example reveals a defect in Aristotle's account. He said, remember, that the effect of an unfortunate occurrence on the dead is "faint and slight" and "not of such a kind or so great as to make the happy unhappy." He was undoubtedly thinking of the normal case, where the unfortunate post-mortem occurrence was not foreseen by the ante-mortem person. But if Berkeley had known, before his own death, that William was going to die young, the effect on him of the boy's death would not have been "faint and slight"; it might well have converted him from a happy man into an unhappy one.

I confess that the thesis "An ante-mortem person can be harmed by events that happen after his death" seems to suggest that when an unfortunate post-mortem event happens, then *for the first time* the ante-mortem person is harmed. The alleged suggestion, in other words, is that the person goes to his death unharmed and only when the unfortunate post-mortem event takes place is he (i.e., the ante-mortem person) harmed, retroactively. I admit that this is a natural way to construe the words of the thesis, but of course, the thesis as I have been defending it does not carry the alleged suggestion. On my view, the sense in which an ante-mortem person is harmed by an unfortunate event after his death is this: the occurrence of the event makes it true that during the time before the person's death, he was harmed—harmed in that the unfortunate event was going to happen. If the event should not occur, the ante-mortem person would not have been

so harmed. So the occurrence of the post-mortem event is responsible for the ante-mortem harm. The sense of "make true" and "responsible," here, is non-mysterious. If the world should be blasted to smithereens during the next presidency after Ronald Reagan's, this would make it true (be responsible for the fact) that even now, during Reagan's term,

he is the penultimate president of the United States. Only if one bears this straightforward sense of "make true" and "responsible" in mind can one properly understand the thesis that "An ante-mortem person can be harmed by events that happen after his death."<sup>2</sup>

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### NOTES

1. "Death," in James Rachels (ed.), *Moral Problems* (New York: Harper & Row, 1975), 401-9. Joel Feinberg mentions a similar case in his article "Harm and Self-interest," in *Law, Morality, and Society: Essays in Honour of H.L.A. Hart* ed. by P.M.S. Hacker and J. Raz (Oxford: Clarendon Press, 1977), 285-308.
2. Joel Feinberg, Dale Jamieson, Gilbert Harman, Thomas Nagel, and Thomas Scanlon made helpful comments on earlier versions of this paper. I am extremely grateful to Ernest Partridge for his painstaking criticisms and also to Edward T. Cone for several useful suggestions.