

On Harming the Dead*

Joan C. Callahan

Barbara Baum Levenbook and George Pitcher have recently argued that the dead can be harmed.¹ Even more recently, Joel Feinberg has revised his earlier defense of the thesis.² There is good reason to attempt a defense of this puzzling notion, for we do sometimes “feel sorry” for a decedent if some project he invested in fails after his death. And we do have and mean to keep laws (e.g., governing wills) which respect the wishes of the dead. Still, the notion of harming the dead is paradoxical for those of us who ascribe to no theory of human immortality. How is it possible to harm someone who no longer exists? In this paper, I shall argue that despite the ingenuity of these recent arguments defending the claim that the dead can be harmed, the arguments fail. I shall, however, suggest that those actions some might think are wrong because they harm the dead may well be wrong, but for other reasons. And I shall argue in particular that there are good reasons, independent of considerations of harm (or wrong) to the dead, which support, in general, respect for wills, testaments, and premortem promises.

POSTHUMOUS HARM AS POSTHUMOUS LOSS

Although they draw different conclusions on the question of harm to the dead, Barbara Baum Levenbook and Ernest Partridge both reject

* This paper was begun during Joel Feinberg’s excellent 1984 National Endowment for the Humanities summer seminar on the moral limits of the criminal law. It was finished with the support of the Louisiana State University Council on Research. The paper has been improved by the insightful comments and questions of reviewers for *Ethics*, and I am indebted to Carolyn Morillo for her extensive and helpful remarks on an earlier draft.

1. Barbara Baum Levenbook, “Harming Someone after His Death,” *Ethics* 94 (1984): 407–19; and George Pitcher, “The Misfortunes of the Dead,” *American Philosophical Quarterly* 21 (1984): 183–88.

2. Joel Feinberg, *The Moral Limits of the Criminal Law*, vol. 1, *Harm to Others* (New York: Oxford University Press, 1984), chap. 2. Feinberg’s earlier views on posthumous harm can be found in “The Rights of Animals and Future Generations,” in *Philosophy and Environmental Crisis*, ed. William Blackstone (Athens: University of Georgia Press, 1974), pp. 43–68, and “Harm and Self-Interest,” in *Law, Morality and Society: Essays in Honor of H. L. A. Hart*, ed. P. M. S. Hacker and Joseph Raz (Oxford: Clarendon Press, Oxford University Press, 1977), pp. 284–308.

Ethics 97 (January 1987): 341–352

© 1987 by The University of Chicago. All rights reserved. 0014-1704/87/9702-0003\$01.00

Joel Feinberg's initial defense of the thesis.³ Partridge leads the Feinberg criticism by arguing that Feinberg involves himself in an incoherent account of posthumous harm, having to posit free-floating interests as objects of harm. As we shall see, Feinberg has revised his view in a way that avoids this criticism. Nonetheless, Levenbook sees the source of Feinberg's problem in his using the concept of interest to elucidate the concept of harm, and she suggests that we use an analysis of harm as loss as a new starting place to develop an account of harm to the dead. Two necessary conditions, says Levenbook, form the core of the concept of harm: "a) The harmed person must lose something or be deprived of something. b) The loss or deprivation must be bad for him."⁴ Levenbook says these are not the only necessary conditions for harm, and she denies that they are jointly sufficient for harm. But she takes this exposition of the core concept to be adequate for her purposes in the paper.⁵

Levenbook's case for posthumous harm rests on the claim that when a person is murdered, he suffers a loss precisely at the moment of death; that is, the moment of death (necessarily) includes the endpoint of the person's loss. She defines a person's death as "what occurs at the first moment at which A no longer exists."⁶ If A can lose something at the first moment at which he no longer exists, then there is no problem with ascribing losses to him at times shortly or long after his death. Thus, since a person can lose something after his death, he can be harmed after his death.

The argument is intriguing, but it fails. And it fails at its very beginning because Levenbook has been led astray by ordinary talk about losses to the dead. The real clue to this lies in the last section of her paper, where Levenbook says that the assumption that one can lose something after death "cannot be rejected on the grounds that there is no loser to do the losing, for there is no loser at the moment of death either. . . . Einstein has not lost his reputation as a scientific genius, even though he had that reputation until his death. One must claim either that he cannot lose it now, having retained the reputation until his death and now being incapable of losing anything, or that he still has the reputation and can lose it now."⁷ But it is not true that one must make either of these claims. For such claims would be the product of taking figurative talk inexcusably literally. Saying that Einstein has not lost his reputation as a scientific

3. Ernest Partridge, "Posthumous Interests and Posthumous Respect," *Ethics* 91 (1981): 243–64. Throughout this paper, readers familiar with Partridge's view will recognize agreements with his negative argument.

4. Levenbook, p. 412.

5. Although I do not want to stop to quibble about this, it should be noted in passing that it is unclear how, on the deepest level, this analysis differs substantially from even Feinberg's initial account of harm. For ultimately, what is a genuine loss to me if not some interference with my interest(s)?

6. Levenbook, p. 410.

7. *Ibid.*, pp. 416–17.

genius is just a shorthand way of saying that of those who have beliefs about scientific geniuses and who know about Einstein, most believe that he was one of them. But this, of course, is not a description of something *Einstein* has or has not got; it is a description of *us*—that is, it is an assertion of what some in the existing community of believers believe. “Einstein has not lost his reputation as a scientific genius” does not imply that *Einstein* has something that he could now lose. What it implies is that we, the living believers, have beliefs that *we* could lose.

Turning back to Levenbook’s argument, we can see that talk about losing things (e.g., mental functions at the moment of death) is equally misleading. To say “A lost his mental functions at the moment of death” is simply a (bad) way of saying “The mental functioning of A ceased at his death.” If ‘A’s death’ is defined (more correctly, I think) as ‘the moment at which A ceases to exist,’ then this is the first moment at which there is no longer a person, A, to grow older or wiser, build a dream house, be advanced or set back by market fluctuations, or make or suffer any other changes. A’s death is the termination of A and all his capacities, including his capacities to gain or lose. Talk, then, about A’s losses at the moment of his death (and afterward), like talk about Einstein’s retaining his reputation, is just loose talk, which is recognizable as such on scrutiny. By positing losses with no loser, Levenbook has saddled herself with the same sort of “bizarre ontological reification”⁸ that haunted Feinberg’s initial account of posthumous harm.

In his new account of posthumous harm, however, Feinberg attempts to solve the problem of the subject. I turn now to that account to see if the amendments to his argument offer a plausible defense of the possibility of harm to the dead.

POSTHUMOUS HARM VERSUS HARM TO THE DEAD

Though Feinberg commences his discussion of posthumous harm giving something of a nod to ordinary language idioms like “he was deprived of his life” and “hundreds lost their lives in the storm,” he contends that the main case for posthumous harm rests on the analysis of harm as setback interest.⁹ This notion is a refinement of an earlier account, which failed to differentiate invasion of interests from violation of rights and impairment of function and impeding, thwarting, setting back, defeating, and dooming of interests.¹⁰ In the new account, these various, slightly different effects on interests all count as ways of harming a subject. The dead, then, are harmed when their interests are “set back” in any of these ways.¹¹

8. Feinberg, *Harm to Others*, p. 83.

9. This analysis is given in *ibid.*, chap. 1.

10. *Ibid.*, p. 53.

11. I put “set back” in scare quotes here because it seems that Feinberg uses the term in two ways. On p. 53 of *Harm to Others*, he gives the term a technical definition. But since he allows that any of these deleterious effects on interests count as harm (if not harm on

But the problem of the subject immediately arises in the new account. If dead persons do not exist as interest bearers, how is it that they can be harmed? Feinberg's first move in approaching the problem is to suggest that even though the person, call him "Smith," no longer exists, it makes sense to think of Smith's interests surviving his death in the same way that we think of some of a person's obligations and claims surviving his death. But this is extremely puzzling since these surviving obligations and claims are no longer *Smith's*—they fall to his heirs, just as his tables and chairs do. His heirs inherit, that is, "come to own" (some of) the obligations and rightful claims that once were his, just as they come to own the material goods that once were his.¹² Of debts falling to heirs, we do, of course, say things like "Beth must pay her mother's debts." But again, this is just loose talk, and an elliptical way of saying that Beth now has debts which were incurred by her mother rather than by herself. If we are to think of a person's interests as surviving his death in the same way that some of his obligations (e.g., financial debts) and claims (e.g., copyrights) survive his death, then this means just that his interests are passed on to other agents—that they become his heir's interests.¹³ But given the sense of 'interest' as 'having a stake in' involved here,¹⁴ this is not only strange; it is false. Doe's interest in moving to the country does not become the city-bred Doe children's interest on his death.¹⁵ But responsibility for debts Doe incurred and what had been his property become theirs. Interests, then, simply do not survive a person after his death in the way some of the obligations and claims he had do. For those obligations and claims now transfer to living debtors and claimants. This is how they survive. But the interests a person had before death only survive *as interests* if they are carried on by living interest bearers—that is, if the living take up (or had and continue to share) the stake a former person had (to put it badly) in some matter.

Although Feinberg seems to want to make considerable progress on the basis of this analogy with surviving obligations and claims, its failure does not defeat his case for posthumous harm. For he hopes to solve

balance), and given that the title of chapter 1 of *Harm to Others* is "Harms as Setbacks to Interest," the term is also used more generally to cover impeding, thwarting, defeating, and dooming of interests, as well as impairment of function.

12. That Feinberg realizes this is suggested by his language in introducing the analogy: "I would like to suggest that we can think of a person's interests as surviving his death, just as some of the debts and claims *of his estate do*" (*Harm to Others*, p. 83, emphasis added). Given this awareness, it is puzzling that Feinberg does not anticipate this objection.

13. I do not mean to leave out insurance companies or business partners, etc., in this discussion of surviving obligations and claims. The point is just that in any such cases some other agent or rights holder falls heir to the obligation or claim.

14. See, e.g., Feinberg, *Harm to Others*, p. 33.

15. To be sure that this qualifies as a genuine interest in Feinberg's sense, suppose that Doe worked extremely hard for many years to put himself in a position to make this move.

the problem my objection to the analogy raises by appealing to a distinction made by Pitcher, which he uses to tie surviving interests to living interest bearers. This distinction is between two ways of describing a dead person: “(1) ‘as he was at some stage of his life—i.e., as a living person’ or (2) ‘as he is now, in death—mouldering, perhaps, in a grave.’ Pitcher calls the first ‘a description of an *ante-mortem* person after his death’ and the second ‘a description of a *post-mortem* person after his death.’”¹⁶ And Feinberg’s claim is that all *antemortem* persons, but no *postmortem* persons, are subject to being harmed (or wronged).¹⁷

With this, Feinberg has a proper subject for posthumous harms (and wrongs). But now the problem of retroactivity arises. Just how does a *postmortem* event harm an *antemortem* subject? It seems that Feinberg has committed himself to a doctrine of backward causation, such that an event after some time changes the state of affairs at that earlier time. But the apparently paradoxical escape from paradox turns out not to be problematic after all. For (following Pitcher) Feinberg now begins to view the subject of posthumous harm as having been harmed all along, or rather, at some point in his existence prior to his death. That is, the fact that *x* will come about makes it true that the *antemortem* Smith is harmed: “It does not suddenly ‘become true’ that the *antemortem* Smith was harmed. Rather, it becomes apparent to us for the first time that it was true all along—that from the time Smith invested enough in his cause to make it one of his interests, he was playing a losing game.”¹⁸ With this, posthumous events are connected to interest bearers, and the problem of the subject is resolved.

Now there is much to be said for this perfectly ingenious attempt at solving the riddle, for it does make sense to think that a person inevitably headed for disaster is already in a harmed state. But the solution just may be too clever, proving too much. For what now shall we say of a person who will later perform an action productive of posthumous harm? It seems that we must say that he is, long before *doing* something, already responsible for placing the *antemortem* Smith or A in a harmed state. Even worse, it can surely turn out on this view that our would-be agent is responsible for harming another even before he is born, just as long as it is now true that he will perform the act. For those of us who do not ascribe to some doctrine of original sin, this is a difficult implication to swallow.

What is more, it is now simply not the case that posthumous events are harmful to Smith. Rather, it is the fact that they will come about which is harmful to him. Once they *do* come about, Smith himself is beyond harm—“he” is merely a corpse, a thing that, by Feinberg’s own admission, cannot be harmed. This defense of the thesis of posthumous

16. From Pitcher, p. 184, quoted in Feinberg, *Harm to Others*, p. 90.

17. Feinberg, *Harm to Others*, p. 90.

18. *Ibid.*, p. 91.

harm terminates in the ironic position of having to allow that the very events it sets out to show are harmful to the dead are not and cannot be harmful to the dead. What seems to have happened here is that a provocative thesis—that the dead can be harmed—has itself been mortally injured by the proverbial thousand qualifications. The very distinction that Feinberg uses to defend the position that certain events harm the dead serves instead not only to show that these events do not harm the dead but also to show more clearly than ever that the dead cannot be harmed. The argument turns out, then, to be a powerful support for the view that only the living can be harmed. We can say that these are “the dead under another description,” but that, after all is said and done, does not change the fact that we are *really* talking about the living.

Finally, this analysis of posthumous harm cannot account for the very intuitions which motivate a theory of posthumous harm. For when we say we feel sorry for the dead Smith because of some posthumous event, we generally do mean it is the *dead* Smith we feel sorry for, even if (as I shall suggest shortly) we are confused about this. If we feel at all sorry for the dead in such cases, it is not because we think that *while alive* the person was harmed—indeed, it is common to express relief that the living (antemortem) person was not harmed by whatever the event is. The very intuitions that we hope a cogent theory of harm to the dead might account for are, in the last analysis, left orphaned on the Pitcher-Feinberg account of posthumous harm.¹⁹

RECALCITRANT INTUITIONS

Although the Pitcher-Feinberg account ties posthumous harm to the living, Feinberg seems unwilling to accept this as the cash value of the analysis. Consider his final response to Partridge: “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 more diffuse public harm. Once we recall that the betrayed party is the person now dead as he was in his trusting state antemortem, all temptation to give this distorted account of the matter ceases.”²⁰ This is an intriguing passage; for despite what Feinberg’s formal account of posthumous harm entails, it seems to suggest that antemortem persons can, somehow, be “resurrected” to be *current* victims of harm and wrong. Perhaps the language, “the betrayed party is . . . as he was in his trusting state antemortem,” is what gives the passage its ethereal flavor. At any rate, throughout Feinberg’s whole discussion of posthumous harm (and wrong), there is a clear tension between the technical theory itself and this shadowy picture of antemortem persons somehow intact in the present, capable of being harmed and wronged *now* by what we do (or fail to do) *now*. Those of us who hold no theory

19. Notice that Partridge’s account leaves these sentiments equally without roost.

20. Feinberg, *Harm to Others*, p. 95.

of immortality know that we do not believe that postmortem persons *are* as they were antemortem. But Feinberg, in his characteristically sensitive way, is drawn back again and again to speak with great compassion and reverence for the dead, and many of us are bound to sympathize. For we do *think of* the dead as they were antemortem. And sometimes we experience compassion for the dead in the wake of some event, and sometimes we experience what certainly seems to be genuine moral outrage at, for example, the breaking of a promise made to a person before her death.

The mistake in all of this, however, is made when we begin to think that because we have these recalcitrant intuitions, something has gone wrong with our theories insofar as those theories entail that the dead cannot be harmed or wronged. But we need to recognize that the failure of arguments which purport to demonstrate that the dead can be harmed or wronged shows that these intuitions are not to be accounted for philosophically (i.e., brought into reflective equilibrium with some philosophical theory) but are, rather, to be accounted for in some other way. That is, I want to suggest that our pretheoretic intuitions regarding harm and wrong to the dead are not genuine moral convictions at all but are, rather, judgments we are inclined to make simply because we *think of* the dead as the persons they were antemortem. They are sentiments which are to be accounted for psychologically.

In a well-known criticism of Lord Devlin, Ronald Dworkin has outlined a plausible set of conditions which must be fulfilled if a position is to qualify as a genuine moral position. Among those conditions is the requirement that the proponent of a position must (be able to) give a reason of some appropriate sort for the position. If one's view is based merely on an emotional response, one's "reason" is inadequate.²¹ What I want to suggest is that the reason that all arguments for harm and wrong to the dead must fail is that there simply is no subject to suffer the harm or wrong. Thus, there cannot be a good philosophical reason for holding that the dead can genuinely be harmed or wronged, and the conviction that the dead can be harmed and/or wronged is, therefore, precluded from being a genuine moral conviction. If this is not and cannot be a moral conviction, attempting to "account" for it in terms of a moral theory is misguided. But given that (for many of us) sentiments that the dead are harmed and/or wronged have a strong emotive content, and given that these sentiments are so widely shared, and given that this does seem to rest on the fact that we quite naturally think of the dead as they were antemortem, it seems that the psychosocial sciences are the most obvious place to look for an account of our preanalytic intuitions that the dead are harmed or wronged.

Just how this psychological account should go is a task for psychosocial scientists. But whatever details it includes, it surely must include the facts

21. Ronald Dworkin, "Liberty and Moralism," in his *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977), pp. 240–58, p. 250.

that those of us who share the relevant sentiments somehow identify with the dead and that this identification plays a crucial role in our responses, which are paradigmatically empathetic responses.²² Perhaps this is where Pitcher's distinction between postmortem and antemortem persons might do its most useful work; for we do not (cannot?) identify with postmortem persons as such. But we can and do identify with antemortem persons—*these* are the persons before our imaginations when we speak of the dead, and in whose behalf we feel sorrow and outrage.²³ There is no philosophical mistake in these sentiments. The confusion arises when we take them to constitute or entail genuine moral commitments about harm and wrong to the dead. They do not and need not constitute or entail any such commitments, any more than the natural (and perhaps unquittable) way of thinking of the dead as they were antemortem commits us to a belief in immortality.

Now it might be objected that the very issue in all this is whether there *is* a harmable subject after death and that I have begged the most important question by simply asserting that there is not. That is, it might be argued that, even if traditional theories of immortality are false, that with which I might meaningfully identify myself—that is, the collection of my projects, plans, passions, and other stakes (rather than merely some mortal body, etc.)—endures after death. Thus, it might be argued that *I* am spread over time after the death of my body and cessation of my consciousness in just this way and, therefore, even after my death can be a subject of harm. Just how we are to fully analyze the notion of a self is a question far beyond the scope of this paper. But it needs to be pointed out that this analysis, whatever it might include, must recognize metaphorical extensions of the concept of a self as metaphor, and it must recognize that there is a subject which is logically prior to projects, plans,

22. I suspect that the process of bereavement is the place to begin this account. Since Freud, it has become widely accepted that if one has lost or must give up some important object, the loss must be compensated and this frequently takes the form of identification with the lost object (Sigmund Freud, *New Introductory Lectures*, in *Complete Psychological Works of Sigmund Freud*, standard ed., trans. and ed. James Strachey [London: Hogarth, 1955–66], vol. 22, p. 86). Lily Pincus is typical of psychosocial theorists who explain successful bereavement this way: "Identification appears to be a feature in all cases of bereavement, varying only in degree, and can be seen as one aspect of the necessary task of internalizing the lost person" (*Death and the Family: The Importance of Mourning* [New York: Random House, 1974], p. 120).

23. That we both think of and identify with the dead as antemortem persons is clearly suggested by Feinberg in an otherwise unrelated discussion: "A dead body . . . is a natural symbol of a living person, and needless to say has a striking similarity to the real thing. When one mutilates a corpse one is doing something that *looks* very much like mutilating a real person, and the spontaneous horror of the real crime spills over on the symbolic one. . . . If I saw a stranger . . . open a coffin and pound the face of the newly dead person inside of it with a hammer . . . my reaction would be to move my hand to my own face, and wince as if *I* were the one who had been struck" (*The Moral Limits of the Criminal Law*, vol. 2, *Offense to Others* [New York: Oxford University Press, 1985], pp. 55–56, final emphasis added).

passions, and other stakes. This logically prior self is the bearer of interests—the subject for whom projects, plans, passions, and other stakes have meaning. And it is this subject which does not exist beyond death, even though much that made that subject's life meaningful may endure. Thus, although it makes sense to hold that all individual persons are in part “defined” by their stakes, no enduring collection of matters which constituted the stakes of some person themselves constitute a person—we need a subject in a special relation to these matters for that, and this is precisely what we do not have (and what we grieve as lost) after a person's death.

Most generally, my position is that lack of harm is to be accounted for in terms of lack of negative effect on a subject. In cases pertaining to the dead, however, the lack of effect is a consequence of lack of a subject to be affected. Thus, lack of a subject to be affected is sufficient, but not necessary, for lack of harm, while lack of negative effect on a subject is both necessary and sufficient for lack of harm. Thus, if you go to some remote island and say terrible things about me while I am alive and well, but your saying those things does not directly or indirectly negatively affect me in any way, you have not harmed me.²⁴

It is important to notice, however, that none of this entails that certain actions which we are inclined to think are wrong because they harm the dead are not wrong. All that follows is that such actions are not wrong *because* they harm the dead. There might yet be some other reason for holding that such actions are wrong. Let me say just a little about wronging the dead as a way of beginning to understand what might make the kinds of actions which concern us wrong.

WRONGING THE DEAD

I have not so far separated questions of wronging the dead from questions of harming the dead. This is because many so-called harms to the dead (e.g., spreading lies about a decedent which are widely believed) are also perceived as wrongs to the dead and because much that accounts for our sentiments regarding harm to the dead also accounts for our sentiments regarding wrong to the dead. Since decedents are not subjects, they cannot be wronged any more than they can be harmed. But, as Partridge points out, we certainly can do things that are wrong which pertain to interests the dead had as living persons and/or which involve agreements with and the legitimate expectations of persons when they were alive. A full account of such wrongs would have to include an account of intrinsic value (including goods worth preserving independent of whether a loss

24. In this regard also, my view differs from Feinberg's (see *Harm to Others*, p. 33). One need not accept my full account of necessary and sufficient conditions for harm to accept that lack of a subject makes harm to the dead impossible. However, the most plausible explanation for that impossibility does seem to be the impossibility of negative effect on a subject.

of those goods can be said to be harmful to anyone), as well as an account of virtuous behavior and wrongful failure of virtue.²⁵ I cannot attempt these accounts here. But I do want to look at a special class of so-called wrongs to the dead, namely, those involving ignoring provisions in wills and testaments and (to some extent) broken promises—in short, violations of the express “wishes of the dead.”

What needs to be pointed out about the express “wishes of the dead” is that the outcomes of these requests generally merit respect in their own right. Wills, testaments, and requests from the dying are generally such as to preserve something we think worth preserving or to produce something good or some entitlement for someone (or some cause). If part of our question is to understand why we generally take wills (etc.) as seriously as we do (i.e., why we tend to feel morally bound by the express wishes of a decedent), then we need to understand that there is, in the usual case, something to be said for what has been willed or requested. Consider some unusual cases. Suppose that someone has willed that on her death her property be liquidated and the proceeds buried with her. Or suppose that a great artist who has kept all his work wills that his paintings be burned immediately on his demise. Or, less dramatically, 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 (the value of certain objects, the good of individual heirs, etc.). It might, of course, be suggested that the reason we believe ourselves relieved of duty in cases like those mentioned is because anyone who would will such things must be incompetent in some way; thus we would not thwart the real will of the person (i.e., what the person relieved of incompetence would will) by failing to abide by such testaments. But this is not a convincing reply. A monumentally stingy person, envious by nature (or nurture) might be perfectly competent in directing her fortune to be buried with her. Such a person might be morally deplorable, but she need not be incompetent. I want to suggest, then, that our sense of genuine duty as regards the express wishes of the dead is deeply tied up with other values that are generally captured in wills, testaments, and other requests of the dying.

I do not, of course, mean to suggest that values independent of the intentions of the living person account completely for our sense of obligation to respect the express wishes of the dead. One important part of a full account of this must be the genuine moral conviction that persons

25. Part of this last account will need to include acting in ways honorable and dishonorable toward the dead. As one reviewer has pointed out, that we can honor or dishonor the dead may also be part of the source of the intuitions Levenbook, Feinberg, and Pitcher are trying to account for.

have a right to dispose of their property as they see fit. Insofar as that disposition is to take place after the person's death, we do have a genuine moral obligation. But that obligation is to heirs. That is, in writing a will (or giving a testament), the individual creates an entitlement that will commence on his demise. But, again, the obligation is not to him; it is to his heirs. We might well refuse to bury the selfish woman's fortune with her. But we cannot refuse to distribute the usual person's willed fortune to his rightful heirs.

CONCLUSION

To sum up: Levenbook's argument for posthumous harm is misled from the outset by ordinary language, leaving her with free-floating losses and the problem of the subject that Partridge raised against Feinberg's initial defense of the possibility of harming the dead. The Pitcher-Feinberg account of posthumous harm avoids the problem of the subject, but at the expense of the intuitions the theory sets out to justify. What is more, in addition to having some importantly counterintuitive implications, the Pitcher-Feinberg account turns out not to be a theory showing how the dead can be harmed but one which supports the view that only the living can be harmed. I have made some tentative suggestions regarding how to account for our pretheoretic intuitions regarding harm and wrong to the dead, and I have suggested that these intuitions, which I have argued are not and cannot be genuine moral convictions, are to be accounted for psychologically. I have ended by suggesting that our intuitions regarding the wrong of ignoring the express wishes of the dead involve other values like the rights and interests of persons and other sentient beings. And I have suggested more generally (and without development) that 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.

All this leaves open the questions of whether we should work to be rid of the sentiments that the dead can be harmed and wronged and whether we should maintain the fictions of harm and wrong to the dead in our legal institutions. But I see no more reason for trying to exorcise these sentiments than I see for trying to change the ordinary language talk about harm and wrong to the dead that has led some philosophers astray. What we need to rid ourselves of is the belief that these sentiments are genuine moral convictions that need to be brought into reflective equilibrium with a moral theory. As for maintaining these fictions in our legal institutions, Partridge and Feinberg²⁶ have offered several good reasons for keeping them—reasons which appeal to the interests of the living—and I see no cause for not letting these benefits and ways of showing respect to the living justify maintaining these fictions in our

26. See Feinberg, "The Rights of Animals and Future Generations."

legal system. Indeed, the vast majority of us are greatly comforted now to know that after our deaths the law can be used to contribute to the good of the persons and causes we care about. If maintaining the fictions of harm and wrong to the dead in our legal institutions is the most effective way of securing this comfort (as well as for ensuring respect for the entitlements of survivors and cared-about causes), then keeping them is exceedingly well justified.