

Harming the Dead

Don Marquis

In "Harming Someone after His Death," Barbara Baum Levenbook argues that, on the one hand, one can account for the harm of murder to the victim and the harm of destroying the reputation of a dead person or breaking a promise to a dead person if one understands harms as losses. On the other hand, if one understands harms as invasions of interests, then one can make sense of neither the harm of murder to the victim nor the posthumous harms mentioned above.¹

The reasons she offers do not appear to support such an asymmetry. Consider her argument that the harm of murder cannot be understood (in the manner of Feinberg) as an invasion of an interest.² Let the moment of death be the first moment at which the victim no longer exists. Assume no immortality. On the one hand, the invasion cannot occur earlier than the moment of death; otherwise, one would be alive, not dead; hence, not murdered; hence, not yet having had one's interest invaded. On the other hand, the invasion cannot occur at the moment of death or later either. "Since he does not exist at this time . . . he has no interests, including the interest in remaining alive to be invaded at this time" (p. 410). Hence, being murdered cannot invade the victim's interest in remaining alive. So much for Feinberg's view via an argument that is the development of a point made by Epicurus.³

Why won't the same sort of Epicurean argument work against Levenbook's loss account of harm? After all, the loss that one suffers due to one's murder cannot occur earlier than the moment of death since, if it did, one would be alive; hence, not dead; hence, not murdered; hence, not yet having lost anything. But at the moment of death or later, one no longer exists; hence there is no victim to suffer the loss. So

1. Barbara Baum Levenbook, "Harming Someone after His Death," *Ethics* 94 (1984): 407–19; hereafter cited in parentheses in text.

2. Joel Feinberg, "The Rights of Animals and Unborn 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 J. Raz (Oxford: Clarendon Press, 1977), pp. 284–308.

3. Epicurus, "Letter to Menoeceus," in *Greek and Roman Philosophy after Aristotle*, ed. Jason L. Saunders (New York: Free Press, 1966), pp. 49–52.

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Levenbook's account of the harm of murder is subject to the same Epicurean difficulty to which Feinberg's account is subject.

Levenbook's central contention is that posthumous harms such as breaking a promise to a dead person or destroying the reputation of a dead person can be understood as losses to that person. Her case for this is based on the claim that the harm of murder can be understood as a loss to the victim, and, if the harm of murder can be so understood, then posthumous harms can also be so understood. Levenbook grants that it is paradoxical to hold that "one can lose something at the moment that he ceases to exist" (p. 415). But she argues that a good reason for making such an assumption is that it "has the advantage of preserving the important pretheoretic conviction that murder harms its victim" (p. 415). If Levenbook is right about this, then why can't Feinberg and the rest of us also make the *assumption* that one's interest (in particular, one's interest in staying alive) is invaded at the moment one ceases to exist? "Paradoxical" though it may be, a good reason for holding it also is that it "has the advantage of preserving the important pretheoretic conviction that" my murder would invade my interest in staying alive. This resuscitates Feinberg. Again, Levenbook can't have it both ways.

The Epicurean argument does seem to have wildly counterintuitive consequences for the supposed harm of murder or the supposed loss of life. Hence, most of us bracket off that argument in most philosophical contexts to get on with our work on the ethics of killing and related issues. That seems legitimate. The argument seems intractable. The cash value of Partridge's recent paper is that Feinberg's account of posthumous harms does not successfully avoid the Epicurean difficulty.⁴ It is also legitimate to take that argument seriously, of course. But it will hardly do to use it against others if one is unprepared to accept it as an objection against one's own views! Levenbook (thinking of her own view) admits that "there are, undoubtedly, real difficulties of a metaphysical and metaethical nature in the thesis that someone can be harmed after he no longer exists" (p. 418). Indeed! The lack of specificity of this remark disguises the fact that the major metaphysical difficulty is the Epicurean argument. Either the difficulty is conclusive or it isn't. If it is, then Levenbook's account is unsound. If it is not, then Levenbook has failed to show that Feinberg's analysis is inferior to hers. Hence, Levenbook's analysis is unsound.

Levenbook's position does nothing to dispel the grossly counterintuitive character of claims such as 'The diminution of Einstein's reputation now is a loss to Einstein' because it does nothing to provide us with an understanding of how it is possible for a nonexistent person to suffer a loss (p. 417). The argument that it must be so, otherwise, murder would not be a harm does not resolve the issue. It merely adds to the perplexity.

4. Earnest Partridge, "Posthumous Interest and Posthumous Respect," *Ethics* 91 (1981): 243-64.

The problem can be put thus: the Epicurean argument seems to establish the truth of the conditional,

If one cannot suffer a harm when one does not exist, then murder does not harm its victim.

The use of both *modus ponens* and *modus tollens* seems plausible here if one notes the plausibility of both the antecedent and the denial of the consequent. But one cannot endorse both arguments. The use of neither *modus ponens* nor *modus tollens* seems plausible here if one reflects on the utter implausibility of both the consequent and the negation of the antecedent. Surely we wish to endorse one of those arguments. Levenbook chooses *modus tollens* when discussing her own theory. An adequate analysis must explain why. Levenbook does not.