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What We Owe the Dead

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ABSTRACT My aim in this paper is to argue that we have at least some obligations to the dead. After briefly considering some previous (unsuccessful) attempts to establish such obligations, I offer a reductio argument which establishes at least some obligations to the dead. Following this, the surprising extent of these obligations (given a few roughly Kantian assumptions) is considered. I then argue that there are and must be some significant limitations on the duties of the living in relation to the dead. My aim in this paper is not to sort out how we should deal with all of the particular cases in which the question of obligations to the dead emerge — in archaeological digs, research involving the newly dead, the execution of wills, or the fulfilment of last requests — but I will attempt to lay some groundwork for the future assessment of these questions.

The dead have remembered
our indifference

The dead have remembered
our silence

The dead have remembered
our words

all the living are guilty . . .

– Tadeusz Rozewicz¹

1. Introduction

Archaeologists have much discussed the ethical issues surrounding their investigations of human remains.² In many respects, the courts have been reassured by this — at any rate, they have been reassured enough to let the archaeologists go about their business.³ On the other hand, the wills of the living are routinely respected when the living are no longer above ground. Indeed, the body of someone recently deceased will not be utilized unless that person has explicitly given consent to use her remains.

These two cases mark common, and perhaps conflicting, attitudes concerning what the living owe the dead. On the one hand, there is a collective recognition that those who came before are worthy of respect: people carry out elaborate last wishes; they build memorials to remember and honour those who died in their names. On the other hand, people dig up buried bodies, they rob the great tombs to fill the halls of museums, they disturb the peace of tribal burial grounds in the name of learning more about the land before it was so drastically changed.

Dealing with the dead, Vico points out, is one of the most basic human institutions.⁴ It is a feature of perhaps every culture, and can be studied virtually anywhere. The

status of dealing with the dead as a basic institution, however, in no way diminishes its complexity. The task of this article is to make one aspect of dealing with the dead — and the complex attitudes toward it — more transparent: namely, what we owe the dead.

To this end, several arguments for the view that there are in fact obligations to the deceased are examined. After briefly considering some previous attempts to establish actual obligations to the dead, a *reductio* argument is presented and defended which successfully establishes at least *some* obligations to the dead (or so I contend). Following this, the surprising extent of these obligations (given a few roughly Kantian assumptions) will be articulated. Equally importantly, it will be argued that there are *and must be* some significant limitations on the duties of the living in relation to the dead.

The aim of this article is not to sort out how we should deal with all of the particular cases in which the question of obligations to the dead emerge — in archaeological digs, research involving the newly dead, the execution of wills, or the fulfilment of last requests — but the article will attempt to lay some groundwork for the future assessment of these questions. The point of departure for this investigation will be to examine the view that we have obligations to the dead based on the capacity of the dead to be the subjects of harm.

2. Posthumous Harm and Postmortem Respect

Aristotle famously claims that:

A dead man is popularly believed to be capable of experiencing both good and ill fortune — honour and dishonour, and prosperity and the loss of it among his children and descendants generally — in exactly the same way as if he were alive but unaware or unobservant of what was happening. (NE 1.10)⁵

What Aristotle says here is surely right, but it is also surely misleading. The dead are not capable of undergoing harm in *exactly* the same way as the living person who is unaware that the harm is being inflicted. The cases are not identical precisely because, in the case of the living person, there is an identifiable subject of harm. In the case of the deceased, a familiar objection runs, there is no such subject. The problem of the subject, as it has come to be called,⁶ marks the central objection to the claim that the dead can be harmed. Its most famous formulation, by Epicurus, is both succinct and powerful: ‘Where death is, I am not; where I am, death is not’. If there must be a *subject* of harm for harm to exist, and death is a cessation of existence (as will be assumed for the purposes of this paper), it seems that the dead cannot be harmed.⁷

Importantly, the problem of the subject does not rely on the (implausible) claim that something must be *felt* as a harm for it to be a harm. As Thomas Nagel and Joel Feinberg (among others) have more recently argued,⁸ one can be harmed without experiencing the harm directly. For example, a person might be injured such that he reverts to the state of a happy 3-month-old. Although the person has *felt* no harm, that person has clearly *been* harmed.⁹ The problem of the subject thus concerns, not the *experiencing* of a harm, but the existence of a subject to whom the harm can plausibly be attributed. If death involves the cessation of existence, it seems, current disrespect of the dead cannot be a harm (the problem runs), as there is no longer anyone to *be* harmed.

Kant was sensitive to the problem of the subject in regard to the question of posthumous harm. As he claims in *Metaphysics of Morals*:

A good reputation . . . clings to the subject as a person, as being of such a nature that I can and must abstract from whether he ceases to be entirely at the time of his death or whether he survives as a person; for in the context of his rights in relation to others, I actually regard every person simply in terms of his humanity, hence as *homo noumenon*. (6:295)¹⁰

The issue of whether or not the dead are owed respect, Kant contends, is broader than the question of whether or not one can locate a being who is harmed by postmortem disrespect. The reason for this is found in the Kantian distinction between the *homo phenomenon* and the *homo noumenon*: to respect humanity *as such* (rather than a particular agent) requires abstraction from the particular circumstances of the human beings one encounters. It is this act of abstraction that generates obligations to both the living and the dead, on Kant's view. The fact that we cannot identify a *subject of respect* becomes irrelevant. Such an identification is irrelevant even in the demand to respect humanity in *living* human beings. This is so simply in virtue of the fact that humanity in itself is an abstraction — a noumenon, and not a phenomenon.

This, it should be noted, is precisely the problem with the Kantian view: it seems to ignore the particularities of agents in the insistence that we respect rational agency as such. The resolute Epicurean might take this argument to show that there are no determinate obligations to respect particular human beings whatsoever, as all particular human beings are *homo phenomenon*. It is humanity as such (*homo noumenon*) that is deserving of respect, and this is compatible with disrespecting any particular *homo phenomenon* at all — living or dead (that is, provided we accept Kant's basic epistemological picture of the phenomenal/noumenal distinction). This point is perhaps arguable, but there is no need to dwell on it here.

Kant's position enables one to see the immense difficulty that the problem of the subject poses for the view that the dead can be harmed. Kant himself sees this difficulty when he states that the rights of the dead represent 'a phenomenon as strange as it is undeniable' (6:295). More recent philosophers writing on this problem are no less aware of the difficulties. Nagel attempts to deal with these difficulties by claiming that harm is not a predicate that necessarily refers to a *state* of a subject. Rather, as Nagel puts it,

. . . most good and ill fortune has as its subject a person identified by his history and his possibilities, rather than merely by his categorical state at the moment . . . while this subject can be exactly located in a sequence of places and times, the same is not necessarily true of the goods and ills that befall him. (p. 65)

Of course, this is not yet a sufficient reply to the view that death deprives us of a subject of harm. Nagel effectively shows that common intuitions about the badness of death are not necessarily contradictory: the view that good and ill fortune are to be judged in terms of the history and the possibilities of agents is a nice way of making sense of common intuitions about why certain occurrences count as harm (e.g. Keats' death at 24 years old). But this response is surely *not* an adequate way of dealing with the deeper (metaphysical) challenge posed by the Epicurean — a challenge that is meant

to call into question common intuitions, regardless of whether or not they generate paradox. To show that common intuitions can be made consistent is not to show that they are *right* — and it is this latter question which the problem of the subject poses.¹¹

The responses to Kant and Nagel offered above, on behalf of the Epicurean, are difficult to overcome. Moreover, other accounts of the way in which we can justify the view that harms befall the dead face similar challenges. Consider what T. M. Wilkinson has dubbed¹² ‘the symmetry argument’:¹³

1. Living persons (often) care about their postmortem existence.
2. Living persons (often) care about their pre-mortem existence.
3. The concerns one has about one’s pre-mortem existence ought to be respected.
4. Like cases should be treated in like fashion.
5. Therefore, the concerns one has about one’s postmortem existence ought to be respected.

The plausibility of this argument rests on the claim that ‘we can make sense of harming someone after her death in the same way that we can make sense of remembering someone after her death’ (p. 35).¹⁴ However, as Geoffrey Scarre has remarked, ‘it needs to be explained how the intentional attitudes we have to formerly living people could be good or bad for them’ (p. 241)¹⁵ if this is to respond adequately to the Epicurean challenge — and this is something that Wilkinson’s argument has not done.

There is, however, a more serious problem with the above argument. The entire argument rests on the view that the post-mortem and pre-mortem cases are in fact alike (i.e. it rests on the view that premise 4 applies in this case). The problem with this, of course, is that it is this very assumption that the Epicurean argument aims to challenge. Thus, once again, it seems that the attempt to justify the view that the dead can be harmed begs the question.¹⁶

The philosophical difficulties surrounding the view that the dead can be harmed make this view an unlikely candidate for establishing that there are obligations to the dead. Despite its plausibility — I cannot help but accept that the dead can be wronged, and hence harmed — the arguments in favour of this view seem *necessarily* to beg the question. This is the force of the Epicurean view, and also the force of the problem of the subject.

3. A Transcendental Argument

In a recent paper, Bob Brecher has offered an alternative, and highly intriguing argument for the view that we have actual obligations to dead persons — obligations that exist precisely because these dead persons are members of one’s community, and this community is a necessary feature of one’s own identity.¹⁷ Brecher argues that the only way a group can discharge its obligations to the dead is by *remembering* the dead collectively (through public memorials, for example).

Brecher’s argument is captured in this passage:

I incur the obligation as a member of a community whose moral-political identity has been in part shaped by what Jan Palach did whether or not I see

it as a benefit, whether or not I entirely welcome the identity I have inherited and however inconvenient it might in fact be. It has contributed to my being the particular person — the particular moral agent — that I am: and so I am in debt to him, just as I am in debt to my parents. I did not contract for it; it might be far from entirely beneficial: but nonetheless it is a debt I have incurred inasmuch as it has helped to make me a person at all — and being a person, having a moral identity, cannot but be one sort of benefit. (p. 116)

The passage has the form of a transcendental argument: we posit something, and move from there to the conditions of its possibility. The posited thing, in this case, is one's moral identity. The dead — or at least many of the dead — are a condition for the possibility of having the particular identities that persons have.

Despite its insight, there is a substantial problem with Brecher's reasoning: namely, it does not establish what it is intended to establish. The argument *does* establish that we must *value* the dead — but this is quite distinct from the view that we have particular obligations to the dead. Even if the dead are a condition for the possibility of those communities that are partially constitutive of current moral identities — a point no one could reasonably deny — it does not follow that there are any particular obligations to the dead who have enabled agents to be what they are.

It does seem plausible, however, to claim that one is required to value any of those things that make one's agency possible, provided that one values one's agency.¹⁸ In keeping this view, agents are also required to value oxygen, parents, the environment, and so on. It does not follow from this, however, that agents are obligated to oxygen, or the environment, or even to their parents. (There may very well be obligations to each of these things, but said obligations do not exist *simply in virtue of their status as necessary conditions for a particular agent.*)

Obligation and value, to put it bluntly, are not co-extensive: one can be obligated to people one does not value (even if one should value them), and value things that cannot be the source of obligation. From this it follows that one cannot infer an obligation to x from attributing value to x. The most Brecher's argument shows is that one must value the dead insofar as they are a condition for the possibility of the existence of one's moral identity. This is an important point — but one cannot infer from this that there are obligations to the dead.¹⁹

So much, then, for the transcendental argument. It fails to establish that there are obligations to the dead precisely because one cannot leap from the (correct) assertion that the dead are a condition for the possibility of the living to the claim that we *thereby* have obligations to the dead.

4. An Argument with Promise(s)

The two arguments thus far considered fail to establish obligations to the dead. They share one thing by way of strategy: both attempt to establish positively that we do in fact have obligations to the dead. I would now like to try to establish this (intuitive) conclusion from another route: namely, by showing that its denial leads to unacceptable results.

The beginning assumption of the *reductio* is that there are in fact *no* obligations to the dead. The strategy will be to show that this assumption, when coupled with some

of the essential features of promise-making and promise-keeping, results in paradox, and hence that the initial assumption must be rejected.

Making a promise, it is usually acknowledged, creates a *prima facie* obligation in the promisor to fulfil that promise. The obligation, we must acknowledge, is *only a prima facie* one, however. It can be overridden in various ways, and it can fail to be a legitimate promise for various reasons. The conditions required for a promise to create obligation in the promisor will be called *legitimacy conditions*. Legitimacy conditions can be either internal or external.²⁰

External legitimacy conditions involve those circumstantial and environmental conditions over which one has little or no control, and which might interfere with one's ability to fulfil an obligation to another. These conditions would include natural disasters, accidents, death, and so on. If A promises to help B move, it is understood that this promise creates a legitimate obligation *only if* A does not die, there is not a horrid accident that prevents A from helping, and so on.

Internal legitimacy conditions involve those features of volition necessary in order for A's promises to create obligations for A. Such conditions would include that the promise was not made under duress, that A was not brain-washed when making the promise, that the promise was not elicited by deceit, and so forth.

Recognizing these conditions enables one to account for what are standardly regarded as obligation-creating promises as well as the exculpatory conditions under which said obligations can be forgiven. If A promises to help B pick out furniture for B's living room, A is obligated to do so, provided A has not been forced to make the promise, and provided that nothing serious would prevent A from carrying out the fulfilment of the promise (e.g. death, maiming), and so on. If A discovers that the furniture B has picked out for B's living room belongs to A, however, A's obligation to help B fails to meet the required legitimacy conditions. A did not, after all, promise to give B A's furniture.

In addition to legitimacy conditions, obligation-creating promises have satisfaction conditions: that is, there will be a certain action (or set of possible actions) that must be performed in order for a particular promise to be fulfilled. These are sometimes difficult to determine (e.g. 'I promise to support you'), and sometimes transparent (e.g. 'I promise to meet you at 5PM today'). While the point is arguable, it is also reasonable to suppose that one internal legitimacy condition of any promise is that the promisor understands the satisfaction conditions of the promise being made.²¹

Consider now a promise Susie makes Sammy: Susie promises to read a poem at Sammy's funeral. This promise has clear legitimacy conditions and clear satisfaction conditions: the promise will be kept if and only if Susie reads the poem at Sammy's funeral. The promise will maintain legitimacy only if Susie does not die before Sammy, does not become incapable of speech, become comatose, or fall victim to any other such tragedy.

Susie's promise creates an obligation. The obligation seems to be an obligation to Sammy.²² This promise is *not* a promise to the deceased. Sammy is alive. The satisfaction conditions of this promise are transparent to the promisor as well as the promisee. We can grant this even while we grant our initial assumption that there are no obligations to the dead. (Sammy is alive, after all.)

Given the initial assumption, however, upon Sammy's death at t_2 , the promise made at t_1 no longer has any obligatory force. This is a necessary result, as by assumption

there are no obligations to the dead. At the moment of Sammy's death at t_2 then, the initial promise to the living Sammy would also *necessarily* cease to have *any* satisfaction conditions: it would become impossible to fulfil the promise, as one (by assumption) cannot fulfil a promise to someone who is no longer alive.

In this case, we can specify the legitimacy and satisfaction conditions of the promise made at t_1 . When Susie says 'I promise to read a poem at your funeral', provided that she did not say this under duress, that she knew what was involved, etc., the promise meets both internal and external legitimacy conditions. The satisfaction conditions are likewise transparent: the promise will be fulfilled if and only if Susie reads a poem at Sammy's funeral.

It must also be said, however, given our initial assumption, that there are *no* satisfaction conditions for this promise, and thus that there are promises that *have no* satisfaction conditions. But this is patently absurd. *All* promises have satisfaction conditions, even if these are not transparent. This follows simply from the fact that a promise, to be a promise, must be a promise to do some x — where x is a specifiable content. This is *not* equivalent to the view that one can fulfil any promise. The view, rather, is that any actual promise (i.e. any promise that has both legitimacy and satisfaction conditions), must admit of conditions under which the obligation to fulfil said promise would be met.

Such conditions in Susie's promise are clear: Susie needs to read the poem at the funeral to satisfy her obligation to Sammy. But if our initial assumption is adequate, Susie's promise has no content, and cannot be satisfied. This contradiction — that one wants to say that Susie's promise both does and does not have satisfaction conditions — constitutes a *reductio* of the initial assumption. One is thus entitled to infer that there are at least *some* obligations to the dead.

The most serious objection to this *reductio* consists in denying that Susie's promise cannot be satisfied after Sammy's death. This objection depends on the obligation incurred by Susie being an obligation independent of Sammy — indeed, it depends on the obligation not being an obligation *to Sammy* at all. This is an important objection precisely because the above *reductio* depends crucially on the view that a promise creates an obligation *to someone*, and not an obligation *simpliciter*. This view requires support if the above *reductio* is to work. After all, if Susie can have an obligation to read a poem at Sammy's funeral that is *not* an obligation to Sammy, then there is little problem with this case. When Sammy dies, there is still an obligation for Susie to read the poem; it is just not an obligation *to Sammy*.

Of course, how one understands this objection depends substantially on how one understands the nature of obligations. If one maintains that obligations are always obligations to moral agents (as Kant did), the agent to whom one is obligated in the above case must be specified. One standard claim made, given this view of obligation, is that promises create an obligation *to oneself*, even if they do not create obligations to others.²³ Given this view of obligation, there is still an obligation to read a poem at Sammy's funeral even if there is no obligation *to Sammy*.²⁴ Susie must still read the poem at Sammy's funeral — and thus the promise still has satisfaction conditions — even though Sammy is no longer alive. The person to whom Susie is obligated is *herself* — or her own rational agency. To respect herself, this line of argument goes, she must be consistent, and consistency requires doing, at t_2 , what she promised at t_1 . On this view, this demand for consistency is an obligation created by *all* promises. This will be dubbed the consistency account of obligation.

An alternative view of obligation holds that one can have obligations even if these obligations are not obligations *to any* particular agent, or even to all agents generally. An obligation, on this view, is a social fact — it doesn't require any particular agent or particular set of agents for the fact to exist. If someone promises one's dead mother to improve one's eating habits, this creates an obligation simply given the general (public) facts about the institution of promise-making and promise-keeping. At least some obligations are created by particular speech acts, and the creation of these obligations is independent of any particular agent *to whom* one might be obligated. Thus, Susie's act of promising creates an obligation *simpliciter*, it is not an obligation to Sammy *per se*, even though it is convenient to speak this way. This will be called the institutional account of obligation.

Both of these accounts of obligation pose a serious problem to the *reductio* offered above. It is my view that the obligation created in a promise to another person is in fact an obligation *to the other person*, but this has not been established. This view does not require one to reject the possibility of other types of obligation. It is sufficient, for the above *reductio* to work, to show that making a promise to B creates an obligation to B, even if there are other obligations that are not obligations to moral agents (there might be direct obligations to animals, to the environment, etc.). One need not decide what the precise nature of obligations involves in order to defend the above *reductio*. Rather, it will be sufficient to show that the consistency and institutional accounts of obligation fail to adequately explain some basic intuitions concerning promise-making and promise-keeping.²⁵ The strategy employed will be to show that these alternative accounts cannot adequately explain the differences between promises made to oneself and promises made to others. This, it will be argued, is sufficient to reject the alternative conceptions of obligation.

Consider: A promises B to stop smoking. A thus incurs an obligation. Several months later, A has still not satisfied the legitimate promise made to B — he is still smoking, and doing so vigorously. If A's promise is a promise to B, one can express A's wrongdoing in terms of a wrong done *to B*. If the promise does not create an obligation to B, then A violating his obligation is simply a wrong, and not a wrong done *to B*.

How one is to describe this case, as pointed out above, will depend on one's account of obligation. But notice that this case, on the alternative views considered above, will be no different from the case of A promising *himself* to quit smoking. The violation of the promise is still wrong, on these alternative views, and it is wrong for precisely the same reason.

By itself, this is perhaps unproblematic. But the symmetry of promises to oneself and promises to others that follows from the consistency and institutional accounts of obligation quickly becomes problematic. Consider first the consistency account of obligation. If promises to oneself are identical to promises to another (i.e. if one is obligated in the same way in each case), then both kinds of promises can be nullified in the same way. Consider: If A promises himself to eat more healthful foods, but later decides that it is in his interest to put on weight, this realization is sufficient to nullify the initial promise. Despite the strong commitment to the initial promise, A now sees his rational interests direct him in another way. He thus nullifies the obligation-creating force of the promise to himself. If A promises B to do x, however, a simple change of heart on A's part is *not* sufficient to nullify A's obligation. Indeed, even a thoughtful

and rational investigation of changed circumstances will not be enough. Because the promise was to *B*, *B* has a say in whether or not the promise will be forgiven. Unlike cases in which one promises oneself, one must, in the usual cases, consult the person to whom one has made a promise if the obligatory force of that promise is to be nullified. It follows that there is a fundamental asymmetry between promises to oneself and promises to another. This asymmetry, I contend, is best explained by a recognition that promises incur obligations *to the person to whom one promised*, rather than obligations *simpliciter*. Promises to oneself cannot be nullified in the same way as promises to others precisely because they create obligations to *different persons*. This explains why the obligation created by a promise to *B* can be nullified by *B*, but not by *A*.²⁶

This is not sufficient, however, to reject the institutional account of obligation, even if it is sufficient to reject the consistency account. Further investigation of the asymmetry between promises to oneself and promises to others, however, demonstrates the weakness of this second alternative account of obligation.

Consider a case in which *A* utters a promise to *B* without intending to fulfil that promise. *A* says ‘I promise to stop smoking’, all the while knowing the he has no intention to stop smoking. If it is wrong for *A* to make such a false promise, it is wrong precisely because the promise is made *to B*. After all, if *A* uttered *to himself* ‘I promise to stop smoking’, knowing that he had no intention to stop smoking, no wrongdoing would have occurred (perhaps *A* was practicing making a promise he intended to make in the next few years).²⁷ On the institutional account of obligation, this asymmetry cannot be explained: promises incur obligations regardless of whether or not they incur obligations to other people. Obligations are incurred given social features of promise-making, regardless of the intentions of the agent uttering the promise (if this were not so, it would never be wrong to falsely promise, as any false promise would not have been intended as a real promise).

What explains the asymmetry between promises to oneself and promises to others is that the obligations created by promises are obligations *to particular persons*. If either the consistency or the institutional account of obligation were correct, there would be symmetry in promises to oneself and promises to others. If two promises are both promises to oneself, then they should have the same nullifying conditions; if all promises create obligations based on the institution of promise-making, then it should be equally wrong to knowingly utter false promises to oneself as well as to others.

Given these considerations, the alternative accounts of obligations considered above can safely be rejected as adequate accounts of obligation. To explain the asymmetry present in promises to oneself and promises to others, it can be assumed that promises create obligations to the person to whom one promises. It can further be inferred that promises to others are not identical to promises to oneself. Thus, Susie’s promise to read a poem at Sammy’s funeral creates an obligation *to Sammy*, not an obligation *simpliciter*, nor an obligation Susie has to herself. This is sufficient to generate the initial *reductio*: When Sammy dies, there is no longer an agent to whom Susie is obligated, and hence there is no longer an obligation. If there is no longer an obligation, there are no conditions under which the promise made at t_1 can be satisfied. Hence, there was no promise made at t_1 , as all promises have satisfaction conditions. Because this is absurd, one must reject the initial premise that results in this absurdity: namely, that there are no obligations to the dead. This *reductio* thus demonstrates that there are at least some obligations to the dead.²⁸

There are two additional objections to this *reductio* one might make on behalf of an opponent. The first objection to the above argument runs as follows: Of course the *reductio* works! It is impossible to fulfil a promise if there *is no* promise to begin with. Because the promise concerned Sammy's funeral, there simply was never a promise made.

In response to this objection, we need merely to point once again to the fact that the legitimacy and satisfaction conditions of a promise have been met at t_1 . It is thus *ad hoc* to insist that there simply was no promise made. If one insists that Sammy's death makes it the case that there was no promise at t_1 , despite the fact that there clearly was, before t_2 , a promise, then one must advocate backward causation — i.e. Sammy's death must *make it the case that* the original promise is *not a promise*. This is, of course, absurd.

The second objection to the *reductio* amounts to biting the bullet. An opponent can simply deny the claim that the promise at t_1 meets all the requisite legitimacy conditions. If the opponent stipulates that one legitimacy condition for *any* promise is that it cannot concern postmortem events, she can eliminate the *reductio* offered above at its first step.

This type of response is available to any *reductio* argument: one person's absurdity, it is often learned in philosophical conversation, is another person's proof. It is always open to the philosopher to simply accept the absurd result of a *reductio* as a way of avoiding revising the initial position. Thus, the opponent might simply accept what most regard as an absurdity: that a promise that has identifiable legitimacy and satisfaction conditions in fact has no satisfaction conditions.

But perhaps there is a better response one can muster against this objection. The view that one cannot make promises about postmortem events requires the belief that postmortem promises and pre-mortem promises are asymmetrical. This asymmetry exists, presumably, even when even we cannot *determine* that the promises in question (when made) concern postmortem events. If A promises B to mail B's tax returns, A takes on an obligation to do so (presuming, of course, that the normal legitimacy conditions and satisfaction conditions obtain). If B is killed while A is on his way to mail B's tax returns, it becomes the case that A has no obligations to B, and that, as seen above, A's earlier promise has no satisfaction conditions. Thus, it would also follow that when A *does* mail B's tax returns, A has not in fact fulfilled A's promise (as the promise no longer has satisfaction conditions).²⁹

But why would one say this? After all, the promise has clear satisfaction conditions: A fulfils his obligation to B iff A mails B's taxes. As demonstrated above, this is an obligation *to B*, not merely an obligation based on consistency or on the institution of promise-keeping. It seems to follow that if there is no B, then there cannot be an obligation, and hence that there are no satisfaction conditions for the (apparent) promise made at t_1 . To insist that there are no obligations to the dead requires saying that A has not broken his promise when A refuses to mail B's taxes, even if A does not know of B's untimely demise. To call this counter-intuitive seems far too gentle.³⁰

5. Some Considerations Concerning What the Dead are Owed

Having given an argument for obligations to the dead, the question of *what* we owe the dead must be considered. It is not my aim to provide a complete — or even near

complete — account of this here. Rather, a general account of the source of (some of) our obligations will be presupposed, and some ways in which these obligations can *and must* be limited in relation to the dead will be specified. I do this out of a sense of obligation to my reader, but also in the hope that what I am here suggesting will spark response. It must be emphasized, however, that I have by no means made the case that *all* (or even most) of the obligations to the dead that I will consider have been established by the above arguments. Indeed, very few particular obligations have been established. My aim with the above arguments was to provide a plausible argument for the view that *there is indeed something to talk about* when we consider obligations to the dead. What I now hope to do is to sketch what form some of these obligations might take, as well as what limits might be required in such obligations.

The framework I will here presuppose is a (roughly) Kantian one. Following Kant, it will be assumed that human agents possess a dignity that creates a *prima facie* obligation in rational agents to respect the ends freely adopted by other agents. I depart from Kant insofar as I hold that this dignity is merely sufficient for establishing a set of obligations. (Kant thought of it as both necessary and sufficient.) This view has its roots in Kant's Formula of Humanity — the principle that we are to treat humanity, whether in ourselves or in the person of another, always as an end, and never merely as means (4:433). The FH, as it is commonly called, is rooted in human agency — an agency 'which constitutes the condition under which alone something can be an end in itself' (4:435). In *The Metaphysics of Morals*, Kant claims that the FH captures, among other things, the 'duty to make others' ends my own (provided only that these are not immoral)' (6:450).

One problem with advocating this framework, of course, is that it is not clear what 'making the ends of others my own' will involve. At the most minimal level, this will involve non-interference with the ends of others. A much stronger reading of this notion will involve the active attempt to enable others to achieve their ends. Non-interference, it can be argued, is *too* weak to adequately capture what is involved in *making another's end one's own*. If an end is truly one's own, one will pursue that end. Nevertheless, pursuing the end of another will not entail abandoning every other end one has, just as pursuing the end of completing a paper does not entail abandoning the end of being a good father. Agents have many ends, and these can exist simultaneously without (much) problem. It will thus be assumed, for the purposes of this paper, that making the end of another one's own involves doing what one can to further that end without thereby sacrificing all of one's own ends.³¹

If the dignity of human beings requires agents to make the ends of others their own in this sense, as Kant arguably claims, and others have since defended,³² then obligations to the dead might be far-reaching indeed. The dead have set many ends, and there are many dead. Centuries of obligation seem to fall upon the shoulders of the living: from a Grandmother's wish to be remembered on her birthday to the desire of an ancient Greek to have his work read throughout history. There are perhaps as many obligations as there are persons who have set foot upon the earth.³³

To what extent must the ends of the deceased be accepted? The easy cases are just that: giving a Christian burial, donating a body to science, playing a song at a funeral. One can establish these obligations to the dead by appeal to the framework advocated above: an agent's choice of an end creates an obligation in other agents, provided the end is itself morally permissible. But is it an implication of this argument that one is

obligated to respect *any* morally permissible end formed by the formerly living? Is one *truly* obligated — to use a famous case — to wheel out Bentham's corpse in order to attend meetings for the rest of eternity? Is one *actually* obligated to remember any person that willed to be remembered?

What the living owe the dead, it must be maintained, admits of restrictions. These are not, however, a special type of restriction that pertain only to the dead. They are the same restrictions as can be found in obligations to the living. While there are certainly *many* restrictions on obligations, the focus here will be on two such restrictions. These restrictions involve the attainability of the ends of agents, and the endorsability of these ends given social, technological, or even prudential changes. The focus in what follows is primarily on the first of these conditions.

Once it is acknowledged that respect for agents involves respecting the ends of those agents, the conditions under which respecting said ends is morally required can be specified. Even morally permissible ends maintained by others are not categorically binding. Ends also have legitimacy conditions. One of these legitimacy conditions is that the ends to be respected must be *attainable*. This can be formulated as a general principle: *The Principle of Attainability*: agents are morally obligated to respect the (morally permissible) ends of others only if those ends are attainable.³⁴ Thus, one is not required — and, indeed, it may not be possible — to respect such ends as, say, trying to become an extra-terrestrial, trying to design a square circle, and so on.

The attainability in question in the principle of attainability need not be immediate. To put the point another way, ends that are currently unattainable do not *necessarily* run afoul of the principle of attainability. If A forms the end of, say, acquiring a medical degree, B must respect that end *even if* A is not currently able to pursue the end (e.g. A does not have the finances, A is hospitalized, A wants to finish another degree first, etc). So, there is an obligation to respect the ends of an end-setter if that end-setter has formed an end that is both morally permissible and possible, and this obligation exists even if the end-setter is not currently in a position to attain that end.

The principle of attainability is sufficient to account for a range of obligations to the dead. It also specifies a number of limitations on these obligations. If a person forms a particular end while living, that end creates an obligation in others. The mere fact of the person's death is, in many cases at least, morally irrelevant. Death is certainly a condition in which it is hard to get much done. Even this situation, however, does not alleviate some cases of obligation: the mere fact that an end cannot currently be attained by the end-setter is not sufficient to dissolve the obligation created by the end-setting. The living have obligations to the dead because they have obligations to respect the ends of agents — and these ends, along with obligations, extend beyond the grave.³⁵

The second restriction to be considered is captured under what will be called *The Endorsability Principle*. This principle stems from the recognition that the content of a permissible end is endorsable only under certain conditions. The moment pursuing the ends of another commits one to morally impermissible actions, one is no longer obligated to make the end of another one's own. For example, if A wants desperately to have A's ashes placed in some location, but this cannot be carried out without violating B's obligation to respect the wishes of the land-owner, B is not obligated to carry out A's end.

More interestingly, one can also recognize that there are conditions under which the ends of an agent would no longer be endorsed *by that agent*. To take an easy example:

Agent A wants to be remembered *only if* A will be remembered well. A wants to be remembered well *only if* this will not lead to mass suicide. If the conditions under which someone would will an end no longer obtain, the obligation we have to respect the end is dissolved.

It seems likely that many (or even most) of the dead would want to be remembered (though there is no way to verify this). It seems equally likely that it would be impossible, individually, to meet this demand. Death has undone too many. It is certainly possible, however, to remember any particular dead agent that had as an end to be remembered. The obligation to remember the dead thus seems to be consistent with the principle of attainability. It is not clear, however, that the obligation is consistent with the principle of endorsability: a rational agent would not likely demand to be remembered even at the expense of the living. The cost to the living of individually remembering the dead would be great indeed: the result of accepting the view that there is an obligation to remember everyone who wills to be remembered would prevent the living from doing anything else.

This does not entail, of course, that the living are *not* obligated to remember the dead. It only entails that there is no such obligation to do so individually, as this would fall afoul of the principle of endorsability (if only because it prevented the living from fulfilling other obligations). It nevertheless might very well be the case that the living are obligated to collectively memorialize the dead as a way of honouring and remembering them — an action that is both attainable and endorsable. It might also be the case that certain *individual* ends of the long dead must also be respected — that tombs remain sealed, that battles be remembered. But whether or not these are in fact obligation-creating ends will depend crucially on the current circumstances: a tomb that has the secrets for curing cancer would likely fall afoul of the principle of endorsability, regardless of the ends held by the deceased.

To adopt an end that extends into the future presumes that one knows, to some degree, what conditions will obtain in the future. One's inability to foresee certain developments may well dissolve our obligation to the original end. Assessing such things will not be easy: would Kafka, for example, have changed his mind about burning his texts had he known the reception they would receive? Would Wittgenstein object to being published on the Internet? Would the Kennewick man revile the idea of being an object of study some 9,000 years after his death, or would he be honoured that he was being remembered by a society he could never know?

It is not the charge of this article to sort all of this out. The point to insist on here is that the ends of the dead must be endorsable by the dead even in changing circumstances, and they must be endorsable by living agents as morally permissible. These are the two senses in which one can judge ends as either falling under, or failing to fall under, the principle of endorsability.

Questions concerning what the living owe the dead must be examined on a case by case basis. What will *not* do, however, is to refuse to ask such questions on the grounds that the dead are owed nothing. It has been argued, via *reductio*, that agents do in fact have at least some obligations to the dead. One route by which one can determine the extent of these obligations — a route which leads to the view that we must respect the attainable and permissible ends of those no longer with us — has been suggested. This, minimally, provides some groundwork for future investigations into what the living owe the dead.³⁶

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NOTES

- 1 Excerpted from 'Posthumous rehabilitation', trans. A. Czerniawski, in H. Schiff (ed.) *Holocaust Poetry* (London: St Martin's Press).
- 2 This is evidenced by the code of ethics now advocated by, among others, the Society of American Archaeologists (anthropologists in other countries have adopted similar codes). In this code, archaeologists pledge, among other things, stewardship of archaeological remains. Interestingly, this is justified in terms of obligations to the living descendants of those exhumed in archaeological digs. Nothing about what the living might owe *the dead* is discussed.
- 3 One example of this is the famous Kennewick man case. After almost a decade of court battles, it looks as though Native Americans have finally lost the fight. They have been told that science will trump their concerns about honouring and respecting the dead. The Kennewick man will be studied. Where his remains will wind up still seems to be an open question, however.
- 4 See Giambattista Vico, *The New Science* (Ithaca, NY: Cornell University Press, 1984).
- 5 While Aristotle does express some doubts about the view that the dead can be harmed, he goes on to remarks that 'The good or bad misfortunes of friends, then, seem to have some effects on the dead, but effects of such a kind and degree as neither to make the happy unhappy, nor to produce any other change of the kind' (NE, 1.11). The point here is that the dead *can* be harmed after death, though not in any great degree. This is compatible with the popular belief quoted above: the living are also harmed by things of which they are unaware, but the harm is not such as to make a great difference.
It is also worth noting that an alternative translation of the passage reads 'as much as' in place of 'in exactly the same way'. As will hopefully be clear, the points which follow can still be made even if the alternative translation is used: the dead cannot experience harm *as much as* the living if there is no subject of harm in the case of the dead. The reason this is true is that there is no subject of harm *to whom* the harm would be directed. Harms are always harms of a subject (even if they are not felt as such). Thus, if death is the loss of the subject, the dead could not be harmed as much as the living.
- 6 See Joel Feinberg, 'Harm to others' in J. M. Fischer (ed.) *The Metaphysics of Death* (Palo Alto, CA: Stanford University Press, 1993).
- 7 This argument was used by Epicurus to show that death *itself* is not a harm. This is a different, albeit related, topic to the one here under consideration.
- 8 See T. Nagel, 'Death', in J. M. Fischer (ed.) *The Metaphysics of Death* (Palo Alto, CA: Stanford University Press, 1993) and Feinberg op. cit.
- 9 The example is from Nagel op. cit.
- 10 I. Kant, *The Metaphysics of Morals*, trans. M. Gregor (Cambridge: Cambridge University Press, 1996).
- 11 There is a distinction between two separate questions addressed here: the metaphysical question (which Nagel's view fails to address), and the question concerning the coherence of common intuitions regarding the badness of death (which Nagel's view effectively explains).
- 12 See T. M. Wilkinson, 'Last rights: The ethics of research on the dead', *Journal of Applied Philosophy* 19 (2002): 34–5.
- 13 This 'symmetry argument', of course, is not to be confused with the classical Epicurean argument bearing the same name: namely, that because I do not regret not living in the time before my birth, I should also not regret the time after my death. Postmortem and prenatal existence, the argument runs, are symmetrical. The concern here is not focused on harms that might befall the dead; rather, the concern is on whether or not we have an obligation to respect the dead. Thus, we might be persuaded by *both* symmetry arguments without contradiction. If this were to happen, one would have the view that the dead *cannot* be harmed, but that they are nevertheless worthy of our respect.
- 14 *Ibid.*
- 15 Geoffrey Scarre, 'Archaeology and respect for the dead', *Journal of Applied Philosophy* 20, 3 (2003): 237–247.
- 16 In the past, I thought many of these difficulties disappeared when we changed the locution from 'harm' to that of 'insult', or 'wrong', and so on. I no longer think this helps. In all of these cases, the seas of language run high.

- 17 Bob Brecher, 'Our obligation to the dead', *Journal of Applied Philosophy* 19, 2 (2002): 109–119.
- 18 This does not entail that one must judge any necessary condition for one's agency a *good thing*. It only entails that those conditions necessary for agency are valuable *insofar as* they are conditions for one's agency. I would like to thank Jon Mandle for pointing out the need for this clarification.
- 19 Of course, it might still be the case that value and obligation *are* co-extensive when it comes to people. This, however, must be shown if one is to avoid begging the question. Simply asserting that these are equivalent in the case of the dead would be to assume one's conclusion before arguing for it.
- 20 This distinction is not meant to be a rigid one.
- 21 This point is not crucial to the argument of this paper. It is merely interesting.
- 22 An argument for the view that it *is* an obligation to Sammy will be provided below, as well as an argument that this prevents one from being able to account for the obligation in other ways.
- 23 Of course, an advocate of this view need not deny that promises *can* create obligations to others. The advocate only needs to insist that *in addition* promises create an obligation to oneself — and, moreover, this is what is going on when we make postmortem promises. Because the criticism of the *reductio* depends on the view that postmortem promises all create obligations to oneself, this is the view that will be examined.
- 24 One might insist that there is an obligation to Sammy until he dies, and then this obligation evaporates. This would make Susie's promise much like other promises to others. This move, however, requires postulating an obligation that can never be satisfied. If, as many suppose, 'ought' implies 'can', (and as will be supposed in this article) this move is unacceptable. Thus, a promise concerning a postmortem event must be merely a promise to oneself.
- 25 One might object to the appeal to intuitions here, as the Epicurean who denies that there are obligations to the dead is trying to deny the legitimacy of many intuitions. To appeal to intuitions thus appears question-begging. In response to this well-placed objection, it is important to distinguish relying on *some* intuitions (which even the Epicurean does), from relying on the very intuitions that are being called into question. The current discussion relies on intuitions about promises, not about death or the dead. Hence, the argument can avoid the charge of question-begging.
- 26 For example: when B sees that A would be put in difficult circumstances by fulfilling a promise to B, B can legitimately nullify the obligation by forgiving the promise. If A sees difficult circumstances accompanying the fulfillment of his promise, this is not sufficient to nullify the obligation A incurred when he promised B. This is precisely why, to get out of the promise, A must convince B to forgive the promise.
- 27 A discussion of self-deception will not be pursued here. It is explicitly ruled out in the above example. Self-deception might well be morally wrong, and it might well be wrong for the same reason that lying to another agent is wrong. Because the case is not obviously parallel to knowingly lying to another, a discussion would add needless complexity to the example.
- 28 One might here offer an additional line of argument to the effect that the *object* of our obligation changes over time. Thus, what begins as a promise to Sammy might eventually become a promise just to the institution of promise-keeping. (My thanks to a referee for pointing out this line of objection.) I think that the arguments against both the institutional account and the consistency account of obligation create serious difficulties for any such view. We are much better off thinking of promises as directed towards persons (and as creating obligations to persons) given these arguments. Nevertheless, there might be an argument that can escape these difficulties, and that attempted to defend a hybrid account of obligation. I cannot reject this possibility *a priori*. I am, however, rather skeptical of its ability to be constructed in a convincing manner.
- 29 It might still be the case that it would be wrong for A *not* to mail B's taxes, just given the fact that A would *believe* that he was obligated to B, but would nevertheless willingly ignore this obligation. This point seems correct. But notice that the *reductio* still works, as one would still be forced to say that there has been no promise broken, and also that the wrong done is *not* a wrong done to B. For reasons already discussed, this is unacceptable.
- 30 There is a worry here that has not yet been sufficiently addressed, and it emerges in the familiar problem of the subject. Consider again the promise that Susie makes to Sammy. If there is an obligation created by this promise, and it is indeed an obligation to Sammy, what are we to make of the fact that Sammy no longer exists at t_2 ? If the promise was made to living Sammy at t_1 , isn't the fulfillment of the promise at t_2 (when Sammy is dead) still a fulfillment of a promise to the *living* Sammy, even though he is no longer in the state that he was in when the promise was made? Answering 'no' to this question requires a very bizarre conception of corpses: we do not have obligations to corpses in any direct way. We have obligations to the persons who were once co-extensive with the bodies that are before us. Thus, answering

'no' is unacceptable: our obligation is to the (formerly) living Sammy, not to the *corpse* of Sammy. If we thus embrace the view that our obligation at t_2 is to the living Sammy, it seems that the *reductio* argument has not established obligations *to the dead* at all — after all, the obligation is to the living Sammy, not to his corpse.

This objection can be formulated in two distinct ways: one weak, the other strong. The weak version of the objection raises the following problem with my case: Call Sammy-while-living SammyL, and Sammy-while-dead SammyD. We can point to SammyL and SammyD. They occupy the same spatial coordinates, though never the same temporal ones. Strange as it sounds, SammyL becomes SammyD, and the change is so significant that SammyD must be regarded as a different *sort* of entity when compared with SammyL. Given that SammyL is not identical to SammyD, fulfilling a promise to SammyL is not equivalent to fulfilling an obligation to SammyD. Thus, fulfilling a promise to a (formerly) living person is not identical to fulfilling an obligation to the dead.

Put in this way, there is a straightforward response to this objection. The response is as follows: in formulating this objection, we are operating with an ambiguous term. 'SammyD' has two senses (and, indeed, two referents). On the one hand, the term might mean 'this particular clump of matter that we call a corpse.' On the other hand, the term might mean 'the formerly-living-Sammy.' Now, if we render 'SammyD' in the first sense, the objection obviously works: there are no direct obligations to dead bodies (though, if my above argument holds, there can be indirect obligations to dead bodies via obligations to dead persons). If, however, we mean 'SammyD' in the latter sense, the objection does not work: SammyD makes explicit reference to, and is temporally continuous with SammyL. So long as SammyD does not refer to 'a clump of matter called a corpse', but rather to a *former person*, there is no problem here.

To see why this is the case more vividly, consider the following (additional) response to the above objection: It is misleading to claim that the promise Susie makes at t_1 is a promise to a *stage* of Sammy rather than to Sammy. To put this more directly: the promise is to Sammy — *not* to SammyL or SammyD. Given the nature of this particular promise (to read a poem after one's death), we ought to say that 'Sammy' covers all instances of SammyL and SammyD from the time of the promise to the time of the promise's satisfaction (again, provided that 'SammyD' does not refer to a clump of matter). To insist otherwise seems simply to invite the *reductio* argument offered above. So long as the view that there are obligations to the dead does not demand that we accept more than the claim that there are obligations to the formerly living, we can deal with the weak version of this objection without committing ourselves to any additional absurdity.

But there is a stronger version of this objection that is worth mentioning. The stronger version runs as follows: It is not simply that SammyL and SammyD are different states of Sammy that constitutes the problem. The problem lies in the idea that there is a 'Sammy' at all. The being at t_1 , SammyL, is not the same being as the being at t_2 , SammyD. Even if we grant that promises made to Sammy are meant to cover all points from the time the promise was made to the time it is fulfilled (and hence, all points of SammyL after t_1 and all points of SammyD until t_2), it simply doesn't follow that it *does* cover these. (Being meant to cover all instances of x and actually doing so are, after all, quite different things.) SammyD is fundamentally unlike earlier versions of Sammy. This is not merely because SammyD is no longer alive. It is because there is no bearer of responsibility called 'Sammy' that can successfully unite the various time-points we call 'Sammy.' Thus, even while alive there are many Sammys.

There is no adequate way, in the confines of this paper, to respond to this objection. The most I can point out here is that, if one accepts this sort of analysis of identity and agency, one will be stuck with the conclusion that very few promises — even among the living — are really obligation-creating. Suffice it to say that if we accept that promises are *prima facie* obligation-creating, we are taking for granted some *minimal* conception of agency that endures across stages of an agent's existence. Once we acknowledge this, however, it is not difficult to extend one's personhood beyond the grave: if I am *minimally* the same agent I was at twenty-five, I can certainly be *minimally* the same agent in the moments after my death. Moreover, we can acknowledge this *without* claiming that I am simply my corpse.

But does speaking this way simply strain credulity? If it does, it is perhaps because we are looking too closely for metaphysical wonders in a discussion about rather mundane occurrences. After all, if we insist that SammyD is simply *not* Sammy (and we mean by 'SammyD' more than his corpse), we wind up endorsing the peculiar view that Sammy cannot die: SammyL, after all, is by definition alive! We also wind up thinking it peculiar to speak of the dead (there is no referent! A dead person is not the same as the lump of matter called a corpse!), or even to contemplate what death is (there's just nothing there!). But all of this, I contend, is simply allowing ourselves to drift on the high seas of language. There is nothing

peculiar about talking about the formerly living. We run into trouble when we equivocate corpse (a lump of matter) with a formerly living person (that individual with a peculiar history, and that had a particular view of the future). Agency, I contend, is temporally extended. It is this that makes sense of *all* promises, including those that are made to the dying.

- 31 What one can do will depend on who one is, where one is, and other variable factors.
- 32 This has been defended by Barbara Herman and Christine Korsgaard, to name but two. See Christine Korsgaard, *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996); Barbara Herman, *The Practice of Moral Judgment* (Cambridge, MA: Harvard University Press, 1993).
- 33 For an effective argument based on obligations to the dead (one aimed at making sense of reparations for past injustices), see Michael Ridge, 'Giving the dead their due', *Ethics* 114 (2003): 38–59. I view this current work as providing additional argumentative support to Ridge's appeal to the existence of obligations to the dead.
- 34 'Attainable' is here understood in the broad sense of 'physically and conceptually possible.'
- 35 Feinberg makes a similar point about the rights of the dead in 'Harm to others':

The very rules that impose duties on us as promisors, speakers, insurers, and testimonial instruction receivers confer, by the same token, rights on the living persons who are the corresponding promises, parties talked about, insurance buyers, and testimonial instruction givers. These are the rights that can be violated after the right-holder's death by the wrongful behavior of those who violate their own duties. (Feinberg op. cit., p. 189)

- 36 I would like to thank two anonymous referees for their helpful suggestions on an earlier version of this paper. I would also like to thank the participants in a conference on Death & Dying held at Oxford University in 2007 for their helpful comments and criticisms.