



The Personhood of the Dead: Morality, Memory, and Posthumous Dignity

Ebikisei Stanley UDISI

Department of Philosophy,

Faculty of Arts, Niger Delta University,

Wilberforce Island, Bayelsa State, Nigeria

Email: ebiudisi@ndu.edu.ng, ebiudisi@gmail.com

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ABSTRACT

The research highlights the central role of memory in shaping societal attitudes toward the deceased, drawing on philosophical, legal, and sociological perspectives to analyze how collective memory transcends individual existence. It argues that while the dead lack conscious existence and cannot experience harm or dignity, their memory and legacy impose moral and ethical obligations on the living. The injunction *De mortuis nil nisi bonum* (“Speak no ill of the dead”) reflects the societal desire to preserve the dignity and reputation of the deceased, even as it raises questions about censorship, freedom of expression, and the accurate representation of history. Ultimately, this study concludes that the concept of posthumous rights is less about the dead themselves and more about how the living choose to honor, remember, and engage with the past. It calls for a nuanced balance between respecting the dignity of the dead and upholding the freedoms of the living, offering fresh insights into the evolving relationship between memory, morality, and law. By addressing these timeless questions, the research contributes to ongoing debates about personhood, rights, and the ethical responsibilities that transcend the boundaries of life and death.

Keywords: Posthumous Dignity; Personhood; Memory and Legacy; Moral Obligations.

INTRODUCTION

The concept of personhood and the moral obligations surrounding the dead have long been subjects of philosophical, legal, and ethical inquiry. This research examines the legitimacy of posthumous dignity and the protection of personality (reputation) through a series of critical questions: Can a deceased individual retain any rights over their body or remains? Who may claim rights over a corpse or the incorporeal entity of the post-mortem person? If the living assert rights over a corpse or the incorporeal entity, does this reduce the deceased to a mere object? Can an incorporeal entity, such as a person’s reputation, be violated through defamation? Are the living morally obligated to fulfill the last wishes or promises made to a person during their lifetime? Finally, why should one refrain from speaking ill of the dead?

These questions are explored through the lens of morality, focusing on the concepts of “self,” “person,” “death,” and “dead body.” Before addressing whether a deceased

person can retain certain rights, it is essential to examine our perception of death as the “future dead.” This perception shapes our understanding of posthumous dignity, memory, and the moral obligations we feel toward the deceased. The legal and moral obligations toward the dead are deeply intertwined with our sense of self and our anticipation of our own mortality. This research delves into the concept of reputation, dignity, and memory of the dead, raising critical questions about the dignity of a dead human body and the incorporeal person in the absence of a physical corpse. The analysis reveals that the human body, once a living, breathing, and feeling entity, becomes an object after death—a property of the living. Whether claimed by family, friends, or the state, the dead body is stripped of its personhood and reduced to an object subject to the whims of the living.

During life, individuals have control over their bodies and property, but this control is temporally limited by death. While a deceased person may exert some influence over the disposition of their material property through a legal will, their control over their body is minimal. A will regarding the treatment of one’s body after death may or may not be honored, whereas a will detailing the distribution of material property carries significant legal weight. The right to dignity of the dead is primarily confined to the right to a decent burial, with further claims to bodily integrity, protection against defamation, or other posthumous rights often dismissed or subject to the discretion of the living and the law. Despite the lack of legal recognition for posthumous personality rights, there is growing philosophical, sociological, and legal interest in the concept of personhood after death.

This research will conclude that human understanding of memory and the continuity of the self as a “conscious moral being” underpins our inquiries into death and post-mortem personhood.

PERCEPTION OF DEATH AS THE FUTURE-DEAD

Human relationship with death is inherently tied to its perception as the “other.” That is, we can only conceptualize death in thought, never experiencing it directly. This perception, however, is profoundly evocative and constitutes an intrinsic affective experience. Death, as an event, can be understood through Maurice Merleau-Ponty’s notion of the reversibility of flesh. This concept describes an experience that can be either horrifying, as Suzanne Laba Cataldi (1993) illustrates in terms of the loss of the other, or an acknowledgment of the inevitability of one’s own loss of selfhood. Merleau-Ponty’s phenomenology of flesh offers a critical framework for understanding our perception of death. He writes, “one no longer knows who is perceiving and who is being perceived” (p. 190). For Merleau-Ponty, this reversibility is the “way of all flesh.” It is thus pertinent to examine the concept of death and its perception through Merleau-Ponty’s phenomenology of flesh and the idea of reversibility.

In *The Visible and the Invisible*, Merleau-Ponty (1968) elaborates:

That the presence of the world is precisely the presence of its flesh to my flesh, that I “am of the world” and that I am not it, this is no sooner said than forgotten: metaphysics remains coincidence. That there is this thickness of flesh between us and the “hard core” of Being, this does not figure in the definition: this thickness is ascribed to me, it is the sheath of non-being that the subjectivity always carries about itself. Infinite distance and absolute proximity, negation or identification—our relationship with being is ignored in the same way in both cases. (pp. 127–128)

One of the defining characteristics of contemporary discourse is the pursuit of alternative pathways to understanding and experiencing phenomena beyond our immediate “being.” The rational-scientific paradigm often reduces humanity to autonomous,

rational beings capable of manipulating nature to align with our perceptions. However, many philosophers argue that this perspective limits meaningful engagement with the “other,” thereby stifling genuine dialogue. This tension reflects a philosophical dualism between subject and object, which has profoundly influenced epistemological traditions and the concept of “being.” Anne Faugstad Aaro (2006), in *Merleau-Ponty’s Concept of Nature and the Ontology of Flesh*, poses a critical question: “How is it that we, as natural beings, can orient ourselves in an environment, know something of the world, and communicate the sense of phenomena to each other?” (p. 333). Such inquiries compel us to confront our embodied existence, initiating an interaction with both nature and our own being.

Reversibility is a central element of Merleau-Ponty’s theory of perception, where the act of seeing and being seen, or touching and being touched, becomes intertwined. Sight and movement are pivotal to this framework:

Once again, the flesh we are speaking of is not matter. It is the coiling over of the visible upon the seeing body, the tangible upon the touching body, which is attested in particular when the body sees itself, touches itself seeing and touching the things, such that, simultaneously, as tangible it descends among them, as touching it dominates them all and draws this relationship from itself, by dehiscence and fission of its own mass. (Merleau-Ponty, 1968, p. 146)

Merleau-Ponty’s concept of reversibility and flesh elucidates the embodied awareness that a “being” can perceive. However, a critical question arises: can this theory be extended to inanimate objects or states of nature, such as death? Suzanne Laba Cataldi (1993), in *Embodying Perceptions of Death: Emotional Apprehension and Reversibilities of Flesh*, argues that Merleau-Ponty’s reversibility thesis can indeed be applied to our understanding of death. While the theory traditionally involves animate entities, it can also inform our perceptions of inanimate phenomena.

Cataldi explores the reversibility theory in the context of the horror associated with death. What makes death so dreadful? Our perception of death is invariably mediated through the experience of the other’s death. Cataldi recounts her first encounter with death as a child:

My horrified hand instinctively withdrew itself from this lifeless piece of flesh (I immediately left off touching it), and I remember being very shaken by the experience... (p. 191)

This tangible encounter with death—through the lifeless flesh of another—reveals a multi-layered perception. It confronts us with the inevitability of mortality while simultaneously exposing the intangibility of lifelessness. The force exerted by a “lifeless piece of flesh” can be analyzed through Merleau-Ponty’s subject-object duality. Both living and dead bodies are perceptible as objects, but the distinction lies in the “flesh of perceptibility.” A living body perceives, while a dead body is entirely perceived. When we touch or see a lifeless body, we encounter a cessation of sensitivity, evoking a sense of limitation and fear. This fear arises from the overlap between the living and dead bodies, both enveloped in the same skin—the fabric of personhood.

Cataldi explains Merleau-Ponty’s reversibility theory by linking the sensation of horror to the perception of lifelessness:

The sidedness of the perception is confused, crossed over, so that, absorbed in the horror of this “gripping” experience, one no longer knows who is perceiving and who is being perceived. That’s reversibility. (p. 193)

The horror of death can be approached from two perspectives. First, it operates at an emotional level, where the perceiver becomes acutely aware of the threat death poses to their identity as a living, feeling, and thinking being. Second, as Cataldi describes, it

evokes a sense of “impurity,” stemming from the “cut-off” incompleteness of the lifeless body and the breach of the categorical distinction between the living and the dead. This breach disrupts the purity of the living being, who is defined by their capacity for sensitivity.

The emotional perception of death, when examined through Merleau-Ponty’s reversibility thesis, reveals a profound interplay between the perceiver and the perceived. The sensation of horror arises from the encroachment of the lifeless body on the perceiver. Merleau-Ponty describes this encroachment as something that “subsequently and reversibly and strikingly becomes differentiated from it through gestures and feelings of repulsion” (as cited in Cataldi, 1993, p. 193). The perception of death as an encroachment, breach, or “closure” is only meaningful within the framework of intercorporeality, particularly the concept of “flesh.”

The perception of death also introduces the notion of the “incompletion of time.” Jacques Roubaud’s poetry collection *Some Thing Black*, written after the death of his wife, captures this incompleteness. Roubaud observes the watch on his wife’s lifeless wrist, where her pulse should be, but instead, the watch’s hands move “mechanically and senselessly.” Cataldi (1993) notes that in our ordinary experience of time, the past and future overlap in the present. This cyclical progression continues until death interrupts it, blocking the future. The “flesh,” as a symbol of both the body and sensitivity, embodies the “self” and the “body.” To perceive a body as dead is to feel the sensitive aspect of the flesh “crossover” into an irreversible state. It is this sense of irreversibility that evokes the horror of death. Such perceptions arise from tangible experiences, where the absence of life in the “flesh” confronts us with the embodied self we are and the body that once was.

“DEAD BODIES” AND PROPERTY INTEREST

The concept of personhood is not necessarily a prerequisite for attributing human rights to an individual. Instead, it is the constituent elements—such as biological humanity, rational agency, and the continuity of consciousness—that collectively contribute to the formation of the concept of “person” and the quality of “personhood.” These elements, in turn, determine the possibility of extending human rights to an individual. However, the question of whether these components can be applied to ascertain a deceased person’s right to dignity remains unresolved. The difficulty in affirming a dead person’s right to dignity arises from the rational agent within us, which reminds us that the dead lack life and, consequently, the capacity to feel outrage. Yet, beyond being rational agents, humans are also moral beings whose thoughts and actions are guided by morality and ethics as much as by rationality.

John Troyer (2006) notes that human bodies often become the “property” of the next-of-kin after death, an idea that many find unsettling due to its objectification of the deceased. This discomfort stems from moral, ethical, and sentimental considerations. However, before delving into these moral and ethical standards, it is essential to examine the legal perspective, particularly in cases such as necrophilia, where a dead body is treated as a form of “property” belonging to the next-of-kin. In such instances, necrophilia is categorized not as a sexual assault on a person but as an act of vandalism. This raises critical questions about the nature of property and ownership in relation to dead bodies.

The term “claim” is central to this discussion. Linguistically, a claim refers to a demand for ownership over something—be it land, victory, identity, or compensation. This demand for ownership is intrinsically linked to the concept of property. However, as Troyer highlights, does this imply that a dead human body is the property of the family or close kin? Everyday language often reflects this notion, as seen in statements like, “In

the absence of any close kin, Lily, a friend of Mary, has come to claim Mary's body," or "No one has come to claim the dead body." In these examples, does the corpse become a form of property claimed by the family or friend? Or is the dead body an unclaimed "thing" awaiting an owner? If "dead bodies are not people," are they then "things"? Even if they are human, what kind of humanity do they retain when they must be claimed from an authority or institution?

Claiming an object, whether a dead body or an inanimate item, confers a legal status upon it. In this context, dead bodies may be treated as legal objects that, when claimed, become the property of the state. Troyer's statement that "in the eyes of the law, in many necrophilia cases, a dead body becomes a kind of 'property' for a next-of-kin" underscores the legal framework that governs such cases. While this raises significant moral questions, these issues will be addressed separately. The relationship between dead bodies and property rights can be examined through three key questions: First, does a person retain any rights over their body or remains after death? Second, who holds rights over a corpse in the absence of immediate family, relatives, or friends? Third, if someone can claim rights over a dead body, does this mean they own the corpse in the same way they might own a house, land, or car? This section focuses on the latter two questions, exploring whether property rights or interests can be asserted over a dead body.

Legally, a dead body cannot be treated as commercial property. However, the question remains whether there is a sense of "possession" attached to a corpse, where "possession" may imply a "property interest." Understanding the concept of property is crucial to determining whether such rights or interests exist. It is often misunderstood that the "right to a thing" and the "subject of property" are identical. For instance, the right to enter a restaurant is not the same as owning the restaurant. John Bouvier (1856) defined property as "the right and interest that a man has in lands and chattels to the exclusion of all others. A vested right of action, an intangible thing, is as clearly property as a tangible thing" (p. 19). Kuzenski (1904), in his article *Property in Dead Bodies*, asks, "Is there such a sole right of user to the corpse, belonging to the next of kin, to the exclusion of all others, as would permit the interest of such relative to be considered a property interest?" (p. 19).

The answer to Kuzenski's question varies across legal jurisdictions. Most courts agree that relatives of the deceased have the right to take legal action against any interference with the corpse. However, courts are divided on the basis of this right. Importantly, this right to action does not necessarily imply a well-founded claim of property interest in a corpse. For example, the Supreme Court of Michigan in *Keys v. Konkel* ruled that there can be no property in a corpse, while courts in Minnesota and Pennsylvania have held otherwise. In 1904, the Pennsylvania court declared that "custody, control, and disposition" are essential tenets of ownership, suggesting that "there is a property in a corpse" (p. 20). This reasoning aligns with the right and duty of burial that families or relatives hold toward the deceased.

The question of whether property or property interest exists in a corpse is primarily a legal issue. Philosophically, the inquiry is often driven by sacred, moral, ethical, and theological considerations regarding the dead, rather than the dead body itself. However, contemporary philosophical research has increasingly focused on the significance of the body as an entity. Thus, any meaningful philosophical analysis of property rights in a dead body must engage with legal perspectives on the subject. It is important to note that laws governing property rights in dead bodies, whether in the United States or India, are heavily influenced by English common law. Historically, English law did not recognize property in a dead body, but modern cases have prompted a reevaluation of this stance. The notion that no property can exist in a corpse is rooted in Lord Coke's maxim:

It is to be observed that in every sepulchre, that hath a monument two things are to be considered: viz., The monument, and the burial of the dead. The burial of the cadaver is *caro data vermibus* (flesh given to worms) is *nullius in bonis*, and belongs to ecclesiastical cognizance... (Taylor, 1919, p. 359).

In the 19th and early 20th centuries, some American courts challenged this English common law, arguing that it was ecclesiastically motivated. While a dead body cannot be treated as commercial property, it is universally recognized that those entitled to its custody for burial possess certain legal rights that the law will protect. The Minnesota court, for instance, argued that the exclusive right to decent burial necessarily implies a property right over the body in the broadest sense.

However, the idea of burial rights as property rights raises further questions. If a family has exclusive rights to a corpse, does this mean they can treat the body in any manner they choose? In practice, this is not the case. Actions such as mutilation, desecration, or necrophilia are criminalized as acts of disrespect toward the dead. If a dead body were treated as property, the owner would, in theory, have the right to treat or mistreat it as they see fit. For example, if one owns a car, they have the right to use or misuse it without it being classified as vandalism. Yet, in the case of a dead body, even if one has exclusive property rights, certain actions may still be deemed mistreatment. This highlights a fundamental conflict: dead bodies cannot simultaneously be objectified as property and de-objectified as entities deserving of moral and ethical consideration.

CLAIMING A PERSON'S BODY

The question of how unclaimed dead bodies should be treated, particularly in the context of donation to medical institutions for research or organ transplantation, raises significant ethical, legal, and moral considerations. One perspective is that the use of unclaimed bodies for medical research and organ transplantation contributes to the betterment of humanity, enhancing longevity and well-being. In such cases, the unclaimed body effectively becomes the property of the state, ostensibly without raising ethical or moral dilemmas about the status of the dead body as property or object. However, this perspective is not universally accepted, as many cultures oppose the notion of exclusive ownership over a dead body or its remains, adhering instead to the principle that the only rightful owner of a body is nature itself—captured in the phrase, “earth to earth, ashes to ashes, dust to dust.”

This principle was challenged in 1998 when artist Anthony Noel Kelly was arrested for stealing anatomical specimens from the Royal College of Surgeons. Kelly admitted to removing the specimens but denied guilt, arguing that English common law did not recognize dead bodies or human remains as property that could be owned (Bouchard, 2020). However, Judge Rivlin ruled that the case constituted theft, as the anatomical specimens were considered the property of the Royal College of Surgeons due to the “skilled work” performed on them by previous generations of surgeons. The court’s decision hinged on the argument that Kelly had dishonestly intended to permanently deprive the owner of its property. Thus, human remains, which are naturally the property of nature, were deemed the property of the institution based on the skilled labor invested in them.

Another notable case is the Alder Hey Organ Scandal of 1996, in which it was revealed that Alder Hey Hospital in Liverpool had retained organs and body parts from miscarried fetuses and deceased children without the knowledge or consent of their families (Wright Jr, et al., 2023). While the hospital may have justified its actions as necessary for medical research, the lack of consent from the families of the deceased was deemed unacceptable by the courts, society, and the affected families. Medical historian

Dr. Ruth Richardson noted that human corpses possess a “commercial value,” emphasizing the importance of ensuring that human bodies or their parts are never bought or sold. Organs or bodies may only be used for “skilled work” in cases of donation or when no one claims the body. However, the concept of “donation” raises complex questions about consent and ownership that require further legal, medical, social, and philosophical examination.

Despite these landmark cases, English common law maintains its “no-property rule” regarding dead bodies. Both the Kelly case and the Alder Hey scandal were treated as theft, which inherently requires an owner from whom something is stolen. These judgments attempted to moralize the cases by emphasizing the “skilled work” involved (in the Kelly case) and the outrage caused to families and society (in the Alder Hey scandal, 2001). Nevertheless, these cases reveal an underlying, albeit subdued, sense of ownership over dead bodies. The question remains: who owns the dead body? Is it the family of the deceased, or the state in the absence of a claimant?

Unlike English law, many American states and India recognize a quasi-property right of survivors over the deceased’s body for the purpose of providing a decent burial. In India, for example, the right to a decent burial is considered a right of the dead. This quasi-property right objectifies the body, stripping it of its identity as a “person.” The dead body is thus reduced to a human body that is objectified as property—owned either by the family or the state. However, this ownership is not equivalent to owning a piece of land, a car, or any other inanimate object. The dead body retains a unique moral and ethical significance that distinguishes it from other forms of property.

The human body, even in death, is objectified in a way that aligns with societal notions of morality and ethics. Unlike a piece of land or a car, a dead body is accorded a level of respect and dignity that reflects its association with the living. To argue that an unclaimed corpse is not the property of the state is to impose a moral framework on the use of such bodies for “skilled work.” Currently, the right to dignity of a corpse is primarily expressed through the right to a decent burial, which implies a form of ownership by the family or the state. If we accept the reasoning of American and English courts that a dead body lacks the capacity to feel outrage or violation, then acts such as mutilation, necrophilia, or desecration must be treated as vandalism against the owner’s property rather than as attacks on the dignity of the dead body.

In this context, a decent burial represents the sole claim to a dead body’s right to dignity. However, this raises another category of consideration: the distinction between the “dead body” and the “dead person.” While the dead body may be objectified and treated as property, the “dead person” retains a symbolic and moral presence that complicates the notion of ownership and dignity.

A DEAD PERSON’S CLAIM TO DIGNITY

The term “dead person” is a linguistic construct—a category that exists in language and discourse to refer to those who have died. While this category is linguistically tangible, it represents individuals who no longer possess a material body or anatomical remains to interact with the corporeal world. The word “person” is inherently tied to the identity of a human being, regardless of whether they are alive or dead. The inevitability of death is a fundamental aspect of human existence, and the absence of a physical body does not diminish the conceptual reality of a “dead person.” However, as previously discussed, the dead body remains a significant entity in medical, social, and philosophical research. A dead body can be harmed in numerous ways: through grave desecration, mutilation, necrophilia, the illegal trade of anatomical parts, or the unauthorized retention of body parts without the consent of the family or relevant authorities. In such cases, the violation of a corpse is often framed as an attack on the emotions or property of the living,

particularly the family or next-of-kin. These circumstances underscore the demand for the right to dignity of the dead, as the body—whether alive or dead—embodies collective notions of morality, ethics, and humanity. Ensuring the inviolability of the dead body is thus a tangible reflection of societal harmony and respect for human dignity.

The concept of a “dead person” can be both tangible and intangible. The corpse or anatomical remains provide a tangible entity that can be violated, necessitating protection—whether to safeguard the property rights of the living or to uphold societal morality. However, when considering the incorporeal entity of the “dead person,” the absence of materiality complicates the notions of dignity, violation, and protection. Key questions arise: First, what can be accorded dignity when the body is unavailable? Second, can an incorporeal entity be violated, and if so, does it require protection? These questions presuppose an understanding of the features, characteristics, or qualities that merit dignity and protection. In the case of the “dead person,” these qualities are not tied to the body or its remains but rather to intangible aspects such as reputation and will.

The aspects most vulnerable to violation in a dead person are their “reputation” and “will.” Different legal systems approach these issues differently. For instance, U.S. law takes a stringent view, asserting that “the dead don’t hear” (Rosler, 2008, p. 162), and therefore, any slander is a matter only among the living. In contrast, German law emphasizes that “death does not stop the state’s duty to protect individuals from assaults on human dignity” (p. 162). This divergence highlights the tension between protecting the reputation of the dead and upholding the freedom of expression of the living. Two critical questions emerge: (1) Should the reputation of the dead be protected at the expense of the living’s freedom? (2) Do we have an obligation to protect the reputation and respect the will of the dead? Hans Rosler (2008) notes that legal systems strive to balance competing values:

First, the need to preserve an individual’s reputation and privacy must be balanced with the right to freedom of expression and the social interest in receiving information and being entertained. A second objective is to find a common ground between the individual’s interest in compensation for reputational injury and the need to shield the media from excessive defamation and privacy awards. (p. 165)

This balance becomes even more contentious when the subject of protection is an incorporeal entity lacking tangible corporeal value.

DEFAMATION AND HUMAN DIGNITY

Human history is marked by countless attacks on the dignity, identity, and humanity of individuals. Modern societies have often shaped their legal and ethical frameworks in response to these historical injustices. For example, the concept of human dignity is a cornerstone of Germany’s legal system, with posthumous personality rights rooted in the belief that human dignity is a supreme value that must dominate all other societal values (Rosler, 2008, p. 168). Similarly, the Preamble to the United Nations Universal Declaration of Human Rights affirms that dignity is an inherent and inalienable right of all members of the “human family”: “...the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person” (p. 168).

The essence of this approach is that the concept of the “self” is central to humanness, and any degradation of the self to the status of an object constitutes an attack on human dignity. A person’s reputation is an integral part of their “self,” and defamation, therefore, becomes an assault on their dignity as a human being. In *Gertz v. Robert Welch, Inc.*, the U.S. Supreme Court emphasized the importance of defamation laws:

The legitimate state interest underlying the law of libel is the compensation of individuals for the harm inflicted on them by defamatory falsehood. We would not lightly require the State to abandon this purpose, for [...] the individual's right to the protection of his own good name "reflects no more than our basic concept of the essential dignity and worth of every human being – a concept at the root of any decent system of ordered liberty. The protection of private personality, like the protection of life itself, is left primarily to the individual State under the Ninth and Tenth Amendments. But this does not mean that the right is entitled to any less recognition by this Court as a basis of our constitutional system. (Rosler, 2008, p. 172)

Defamation is universally recognized as a serious offense against human dignity. However, the dynamics change significantly when the subject of defamation is a dead person. A dead individual cannot know they have been harmed, cannot defend themselves, and cannot react to defamation. This raises the question: Does it make sense to claim that a dead person can be defamed and therefore requires protection against defamation? The answer lies in the broader societal commitment to upholding human dignity, even in the absence of the individual's ability to perceive or respond to harm.

POSTHUMOUS DIGNITY

Defamation laws concerning the dead present a complex legal challenge, primarily due to the ambiguous status of the "subject"—the deceased individual. Philosophical analysis in this area often draws from legal precedents, as courts worldwide have grappled with defamation cases for centuries. The human sense of dignity and the right to dignity have continually prompted legal systems to reevaluate their stance on defamation, particularly when it involves the dead. Posthumous personality rights are particularly contentious because it is difficult to equate the dead with the living. While the living can be aware of libel and slander and are directly affected by such defamation during their lifetime, the same cannot be said for the dead. This situation parallels the ethical dilemmas surrounding the desecration of a dead body, such as mutilation or necrophilia. Just as a dead body cannot feel desecration, a disembodied dead person cannot perceive defamation.

Thus, the concept of "harming" a dead body or a dead person by violating their dignity, personhood, or emotions is challenging to rationalize. However, this raises a broader question: What are the implications of such unawareness for the living? For instance, if a living person is subjected to slander but remains unaware of it throughout their life, does their personality and dignity still suffer? Before addressing this question, it is essential to examine posthumous personality laws in various societies.

In India, defamation is treated as both a civil and criminal offense, a unique approach compared to most legal systems where defamation is primarily a civil matter. Anish Dayal notes that defamation as a crime is almost nonexistent in global legal frameworks. Generally, posthumous personality laws worldwide are similar, with reputation being considered an intensely personal attribute. English common law, which heavily influences many legal systems, adheres to the principle of *actio personalis moritur cum persona*—any personal action dies with the person. Hannes Rosler (2008), explains that this principle implies that a dead person has no claim to personality rights; all such rights technically expire upon death. This allows heirs to sue for defamation only if the defamatory statement damages the memory of the deceased and indirectly affects the survivors. However, this rule has been repeatedly questioned.

A defamation suit, whether for posthumous personality rights or the rights of the living, requires several conditions: (1) the defendant must have made a false publication against the plaintiff; (2) the statement must concern the plaintiff; (3) the statement must harm

the plaintiff's social functioning and relationships; and (4) the defendant must have acted with a degree of blameworthiness. Crucially, the plaintiff must be a living person, even in cases involving posthumous personality rights, and must be directly affected by the defamatory statement.

Historically, most courts reject defamation claims for the dead, arguing that the cause of action in defamation cases is inherently personal and cannot survive death. Additionally, establishing the grounds for such claims is challenging, and allowing defamation suits for the dead could hinder historical research. This concern ties into the recent legal debate over the "Right to be Forgotten," which allows individuals to control the availability of personal information, particularly online. While this right protects individuals from stigmatization due to past actions, it also restricts others' access to information, raising questions about collective memory, historical preservation, and the balance between individual and societal rights.

Despite these challenges, some courts have recognized posthumous defamation in limited contexts. In *Mrs. Pat Sharpe v. Dwijendra Nath Bose*, [Mrs. Pat Sharpe v. Dwijendra Nath Bose, AIR 1964 Cal 235] the court ruled that defaming a deceased individual harms their reputation and the feelings of their family, thus constituting defamation. Similarly, in *Raju vs. Chacko*, the court acknowledged that while civil claims for defamation of the dead may not be maintainable, criminal prosecution is justified to prevent breaches of peace caused by defaming deceased family members. These cases illustrate that posthumous personality rights, like the right to dignity of a corpse, are primarily concerned with the living rather than the deceased.

The concept of posthumous personality rights raises fundamental questions about the nature of defamation and dignity. If a living person is defamed but remains unaware of it, does their dignity suffer? This question hinges on whether defamation and dignity are independent of the subject's knowledge or are contingent on human agency. While the defamed individual may not be aware of the libel, the act of defamation still undermines their reputation and the moral fabric of society. Personality, as a construct of distinct character traits, does not die with the individual. It forms the basis of our social and ethical structures, making the protection of personality rights—whether pre- or post-mortem—essential to maintaining societal morality.

However, the emphasis on personality rights can conflict with the right to free speech. Balancing these competing rights is a persistent challenge. Additionally, the protection of posthumous rights extends beyond defamation to include the fulfillment of a deceased individual's interests and will. As Ray Madoff observes, protecting these interests grants the dead a form of "virtual immortality." This raises the question: To what extent should society and the law protect posthumous rights, interests, and wills? Should a deceased individual retain control over their body and property, even after death?

POSTHUMOUS CONTROL

A rational belief holds that death marks the end of conscious existence. Should it not, therefore, also signify the end of legal existence? This question has been central to this thesis, as it challenges not only our rational understanding of death but also the moral and ethical foundations of our society and legal systems. One of the core tenets of our moral framework is the respect for the interests and will of others. But should this respect extend to the dead at the expense of the living?

Thomas Jefferson articulated this dilemma succinctly:

That our Creator made the earth for the use of the living and not of the dead; that those who exist not can have no use nor right in it, no authority or power over it; that one generation of men cannot foreclose or burden its use to another, which comes to it in its own right and by the same divine beneficence; that a preceding generation cannot bind a succeeding one by its laws or contracts; these are axioms so self-evident that no explanations can make them plainer: for he is not to be reasoned with who says that non-existence can control existence or that nothing can move something (as cited in Madoff, p. 1).

From a rational perspective, Jefferson's argument is compelling. Death, by its very nature, precludes the dead from exerting physical control over the living. However, Jefferson is not referring to physical control but to the moral obligations that the living may feel toward the dead. Should the legal system endorse such posthumous control? If the dead lose all capacities for conscious existence upon death, why should society or the legal system prioritize the protection and fulfillment of their pre-mortem wishes? How rational is it to safeguard the interests of the dead at the cost of the living?

CONTROL OVER THE BODY

The human body is not only the quintessential aspect of personal identity but also the most intimate form of property. During life, individuals have the fundamental right to control their bodies as they see fit, and no one else can claim possession over them. But does this right extend beyond death? As previously discussed, a dead body often becomes a form of property, either of the closest kin or the state. Decisions regarding the disposition of the body are typically made by the living. However, what if a person leaves specific instructions about how their body should be treated after death? Can an individual retain control over their body posthumously, and to what extent?

History provides examples of individuals who have directed the treatment of their bodies after death. Jeremy Bentham, for instance, requested that his body be preserved and displayed in a glass cabinet at University College London, where it remains to this day. Eugene Merle Shoemaker, the founder of planetary science, had his ashes buried on the moon. Sandra West, a socialite, was buried in her Ferrari, dressed in a lace nightgown, with the seat reclined comfortably. These cases suggest that individuals can exert some control over their bodies after death, at least in terms of influencing the decisions of the living. However, this control is not absolute and often depends on the willingness of the living to honor such wishes.

There are also instances where posthumous wishes have been disregarded. Albert Einstein, for example, wished to be cremated. However, before his cremation, a pathologist removed his brain without consent from Einstein or his family, preserving it in glass jars for scientific study. Similarly, Ted Williams, the baseball legend, specified in his will that his remains be cremated and his ashes scattered at sea. Instead, his body was cryogenically preserved, with his head and body stored separately in liquid nitrogen tanks. Grace Metalious, author of *Peyton Place*, directed in her will that her body be donated to Dartmouth School of Medicine. Her family, however, refused to honor this request, and the court upheld their decision, emphasizing the primacy of the family's wishes over the deceased's instructions.

These examples illustrate the tension between an individual's posthumous wishes and the rights of the living to make decisions about the deceased's body. The value of a corpse, whether as a physical entity or a symbolic representation of the deceased, is difficult to define within legal and moral frameworks. Legal systems worldwide, particularly those influenced by English common law, generally do not recognize a

property interest in one's own dead body. This lack of recognition significantly impedes an individual's ability to control what happens to their body after death. As Madoff notes, "The failure to recognize a property interest in a dead body has proven to be a significant impediment to the ability of an individual to control what happens to his or her body after death" (p. 17).

CONTROL OVER PROPERTY

The idea of a future dead person exerting control over their body after death is legally challenging, as the deceased no longer holds property rights over their body. However, as a future dead person, one can conceive of certain rights through the integrity of their personhood, particularly in controlling the disposition of their property after death. The concept of making a will reflects the human desire to maintain control over aspects of life even after death. A will embodies the ability to influence the distribution of one's property, reflecting the profound impact of death as a lived experience. The right to control the disposition of property at death is central to the concept of private property. Individuals may use wills to disinherit children, donate to charity, establish trusts, or allocate assets to religious organizations. Courts generally recognize and enforce such wills, ensuring that the wishes of the deceased are respected.

However, the scope of posthumous control can extend beyond property to attempts to influence the behavior of the living. For example, a husband might stipulate in his will that his wife will forfeit her inheritance if she remarries, or children might be disinherited if they fail to fulfill certain conditions. Such stipulations often lack rational justification, as they seek to impose control beyond the bounds of life. While courts may uphold property-related wills, they are less likely to enforce posthumous control over personal decisions, such as remarriage or lifestyle choices. This distinction highlights a curious asymmetry: a dead person can exert significant control over financial matters through a will, but their control over their own body, even if specified in a will, is minimal. The living are legally bound to respect property-related wills but are not obligated to honor posthumous wishes regarding the body.

This raises the question: Do the dead have any legal rights? In practice, the dead are subject to the whims of the living, whether in matters of last rites or property disposition. While a will is a powerful legal document, there are instances where courts or individuals may choose not to honor the deceased's wishes. This leads to a broader philosophical question: Are the living obliged to the dead? If so, what binds us to such obligations? If not, why do we entertain the notion that the dead may have rights or require protection against injustice?

"DE MORTUIS NIL NISI BONUM"

The Latin phrase *De mortuis nil nisi bonum*—"Speak no ill of the dead"—encapsulates a longstanding cultural and moral injunction. But why should one refrain from speaking ill of the dead? What utility is there in concealing the truth simply because the subject is deceased? Is our obligation to the dead more important than our right to freedom of speech? Questions such as "Can dead people have rights?" or "Why should one not speak ill of the dead?" are often dismissed as irrational. Death, while inseparable from life, is not a state that can be experienced or influenced by the living. Scientifically, there is no evidence to suggest that the dead are affected by the actions of the living. Our concern with death and the dead is rooted in a relationship shaped by our anticipation of our own mortality, rationality, and morality. Thus, rather than asking why one should not speak ill of the dead, it may be more productive to ask why one speaks ill of the dead. If the dead lack conscious existence, it matters little to them whether they are praised, honored, or defamed.

Human sense of rationality and well-being guides our relationship with death and the dead. Intrinsically, death and the dead represent the future of the living present. Concepts such as reputation, dignity, and rights are attributes of the living. Yet, we struggle to imagine a state in which we are stripped of our essential humanness—our dignity, reputation, and rights. The questions of why we should or should not speak ill of the dead are tied to the concept of memory. What remains of a person after death is memory, and a dead person's reputation is shaped by how we choose to remember them. Memory, therefore, is central to our relationship with the dead, just as it is with the living. The moral, ethical, social, and legal obligations we believe we owe to the dead are, in reality, obligations we owe to ourselves as future dead. These obligations are guided by our rationality, which fosters a sense of personal well-being.

This sense of well-being is intertwined with the systemic interrelation of interests within society. Our morality and ethics are shaped by the need to consider and incorporate the interests of others into our own. However, this raises the question: Is there a valid rational ground for obligation? If the obligation in question is moral, what constitutes a valid moral principle? One possible answer is that a moral principle is valid if it is universally endorsed. Nicholas Rescher (1987), in *Rationality and Moral Obligation*, argues that a moral rule is valid if its general adoption and implementation would “conduce to the best (real) interests of people in general” (p. 32). However, there are always exceptions—individuals who do not benefit from the rule. Rescher (1987) suggests that the identity of these non-beneficiaries must remain veiled in the unpredictability of human affairs. Thus, the sufficient condition for a moral principle is: “People ought to endorse a certain moral principle whenever/wherever such a moral principle, if it were to be adopted and implemented in general, would conduce to the best (real) interests of people in general” (p. 32).

Our obligation to the dead, if it exists, is part of this moral framework. The belief that the dead possess bodily and personal dignity reflects the conditioning that the dead are valid entities within the societal system. While this belief lacks scientific validity, it is grounded in morality. To explore this further, consider the question: Are we morally obligated to keep a promise made to a person who is now dead? This question can be approached from two perspectives: our moral obligation to the dead and the concept of personhood in the dead. However, before addressing this, we must ask whether promise-keeping is a matter of moral obligation or an acknowledgment of personhood.

Traditionally, honoring a promise is considered a moral obligation. However, if the action promised is immoral, fulfilling it would itself be immoral. For example, should one keep a promise to commit murder? While such questions fall outside the scope of this discussion, they highlight the complexity of moral obligations. Returning to the question of promises to the dead, it is intrinsically linked to whether we have any moral obligations to the dead. Technically, it makes little sense to equate our moral values toward the deceased with those toward future generations. Our association with the past and our concern for the future belong to different categories. For instance, preserving natural resources for future generations is rational, as they will benefit from it. However, preserving the environment for ancestors is nonsensical, as they cannot experience its effects.

Walter Ott (2009) argues that we have no moral obligations to the dead because they are not “moral beings.” His perspective is influenced by George Pitcher's essay, *The Misfortunes of the Dead*, which posits that harm or misfortune can only be attributed to individuals if it contradicts their desires or interests. Since the dead lack consciousness, they cannot be harmed. Jeremy Wisniewski (2009) acknowledges the far-reaching nature of obligations to the dead but questions their validity. H. Conway and K. McEvoy (2006) argue that death transforms a person into an object, biologically human but no longer a

moral or conscious being. Thus, it matters little to the dead whether promises made to them are fulfilled or whether they are defamed.

The injunction against speaking ill of the dead is rooted in moral and cultural norms rather than rational or scientific grounds. Since the dead lack consciousness, they cannot be harmed by slander or defamation. The argument that the dead cannot defend themselves is tautological, as it presupposes their capacity for harm. Ultimately, the dead are not moral beings, and the living hold no moral obligations toward them. Our concerns with the dead are reflections of our own moral frameworks and anticipations of our future mortality.

HUMAN TEMPORALITY AND MEMORY

Throughout this discussions and analyses concerning the dead, the primary focus has often centered on proving or disproving the “conscious” status of the deceased. However, from a philosophical perspective, this exercise is ultimately futile. While we may rationally deny any state of being to the dead, philosophical inquiry into death and the personhood of the dead is not about the “being” devoid of consciousness but rather about the “being” capable of contemplating death. The sense of “self” is what enables a being to reflect on death and its own existence. As Nicolas Russell (2006) observes that memory plays a crucial role in creating a sense of self. Thus, questions about moral obligations toward the dead are, at their core, reflections on moral obligations toward one’s own “being” and the memory of the “self” that may outlive the individual.

Memory studies, dating back to the Greeks and significantly advanced by Maurice Halbwachs (1992), have transformed the way social science approaches its subjects. Halbwachs’s concept of “collective memory” imbues memory with a character capable of granting a form of immortality to individuals. In the archaic Greek worldview, memory and immortality were closely intertwined, with memory serving as a bridge between the transient and the eternal. Russell notes that the idea of collective memory granting immortality to names and reputations is a significant contribution of early memory researchers, as it elevates memory beyond the “contingencies of human experience.” Collective memory transcends human temporality, deriving its immortality from its inherent ethical and aesthetic value, which naturally attracts posterity and sustains it (Russell, 2006).

Russell (2006) highlights terms such as *La mémoire des hommes* and *La mémoire de la postérité* (memories attributed to groups) and *une mémoire éternelle* and *une mémoire perpétuelle* (implicitly attributed memories to groups), which underscore the understanding that memory is an element that passes from one generation to the next, capable of outliving any individual. This idea is particularly relevant to the question of why one should not speak ill of the dead—or why anyone would speak ill of the dead, who lack conscious existence. Memory, as a self-sustaining entity, is independent of the transient nature of human existence and the specific groups or individuals who preserve it. However, Halbwachs (1992) argues that the process of remembering is deeply influenced by the dynamics of groups, individuals, and families. Social interactions within a particular group shape how individuals remember events, incidents, and people from the past. For Halbwachs, groups have the power to reconstruct memories, making memory a socially contingent phenomenon.

If memory truly transcends human temporality, it follows that the desire for immortality—as believed by the archaic Greeks—can be fulfilled by preserving one’s memory untarnished. We speak of the dead, whether in praise or condemnation. While praise does not affect the dead, neither should ill words. Yet, when we tarnish the image of a deceased person, it is not the dead who are harmed but their memory. In the study of death and the dead, memory and our approach to the concepts of body and personhood

play a crucial role in shaping our moral and ethical obligations toward the deceased. From this analysis, it can be inferred that the injunction *De mortuis nil nisi bonum* (“Speak no ill of the dead”) is rooted in the desire to preserve the memory and reputation of the living, even after death.

This raises a significant question about the tension between preserving the memory of the dead and upholding the right to freedom of speech and artistic expression. Should we censor our speech, art, and historical representations to protect the reputation of the dead? This question lies at the intersection of memory, morality, and freedom, requiring a delicate balance between honoring the past and respecting the rights of the living.

CONCLUSION

The exploration of posthumous dignity, personhood, and the moral obligations surrounding the dead reveals a complex interplay between legal, ethical, and philosophical dimensions. At the heart of this research lies the question: Can dead people have rights? While the dead lack conscious existence and the capacity to experience harm or dignity, their legacy, memory, and the societal norms surrounding death continue to shape the actions and obligations of the living.

The analysis demonstrates that the human body, once a vessel of life and identity, becomes an object after death—a property subject to the control of the living, whether through familial claims or state authority. The legal recognition of posthumous rights is limited, often confined to the right to a decent burial, while broader claims to bodily integrity or protection against defamation remain contentious. The tension between the living’s freedom of expression and the preservation of the dead’s reputation underscores the ethical dilemmas inherent in balancing respect for the deceased with the rights of the living.

Memory emerges as a central theme in this discourse, serving as the bridge between the living and the dead. Collective memory, as explored through the works of Halbwachs and others, transcends individual existence, granting a form of immortality to the deceased. This enduring memory shapes societal attitudes toward the dead, influencing moral obligations and ethical considerations. The injunction *De mortuis nil nisi bonum* (“Speak no ill of the dead”) reflects the desire to preserve the dignity and legacy of the deceased, even as it raises questions about censorship and the freedom to critique historical figures or events.

Ultimately, this research concludes that while the dead cannot possess rights in the traditional sense, their memory and legacy impose moral and ethical obligations on the living. These obligations are not rooted in the conscious existence of the deceased but in the living’s anticipation of their own mortality and their desire to uphold societal values of dignity, respect, and continuity. The question of whether dead people can have rights is less about the dead themselves and more about how the living choose to honor, remember, and engage with the past.

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