The Dead

At the other end of life, or just beyond it, lie the dead. Could persons who certainly possessed moral rights while they were alive also be right-holders now that they are deceased? It would seem that the dead must be capable of possessing rights, because most of us, moral philosophers and morally scrupulous agents alike, believe that a dead person has a right that his property be passed on in accordance with his will and that one’s mother has a right that her son honor the promise he made to her on her deathbed. But how is this possible?

There is no special problem about ascribing rights to the dead if one accepts a Platonic or Cartesian conception of a person as a soul temporarily wearing a body or a mental substance in a material machine. Because the self remains essentially the same kind of being after death that it was during this earthly life, the deceased self retains in full its capacity to possess rights. But there is insufficient evidence to support the highly speculative hypothesis that the self is an immortal soul, and it is very hard to believe that one’s death touches one’s person so lightly. Indeed, to believe this is virtually to deny the reality of death. Therefore, let us assume that at death the living right-holder loses all those psychological capacities normally required for the possession of any right and becomes a mere cadaver. It surely appears that a corpse is not the sort of being that could be a right-holder. How, then, can the dead possess any rights at all?

It is, of course, far from clear just when in the process of dying the death of a person actually occurs. But let us bracket for the time being the theoretically difficult and practically important problems concerning the proper legal definition of death and the empirical criteria for death that should be used in medical practice. For our present purposes, it will be enough to ask whether it is possible, given the best theory of rights, for those who are obviously dead to possess any moral rights.

Annette Baier argues that no conceptual error is involved in speaking of the rights of past or future persons. Although the focus of her attention is on the alleged rights of future generations, let us consider the relevance of her reasoning for those who are now deceased. She believes that the dead can and do possess moral rights that impose duties on us here and now because the dead are members of our moral community, “a cross-generational community, a community of beings who look before and after... who see themselves as members of enduring families, nations, cultures, traditions.”

On first reading, it might seem that Baier’s reasoning concerning the rights of future generations is inapplicable to the alleged rights of the dead, for she distinguishes between the special rights of past persons that require some “special tie to the original right-holder” and the general rights of future persons. On closer examination, however, it becomes clear that her argument requires that the past right-holder possessed some social role and that the present spokesperson exercise some socially recognized means of acting as the past right-holder’s proxy. Thus, society or the community is presupposed in at least two places as a necessary background for the existence of the rights of the dead. Moreover, on further reflection, we see that Baier would presumably allege that the dead possess general rights, such as the right not to be defamed by anyone and the right not to have one’s corpse mutilated.
How is community membership supposed to be relevant to the possession of any right? First, the right-holder must be a member of the community because of the very meaning of an ascription of any right to him or her.

I turn first to the question of what we are committed to in asserting that a person has a certain right. I take it that this is to assert: (a) That at least one other person has an obligation to the right-holder. . . . (b) There is, or there should and could in practice be, socially recognized means for the right-holder, or his or her proxy, to take appropriate action should the obligation referred to in (a) be neglected. . . .

Thus, because every right conceptually presupposes the existence of some socially recognized means of action of the right-holder or proxy, rights can exist only within some society and only a member of that society could possess any of its rights. Or so it seems.

But membership in the society that confers the power to take appropriate action in the event that some implied duty is neglected is not always required, even for the possession of a legal right. For example, a foreigner to whom a U.S. citizen has willed a specified number of dollars has the power to sue in our courts should the executor of the estate fail or refuse to transfer this inheritance to the right-holder, and an alien who has applied for asylum in our country might well have the legal power to appeal an adverse decision by U.S. immigration officials. And when one turns from institutional rights to moral rights, one sees that no social practice of recognition, actual or even possible, is entailed by their very conception.

More to the present purpose, even where necessary, societal membership is not a sufficient condition for the possession of rights, other than just possibly the most fundamental civil rights. Some members of a society may be denied the power to act in any appropriate manner when obligations regarding them are neglected. Although in most societies slaves did possess a few socially recognized rights, a complete slave—a person who is socially regarded as merely the property of another—would possess no socially recognized means of action in the event that his or her owners or others neglect their duties regarding him or her. Although some might for this very reason conclude that the slave is not a member of the society, this inference is blocked for Baier because of the way she explains how a community (or society) might be constituted by relations of dependence. Again, women and children presumably were members of the Roman community, even though it was only the paterfamilias who under ancient Roman law possessed the relevant socially recognized power to take action to rectify any mistreatment of women and children; in doing so, the father of the family would be acting not as a proxy for some woman or child but in his capacity as head of the household. Therefore, the first reason that Baier seems to have for concluding that community membership might qualify the dead for the possession of rights is inadequate.

Her second reason is that it is one's social role that qualifies one to possess any specific right.

Rights and obligations are possessed by persons not in virtue of their unique individuality but in virtue of roles they fill, roles that relate to others. For example, children, qua children, have obligations to and rights against parents qua parents.
Because roles by their very nature relate those who play them to other persons, they are necessarily social. It would appear, therefore, that it is as a member of a community in which one holds a role that one is qualified to hold any right.

Moreover, dead persons can possess moral rights because their social roles persist in a moral community that endures over many generations.

Earlier I said that rights are possessed not in virtue of any unique individuality but in virtue of roles we fill. The crucial role we fill, as moral beings, is as members of a cross-generational community, a community of beings who look before and after, who interpret the past in the light of the present, who see the future as growing out of the past, who see themselves as members of enduring families, nations, cultures, traditions. Hence, a mother has a moral right that her son keep the promise he made to her on her deathbed because she is still his mother in an enduring family and a promisee in a cross-generational moral community.

But in what sense is she still a mother and a promisee? Well, she is the person who gave birth to her living son, and it remains true that she was the person to whom he made that deathbed promise. But does she—is it even conceivable that she could—continue to fill the roles of a mother and a promisee? Well, this depends on precisely what one means by a role. The Oxford English Dictionary defines a role as “The part or character which one undertakes, assumes, or has to play. Chiefly fig. with ref. to the part played by a person in society or life.” This strongly suggests that a role by its very nature involves some pattern of activity. Any social role necessarily presupposes various sorts of interaction between the one who possesses that role and others. Because the dead can no longer “play” the roles they played while alive, it would seem that it must be impossible for dead persons to possess any moral rights by virtue of their roles.

Although I believe that this inference is validated by the concept of a role as it is used in the social sciences, it might be that Baier is using the expression “a social role” in a broader sense such that there could be purely passive roles. This may even be implicit in her discussion of dependency.

Reliance creates dependency, and the second point I wish to make is that the relations that form a moral community, and which, once recognized, give rise to obligations, all concern dependency and interdependency. Some of these dependency relations are self-initiated, but the most fundamental ones are not. The dependency of child on parent, for example, is a natural and inevitable one, and the particular form it takes is socially determined but certainly not chosen by the child. Socially contrived dependencies shape, supplement, and balance natural and unavoidable dependencies. Rights and duties attach to roles in a network of interdependent roles, which if it is wisely designed will conserve and increase the common store of goods, and if it is fairly designed will distribute them equitably.

It is one thing to hold that every social role concerns dependency and that some are not chosen or initiated by those who hold them; it is quite another to maintain that mere dependency without any interaction with other persons is sufficient to constitute a social role. But let us grant, for the sake of argument, that there could be purely passive roles. Indeed, Baier might suggest that being a third-party beneficiary, a vic-
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An heir, or a neonate are instances of socially recognized purely passive roles. It would not follow, however, that any of these roles could qualify one to possess rights. Because every moral right conceptually involves activity, something on which Baier herself insists, only possession of an active role could qualify one for the possession of any right. Therefore, the dead, who have lost their capacities for action, could not possibly be moral right-holders.

Unless, of course, they could act through some living representative. Baier recognizes this.

This account of what it is to have a right differs in another sense from the account that is more commonly given. The point of difference lies in the extension of power to claim the right from the right-holder to his spokesman, vicar, or proxy. This extension is required to make sense of the concept of rights of past or future generations.

In my discussion of the rights of children, I explained why it is a mistake to appeal to representation in order to extend the range of possible right-holders beyond those who possess the psychological capacities required for moral agency. If my arguments are sound, Baier's reasoning to the conclusion that the dead can possess moral rights fails.

Nevertheless, it might be possible to find some similar reasoning from their membership in the moral community, but without using this assumption. It may even be that such an argument is implicit in two journal articles by Martin Golding. In these articles he develops a theory of rights as claims but insists that "someone may have a claim relative to me whether or not he makes the claim, demands, or is even able to make a claim" and that "the existence of the right turns upon the considerations that would justify the granting of the remedy." Accordingly, if the existence of such considerations were to depend on membership in the moral community, then the dead might be able to possess rights even if they are no longer able to claim their rights against those who outlive them.

How or why might these considerations depend on one's membership in a moral community? Assuming, as Golding does, that rights are to be understood in terms of what the right-holder would be justified in claiming against some duty-bearer, what kind of reason would be required to ground any such demand?

My desire for another's good must in this event be more than impulsive, and presupposes, rather, that I have a conception of his good. . . . An additional step is, therefore, required, and I think it consists in this: that I acknowledge this good as a good, that his good is a good-to-me. Once I have made this step, I cannot in conscience deny the pertinence of his demand, if he makes one, although whether I should now act so as to promote his good is of course dependent on a host of factors.

Thus, every moral right presupposes some conception of the good that relates the right-holder to the duty-bearer. And because the considerations that confer rights are derived from or are constituents in this social ideal, one can possess a right only as a member of some community.

It would seem to follow that the dead could possess moral rights holding against those still living only if they are members of the same community. But how could
those who, as we say, are no longer with us nevertheless remain as members of our moral community? Golding distinguishes several ways in which moral communities are constituted. They can be generated by explicit contract between its members, out of a social arrangement in which each member derives benefits from the efforts of other members, or out of altruism. As we have seen, altruism goes beyond fellow-feeling to include demands grounded on a social ideal. It is quite possible that Golding would ground special rights of the dead on contracts they have made with those now living or on social arrangements in which both they and those now living have participated in the past. But presumably he would also insist that the dead could possess general moral rights grounded on our social ideal. He explicitly concludes from the sort of reasoning we have been describing that “[f]uture generations are members of our moral community because, and insofar as, our social ideal is relevant to them, given what they are and their conditions of life.”

Surely our moral ideal is as relevant to those who are now dead as to those who are yet to be born. Even so, we must reject this explanation of how the dead could be moral right-holders. Why does Golding believe that community membership is in any way relevant to the possession of rights? It is because he conceives of rights as essentially involving claims. Therefore, any right presupposes the existence of at least one person with the capacity to make demands and one other person with the capacity to respond to demands. But the significance conditions for the language of rights require even more than this.

The mere presence in the universe of two individuals who have the above mentioned capacities and who reside in the requisite kind of environment, but are in total isolation from one another, provides no occasion for talk of rights. Robinson Crusoe can consciously engage in purposive activity, has desires and interests, can communicate demands and be receptive to them. But it is idle to speak of his rights when he is alone on the island, when no other men know or care about him. Although he can talk, he lacks someone to talk to and someone to talk or think about him as a living being. He lacks a social environment, and outside such an environment rights-discourse has no foothold. The type of community that gives rise to talk of rights is one in which there are at least two individuals who are capable of communicating demands, have a capacity to respond to demands, and whose demands may clash. . . . Given two such individuals, a community, for our purposes, may contain other individuals who lack these capacities.

In other words, because “a right” is a forensic term, “its significant use requires a forum of a particular kind.” Therefore, we cannot speak of rights existing outside a community.

Now I agree, although for somewhat different reasons, that semantically rights presuppose a community of at the very least two or three parties. Notice, however, that the kind of community required by Golding’s theory is a forensic community. This would seem to undercut his explanation of the rights of the dead, for those who are dead are simply incapable of being members in any community defined in terms of the capacities of making and responding to claims. The dead are no longer members of our public forum. Moreover, even if one were to grant, as I would not, that a forensic community could contain other members who lack these capacities, his reasoning shows only that membership in some such community is a necessary condi-
tion for the possession of rights. It would still fall short of explaining how the dead could possess rights, because it does nothing to establish the conclusion that membership in our forensic community is a sufficient condition for being a moral right-holder.

This may be why, when Golding considers our obligations to future generations, who “cannot expect in a literal sense to share a common life” with us, he appeals to a very different kind of community, a community defined by its social ideal. Because one need not make, or even be able to make, a claim in order to have a claim, this need not be a forensic community. Golding now explains that the capacity to possess rights presupposes community membership because the existence of any right depends on whatever considerations would justify a claim, were it to be made, and those considerations are constituents of or derived from a social ideal. This is so because of what is required to ground a right that one party might claim against a second party.

My desire for another’s good must in this event be more than impulse, and presupposes, rather, that I have a conception of his good. . . . An additional step is, therefore, required, and I think it consists in this: that I acknowledge this good as a good, that his good is a good-to-me.

But to rule out the acknowledgement of frivolous claims, one needs some criterion of genuine entitlement.

The test of this, in the case we have been considering, is my conception of the other’s good. This conception is a model in miniature of what I earlier called a social ideal. . . . By the term “social ideal,” however, I mean primarily a conception of the good life for individuals under some general characterization and which can be maintained by them as good for them by virtue of this characterization.

Accordingly, the dead could possess moral rights as long as our social ideal is relevant to them, that is, as long as they are members of our ideal community.

There are two serious problems with this attempt to explain how the dead could possess moral rights. First, Golding’s description of the sort of considerations that would justify any rights claim is inadequate. Consider an emaciated beggar who demands that I give her some money to purchase food. I probably would and should recognize that food is a good-for-her (something that would enhance her welfare), that it is a good-to-me (a genuine good according to my own conception of value), and that its goodness is derived from the ideal of human well-being shared by our ideal community. Although this might well prove that I have a duty of charity to accede to her demand, it would not show that she has a moral right to any gift from me. As we have seen, moral rights must be grounded on special sorts of moral reasons, reasons very different from those that might ground a duty of charity.

Moreover, it is doubtful that the dead really are members of our ideal community as Golding defines it. On his own theory, a social ideal is relevant to some potential claimant only insofar as it establishes that some good-for-him falls under our conception of the good life for individuals of our kind. But how could anything at all be good for or bad for one who is dead? Surely a mere corpse cannot fare well or ill, and the living person for whom some things were good and others bad is now de-
ceased. This implies that one’s membership in our ideal community cannot survive one’s death. Therefore, even on Golding’s own account, it would seem that the dead could not possibly possess any moral rights.

That is unless, perhaps, something could benefit or harm the dead. Joel Feinberg, among others, has attempted to explain how the dead could be moral right-holders in precisely this manner. He has persistently maintained that to benefit a person is to promote or enhance her interests and that to harm someone is to invade or set back her interests. He has also argued repeatedly that some of one’s interests—in particular, one’s interests in a good reputation and that one’s loved ones flourish—can survive their owner’s death. This conclusion, together with his principle that the sorts of beings who can have rights are precisely those who have or can have interests, implies that the dead can possess moral rights.

Is it true that some of one’s interests can and often do survive one’s death? This depends, in part, on precisely what one means by “an interest.” Feinberg is well aware of the ambiguity of this expression.

The Restatement of the Law of Torts gives one sense of the term “interest” when it defines it as “anything which is the object of human desire,” but this seems much too broad to be useful for our present purposes. A person is often said to “have an interest” in something he does not presently desire. A dose of medicine may be “in a man’s interest” even when he is struggling and kicking to avoid it. In this sense, an object of an interest is “what is truly good for a person whether he desires it or not.”

On the same page and elsewhere, he interprets the latter sense as equivalent to “something in which he has a genuine stake.” Thus, Feinberg notes that the expression “an interest” can refer either to an object of desire or to something good for one.

What is most remarkable is that he does not notice that in this passage he uses the expression “an interest” in yet another sense. When he writes “an object of an interest,” he is lapsing into the terminology of traditional interest theories of value. Thus, Ralph Barton Perry held that value is the object of interest and John Dewey replied that value is the object of rational or critical interest. Both used the expression “an interest” to refer to any pro or con attitude, such as desire or aversion, love or hate, liking or disliking. Here we find a third sense of “an interest,” a meaning that underlies and helps to explain the ambiguity noted by Feinberg. If desires do confer value on what is desired, then the objects of one’s desires are indeed goods for one.

In one typical example of Feinberg’s reasoning we find all three of the concepts we have just distinguished—desires, objects of desire, and goods. “Because the objects of a person’s interests are usually wanted or aimed-at events that occur outside of his immediate experience and at some future time, the area of a person’s good or harm is necessarily wider than his subjective experience and longer than his biological life.” Here he is using the word “interests” to refer to a person’s desires or other conative states. Surely he would agree that in this sense there are and could be no surviving interests. Corpses lack the capacity to desire or want anything at all.

At the same time, it is true that the objects desired by a person before she died can and often do survive her death. A woman will typically want her property to be distributed in accordance with the will she made out while she was alive and desire
that her surviving children prosper and be happy. These and similar desired events certainly could and typically will occur after her death. If so, do they constitute surviving interests in the sense of desired objects? Well, the objects of her desires do survive as objects, that is, as real things or events, but do they survive as desired? One could, and I would be inclined to, argue that because the woman no longer does or could desire them, they are, strictly speaking, no longer interests in the sense of objects of desire. Still, this is a fine point on which I would be reluctant to put much weight.

Let us grant, then, that there are surviving objects of desire. Is this sufficient for Feinberg's purposes? What he really needs to establish in order to show that dead persons could have moral rights is that they could have surviving interests in the sense of things that remain good for them even after their death. The crucial issue is whether there can be posthumous benefits or harms to the dead. After all, Feinberg explains why a mere thing cannot have rights by pointing out that, however valuable a thing may be to others, it "has no good of its own."22 Does the possibility of surviving objects of desire indicate any possibility of surviving goods? Perhaps. Feinberg suggests that these two senses of "an interest" are conceptually linked.

Even interest defined in this second way [as "what is truly good for a person"] may be indirectly but necessarily related to desires. The only way to argue that X is in Doe's interest even though Doe does not want X may be to show that X would effectively integrate Doe's total set of desires leading to a greater net balance of desire-fulfillment in the long run.23

He has reasserted this thesis in his subsequent discussions of surviving interests.24 Although his assertions are somewhat tentative, he clearly presupposes some version of an interest theory of value, probably one closer to Dewey's rational interest theory than to Perry's unqualified interest theory. Because I do not believe that any sort of interest theory of value is adequate, I doubt that the possibility of surviving interests in the sense of desired objects implies the possibility of surviving interests in the sense of goods for the deceased. No doubt many of these desired objects, such as the happiness of one's surviving children, are good; but are they still goods for the person who has died? Not at all.

Be that as it may, there are other questions one can and should ask about this attempt to show that the dead can be moral right-holders. How are interests supposed to be relevant to the possession of rights? The most obvious and direct way would be for the possession of interests to be the necessary and sufficient qualification for the possession of rights. This is just what Feinberg explicitly asserts.

Now we can extract from our discussion of animal rights a crucial principle for tentative use in the resolution of the other riddles about the applicability of the concept of a right, namely, that the sorts of beings who can have rights are precisely those who have (or can have) interests.25

I will not repeat here the reasons I gave in my discussion of children's rights for rejecting this principle.

There is, however, another way in which interests might be relevant to the capacity to hold rights. Suppose, as Neil MacCormick and Joseph Raz maintain, rights
are grounded on the interests of the right-holder. Because the existence of any right depends on the existence of sufficient grounds, it would follow that only a being with interests could have moral rights. Thus, interests might be indirectly relevant to the possession of rights as grounds rather than directly relevant as qualifications.

Loren Lomasky explicitly extends the range of possible right-holders beyond the moral community of project pursuers by appealing to the surviving interests of the dead as the grounds for their rights.

I wish to maintain that it makes good sense to speak of the dead as having rights and, further, that considerations previously adduced entail that this is a morally sound result. The argument involves two stages: giving reasons for believing that the interests of persons that ground their claims to rights while they are alive are not extinguished by their death, and confronting the charge that it is nonsensical to conceive of the dead as rights holders.26

Similar reasoning may be implicit in Feinberg's writings, for he occasionally hints that interests are the grounds for some moral right.

I should think that the fact that a being has an interest in X would be a very good reason, speaking generally, in support of the claim that he has a right to X, even though it is admittedly not, all by itself, a decisive reason. . . .

In such circumstances, therefore, a proxy for the fetus might plausibly claim on its behalf, a right not to be born. That right is based on his future rather than his present interests. . . .27

Is this line of reasoning sound?

Not if my account of the grounds of moral rights is correct or even close to the mark. The grounds of moral rights must be specifically moral reasons, and interests as such are not specifically moral. To be sure, it may be that interests are somehow involved, in a manner yet to be explained, in moral reasons because moral reasons are proximate reasons that in turn require further grounds. But interests in and of themselves lack those special aspects required to explain either the bindingness of the duties implied by rights or the moral powers contained in them. What is especially mysterious is how some interest of a right-holder could ground a right sufficient to impose a duty on a second party who may well not share this interest. Because interests are not adequate grounds for moral rights, the surviving interests of the dead, even if there be such, could not ground any possible right for someone who had died.

Another, and more worrisome, question is "Who possesses the rights of the dead?"

Lomasky puts the problem this way:

A dilemma confronts those who would attribute rights to the dead. Saying that the deceased Jones now possesses rights means one of two things: either that Jones the corpse is a rights holder or that Jones the living and breathing person possesses rights that survive his own demise. The former represents a moral confusion about what sort of being can have rights, and the latter seems to incorporate a logical confusion.28

He chooses the second horn of the dilemma and argues that because project pursuers while alive have interests that survive their death, they can be benefited or harmed after their death.

Feinberg, who has repeatedly argued along the same lines, recognizes that this merely moves the problem to another place.
The death of the victim, it would seem, is not a mere "harmed condition" he is put in, and certainly not a "harmful" one; it is no "condition" of him at all, but rather his total extinction. Ordinary language, to be sure, is not univocal, but the main case against calling death a harm is not based on ordinary language, but rather on a very simple and powerful argument: there cannot be harm without a subject to be harmed, and when death occurs it obliterates the subject, and thus excludes the possibility of harm.29

One finds oneself confronted by the problem of the subject wherever one turns. Just as there can be no harm without a subject to be harmed, so there can be no interest that is not someone’s interest, and there cannot be a moral right without a right-holder.

Like Lomasky, Feinberg attempts to solve this problem in the first instance regarding interests. “The view I would like to defend is that the interests harmed by events that occur at or after the moment a person’s nonexistence commences are interests of the living person who is no longer with us, not the interests of the decaying body he left behind.”30 He argues that living persons have interests that survive their death. Because these were (and perhaps are) interests of the living, they do have a subject. Because they survive the death of that subject, they can continue to ground rights of the dead.

Like many others, I am not happy with this solution. For reasons already explained, I very much doubt that there are any surviving interests in the sense of “interests” required for their argument. Moreover, ascribing interests, benefits, and harms to those who were alive but no longer exist poses very serious problems about predication and tenses. How can one predicate an actual interest of that which is nonexistent? Does one ascribe interests to those who were but are not now alive in the past or present tense, or in some tenseless manner? I do not intend to add to the large and highly technical literature on these conceptual puzzles. Rather than attempt to deal with these issues, I propose a different strategy that will, I hope, avoid them.

Where can one best solve the problem of the subject? What survives—interests, benefits and harms, rights or duties? Well, what is most important, in theory as in practice, are posthumous duties such as that to keep a deathbed promise or not to damage the reputation of someone now dead. Happily, it is not at all difficult to find subjects here. The bearers of these surviving duties are clearly identifiable persons who survive the deceased, for example, the son who made a promise to his mother as she lay dying, or anyone tempted to libel a person who has died. Let us begin, then, by asserting that such surviving duties are real.

Our problem now becomes to explain the nature and grounds of these duties. Not every plausible explanation will do. Ernest Partridge attempted to explain these duties by appealing to general practices, such as making wills or promises and truth-telling, that most people, including most survivors, have an interest in preserving. Feinberg rejects this explanation.

Rule-utilitarian arguments of this familiar kind do indeed give the truth about our duties toward the dead, and nothing but the truth, but they do not give the whole truth. . . . It is absurd to think that once a promisee has died, the status of a broken promise made to him while he was still alive suddenly ceases to be that of a serious injustice to a victim, and becomes instead a mere diffuse public harm. Once we recall that the betrayed party is the person now dead as he was in his trusting state antemortem, all temptation to give this distorted account of the matter ceases.31
Although I agree that this account is distorted and should be rejected, I cannot accept Feinberg’s alternative account.

To be sure, surviving duties are not general duties to the public; they are duties implied by the rights of individuals who have died. But this need not be to ascribe rights to the dead; it can and should be to assert that the rights of the living continue to impose duties even after the persons who possessed those rights have ceased to exist. I do not imagine that their rights continue to exist without subjects. I suggest that surviving duties are implied by proactive rights—rights that impose future duties. Here we find mirror images of the retroactive rights I described in explaining our duties regarding the human fetus.

But how is this possible? If a person’s rights perish with the right-holder, how can they continue to impose duties on those who survive? Surely what no longer exists cannot now do anything at all. The beginning of wisdom is to recognize that much of our language of rights is highly metaphorical. We speak of rights as though they were objects, pieces of furniture in our world, capable of acting in various ways such as imposing duties. But rights and duties are really positions under norms, and their existence consists in the existence of these norms, for example, laws or moral reasons. And to say that some right imposes a duty is not to assert that it does something—that it literally lays a normative burden on some duty-bearer—but merely that it implies a duty. Thus, what sounds like causal language is more accurately interpreted as asserting some logical implication.

There is, however, more to explain. How can a right that has ceased to exist imply a duty of someone who has survived that right and its possessor? First, to say that a right implies a duty is an elliptical way of saying that some statement about that right implies a statement asserting or implying the existence of that duty. Second, any such implication is based on and reflects the fact that the grounds of the right include or imply the grounds of the implied duty. In short, surviving duties are implied by the rights of those who were living, because the grounds of the latter are sufficient to ground the former.

In the case of moral rights and duties, those grounds include specifically moral reasons involving sociability factors. Hence, Feinberg was wise to ask us to recall that “the betrayed party is the person now dead as he was in his trusting state ante-mortem.” Trust and betrayal are indeed sociability factors that, among others, make promise-keeping and promise-breaking moral reasons. These reasons grounded the right of the deceased person that the promisor act as promised. And although that right and that person no longer exist, the moral reasons do still exist and continue to ground the surviving duty of the promisor. They continue to exist because they are essentially social reasons relevant not only to the individual right-holder who has died but also to the surviving duty-bearer and all those who continue to be in society with him or her.

One puzzle remains. If the moral reasons that grounded the rights of the person who has died survive and the existence of any right consists in the existence of its grounds, must not the rights of the dead also survive? Not at all, because the complete grounds of someone’s moral right must include the qualifications of its possessor as well as specifically moral reasons. Death destroys a person’s capacity for agency and thereby destroys an essential qualification for being a moral right-holder.
At the same time, death sometimes leaves the moral reasons intact so that, together with the qualifications of the surviving duty-bearer, these can ground a surviving duty.

We are now in a position to see that there is more insight than error in the reasoning of Feinberg and Lomasky concerning the rights of the dead. They recognized that surviving duties are in many cases implied by the rights of those who have died. They also correctly held that these surviving duties are based on the grounds of those rights. Where they went astray was in assuming that moral rights are primarily grounded on interests. This mistake led them to postulate surviving interests to ground the surviving rights of the dead. Now that we know that the normative grounds of moral rights are specifically moral reasons, we can explain surviving duties without imagining that those who have died continue to have any moral rights.

Corporations

In spite of the individualism implicit in traditional natural rights theories and explicit in the contemporary theories of Ronald Dworkin and Robert Nozick, many recent moral philosophers allege that certain groups can and do possess moral rights. They assert, for example, that every person has a human right to self-determination, that American blacks have a moral right to preferential admission to American colleges and professional schools, or that even the Ku Klux Klan has a right to hold a meeting in a public park or square. Would such ascriptions of group rights be possible in the most adequate moral theory? Could groups per se possess moral rights?

No one, to my knowledge, imagines that each and every group could be a moral right-holder. Advocates of group rights ascribe them only to certain sorts of groups. For our purposes, the fundamental distinction is between organized groups and unorganized groups. Although I do not believe that the many differences between formal and informal organizations matter very much for our purposes, I do think that within organized groups we need to distinguish between corporations and teams. Among unorganized groups, the various differences between collections and classes may well be significant. Therefore, let us consider these four different kinds of groups—corporations, teams, collections and classes—in turn.

An organization is an ordered or structured group of persons. One common and important sort of structure is based on rules or norms, written or unwritten, that define specialized offices or roles within the group and that authorize individuals holding those offices to act for the group as a whole. This species of group constitutes a corporation in the sense defined by the *Oxford English Dictionary* as “a number of persons united, or regarded as united, in one body.” What makes a corporation one body of persons is the fact that according to its rules any official act of one member (or a few members) is recognized as an act of the entire group.

Familiar examples of corporations include the Gulf Oil Corporation, the United States of America, The American Philosophical Association, and the Saint Louis Chapter of the Jane Austen Society. A more informal corporation would be a bridge club that meets every alternate week in the home of one or another of its members and that annually elects a president and treasurer according to its traditions. An even