

‘Go Tell the Spartans, Passerby’: Whom to Remember Ahead of Whom?

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ABSTRACT *The dead are among us. We are reminded of their names through the books we read, the hoovers we buy, the sandwiches we consume, the tarmac we travel on, the wellingtons we wear, or, frequently, the buildings we visit. Even if we settled on the criteria for being worthy of commemoration, what should we do about the fact that there seem to be so many people who would likely meet them? Commemoration is a form of attention giving, and attention is a scarce resource. It is scarce even if it could be permissibly commanded at will. It is even more scarce when commanding attention may violate someone’s freedom to decide for themselves where to bestow it. I will argue that when it comes to public commemorative attention, there are duties that fall on us all to remember the now dead victims of injustice. I will also offer reasons for why such duties would normally mean that we need to prioritize the remembrance of the victims of injustice ahead of remembrance that might be owed to those who had expectations of being remembered or even took steps by donations to secure such remembrance.*

1. Introduction

For the 300 Spartans killed at Thermopylae, Simonides wrote an epitaph: ‘Go Tell the Spartans Passerby that Here Obedient to Her Laws We Lie’. It is a passerby who is charged with the task. But Spartans were just a fraction of those killed there.¹ Since, there have been many wars and so much injustice and, therefore, countless victims and many heroes. There have also been many others who are worthy of commemoration. We are reminded of some of their names by the tarmac we travel on, the wellingtons we wear, the hoovers we buy, the sandwiches we consume, and the buildings we visit. Our cities are full of commemorative plaques and statues, and yet, all this hardly scratches the surface of what could be done to commemorate the dead. There are many statues of George Washington. Should there not be some to the enslaved people whose teeth were used to replace his own? There are posthumous tributes to Maria Skłodowska Curie. Should there also be some to other victims of misogyny who did not manage to achieve half as much? More generally, should we privilege commemoration of victims of injustice or of those who expected and took steps to be commemorated?

Commemoration is a form of attention giving, and attention is a scarce resource. It is scarce even if it could be permissibly commandeered at will. It is even more scarce when commanding it may violate someone’s freedom to decide for themselves where to bestow it. This means that we face the general problem of whom to prioritize for our posthumous attention that we bestow on strangers.² By posthumous or commemorative attention

I mean both commemoration (honouring) and remembrance of (reflection on) the dead of the type that would be valued by them – and I will mean both commemoration and remembrance when mentioning either.

It might seem that this question of who should get commemorative attention could be resolved by each person deciding individually in line with their worldviews. But even if our private commemorative attention could be divvied up by individuals as they wished, we would still face the problem of how to prioritize among all those people who could be offered our public commemorative attention.

Commemorative attention is public, as I understand it here, when it involves decisions, institutions, and resources that should be under the public's democratic control (even if such control is delegated).³ Such public commemoration therefore includes public monuments, official commemorative plaques, street names, or the names on buildings of publicly funded institutions. It includes scheduled commemorative occasions involving the state. It involves not just the objects and events but also the intended individual mental states they bring about. So, for example, public commemoration is constituted by the laying of wreaths on the day of remembrance and the resulting reflection by individuals about the victims of war that the practice is meant to elicit. Some public remembrance practices are simply records of actions and events, however. For example, institutions record the names of those who donate to their upkeep. My focus here is not on such record keeping but on commemoration that is undertaken in a way that is meant to be enduring or repeated as well as prominent.

I will argue that when it comes to public commemorative attention, there are duties that fall on all of us to remember the now dead victims of injustice. Who counts as the 'all of us' will be left unrefined but is meant to pinpoint commemoration by strangers who are not perpetrators of the relevant injustice. The detail of the relationship between the strangers and those to be commemorated can make a difference to our duties to commemorate but not to the extent that I discuss them here. I will offer reasons for why such duties to commemorate the victims of injustice would normally mean that we need to prioritize their remembrance ahead of remembrance that might be owed to those who had expectations of being remembered or even took steps to secure such remembrance.

Of course, anyone who has ever lived has been a victim of injustice in our world. When I invoke the category of a victim of injustice, however, I mean to signal that the person has been disadvantaged by injustice noticeably more than others: the injustice they have suffered has been serious and special in this sense. Referring to them as victims is not meant to signal that they lacked agency or were not heroic in resisting it but that injustice had been done to them. Commemorating them need not mean focusing on the injustice they suffered rather than on how they responded to it or who they were over and above what they suffered.⁴ I also leave it deliberately open what is the exact focus of the commemoration of victims of injustice: whether it is the person, or her projects, or her life.

I focus throughout on remembrance that is owed to those who are no longer alive. Those who do not want to commit to the view that we may owe anything to the dead will need to put up with the language here, but they can think of such duties differently: as duties that arise on account of the dead because of the impersonal value this may serve and/or because of the value the dead have. What is distinctive about my argument is that I am focused on reasons for commemorative attention that are not about how such attention can serve those who are currently alive or will be in the future. This means, however,

that the picture I offer is partial by design. But it offers the part that is often absent from our commemorative debates.

Why focus on the duties we owe to the dead rather than just on what we owe to the living when many will deny that duties to the dead can even exist? Precisely because such denials distort the normative picture of the role the dead should play in our commemoration. Of course, what we owe to the dead is not the only consideration when it comes to bestowing commemorative attention. Much of our remembrance should be governed by considerations that are aimed at the interests of the living: the need for inspiration, community and identity building, education, space to express gratitude, regret, atonement, or anger. It is also relevant when remembrance can morph into a call to vengeance or injustice.⁵ My argument here does not tell us how to deal with these problems, but it adds a set of considerations that should be part of the calculus of how to allocate our commemorative attention given the interests and value of those who were once alive. These considerations, I argue, show that commemorating victims of serious injustice takes priority over commemorating others.

I begin, in Section 2, by outlining the case that remembering victims of injustice can be a duty that falls on third parties, that is bystanders, who did not perpetrate the injustice in the first place or benefit from it.⁶ The duty to save the victims from the fog of forgetting falls on us all. In Sections 3 and 4, I argue that duties of remembrance owed to the victims of injustice would normally trump duties grounded with reference to the contributions the now dead people made to the world and also trump any voluntarily undertaken obligations to publicly commemorate people. I will use the terms ‘injustice’, ‘wrongdoing’, and ‘unfairness’ interchangeably throughout. To make the discussion manageable, I put aside the problems of what might be owed by the perpetrators or beneficiaries of injustice vis-à-vis remembrance and assume that the victims whose commemoration is at stake are not themselves wrongdoers in any significant sense. I will mostly drop the adjective ‘public’ ahead of ‘remembrance’, but my focus is on public remembrance throughout.

2. Commemorating Victims of Injustice⁷

Can we think of commemoration as a matter of duty? I think that we can and that it is something that bystanders can owe to victims of injustice. As I understand them here, duties that direct what we owe to others (directed duties) exist when our freedom to decide on our own ends is constrained on account of (the interests, claims, or status of) others.⁸ Thus, I have a duty to rescue you if you are in peril (and I can do it without undue cost to myself), even if I would rather do something else, just as I have a duty not to steal from you, even if I am really tempted. More generally, then, our freedom to set our own ends is constrained on account of others when having such freedom in a given case is sufficiently less important than what we could do for others if we were under a duty. Our freedom to set our own ends may also be constrained, giving rise to duties, on account of us needing to advance some crucial impersonal value.⁹

Being well placed to rescue others creates one famous set of constraints on our actions: duties of rescue. But a different, if sometimes overlapping, source of constraints on our actions is more relevant to my argument here. It is being in a position to mitigate an injustice even if we are not the perpetrators or beneficiaries of the injustice but mere bystanders to it. It counts as mitigation of injustice if some form of compensation, redress, restitution,

or justice-affirming response takes place even when, as is usually the case, the mitigation is merely partial. The core case of mitigation on which I focus here is compensation or the advancement of the relevant preferences of the victims of injustice. Such mitigation of injustice can be the reason why we have a duty in some cases to act one way or another. It is our duty to mitigate injustice, for example, that explains why a person may have a duty to help fund through taxation schemes to compensate victims of atrocities even if she was never the perpetrator or hopes never to need such compensation. Usually, the duty only arises if the costs to the duty bearers are fairly low – after all, they are not the perpetrators. If so, the duty to mitigate injustice arises only when this can be done at a low cost to ourselves.

It is easy to see how duties of mitigation might arise on account of living persons whose interests our actions could jeopardize or serve. Can they arise also on account of the dead? They can. I will briefly outline a case for this view, but my core focus is on the relative stringency of remembrance duties to different categories of people if we assume that duties to mitigate injustice through remembrance can exist.

The case is as follows. People, while alive, have an interest or claim that at least some of their preferences be fulfilled and their projects advanced. These preferences and projects need to be permissible and permissibly fulfillable and may need to fulfil further criteria to qualify, but any plausible conception of justice needs to stipulate when the distribution of opportunities for the fulfilment (or, for short, when the fulfilment) of preferences and projects is just. Different conceptions of justice will differ on whether we need to aim for equality or adequacy or something else but all of them can be assessed with reference to whether they offer the right account of what the opportunities for the fulfilment of preferences and projects should be.

Some of the preferences and projects that people have, while alive, concern posthumous states of affairs. We can call such preferences posthumous preferences and refer to them, following Feinberg, as surviving preferences once those who had them are no longer alive.¹⁰ For example, many people have posthumous preferences regarding their property, children, or achievements. People also have projects that are meant to extend beyond their lives. Once people die, these become their surviving preferences and projects.¹¹

Justice clearly must care about granting people some opportunity to advance the fulfilment of their posthumous preferences (and projects, although I shall drop the conjunction from now on for simplicity). After all, many people – while alive – care more about the fulfilment of their posthumous preferences than many of their other preferences. Sometimes they donate money or set up trust funds that exhibit this precise ranking. The correct conception of justice may prohibit trust funds, of course, but may not prohibit all avenues to shape the world, or have it shaped in line with one's preferences, beyond one's life. In fact, it is my core claim that it would be ad hoc to stipulate that the advancement of posthumous preferences, the preferences a person has while alive regarding posthumous outcomes, matters to justice but that the advancement of those preferences once they become surviving preferences, because the person has died, does not matter. Although I cannot make the case here, there is no good way of restricting the concern of justice to posthumous but not surviving preferences in a way that would also result in an intuitive picture of which more mundane (neither posthumous nor surviving) preferences of the living justice must care about.¹² Such a restriction would also fly in the face of our intuitions about, say, posthumous slander and remembrance. It is a matter of justice not only who can or cannot advance their preferences regarding their remembrance while alive; it also matters who

does or does not get to be remembered or slandered. Importantly, they matter not only when and because they affect the family or friends of those who get to be remembered or slandered.

But my focus here is not simply on what justice requires regarding opportunities for the fulfilment of surviving preferences. Rather, the fact that surviving preferences can be advanced or set back posthumously means that it may be possible to mitigate some of the injustice that people who are no longer alive had suffered in the past.

How can such mitigation of injustice be possible? When it comes to the living, it is normally accepted that advancing some of their preferences can mitigate injustice: if you were wrongly stopped from acting on your preferences, letting you act on it now – or, sometimes, delivering the outcome that you were after – can do so (if the point of the preference was the outcome and not you yourself securing it). If you were wrongly prevented from buying flowers, for example, you should now be granted the chance to buy them or perhaps even receive them. Normally, we think that to mitigate injustice it is best, when possible, to fulfil the same preference that was set back by the injustice. But if this is not possible, advancing other preferences can sometimes qualify. This is why monetary compensation for losses that cannot be restituted can count or, sometimes, offering, say, a different painting instead of the one that was stolen and cannot be returned can also count. So since it is possible, sometimes, to mitigate injustice by fulfilling preferences other than those that were set, and since it is possible to advance the surviving preferences of people who are no longer alive, then mitigating injustice done to those who are no longer alive may also be possible.

What roles can remembrance and commemoration play in this picture? Many people while alive care that they be remembered after they die. This sometimes goes beyond wanting to be remembered exclusively by one's close friends and family. This is true, for example, of many people whose motivation to undertake some projects is in part due to this form of immortality in the minds of others. It can remain the case even if such immortality is a poor substitute for the real thing, as once observed by a famous filmmaker, who remarked: 'I do not want to achieve immortality through my work, I want to achieve immortality through not dying. I do not want to live on in the hearts of my countrymen, I want to live on in my apartment'.¹³ For many, living in the hearts of others remains something they care about when the other option is unavailable. Remembrance, we know, also matters in a way that is well documented and easy to grasp to victims of injustice.¹⁴ Clearly, posthumous remembrance is not the only thing that matters. But it is often the one thing that can be feasibly (and permissibly) delivered. When this is the case, delivering it may be required as a form of mitigation of injustice, however small and inadequate¹⁵ such mitigation may be.

Of course, some people may not want to be remembered at all; they may decide that, injustice or not, they are best soon forgotten.¹⁶ In such cases, remembrance will not mitigate injustice. Sometimes we may be uncertain whether a given person cared or not about remembrance. But often we do not face such radical uncertainty. I would even speculate that the preference to be forgotten is fairly rare, even if we cannot assume that those who lack it have all formed an active preference to be remembered. On balance, we can often take the risk of delivering remembrance as injustice mitigation: we may not know in a given case if we must forget or commemorate, but commemoration is far more likely to deliver what those who are no longer alive would have wanted.

In what follows, I will take it for granted that when remembrance can mitigate injustice, the duty to commemorate can fall on bystanders who can engage in it at a low cost to themselves. It may be that there are further conditions that have to be met, such that the victims must be somehow connected to those who must commemorate them. I will assume any such conditions have been met. Doing so will allow me to focus on the stringency of such a duty vis-à-vis any remembrance that might be owed on grounds other than mitigation of injustice.

3. Commemorating Those Who Contribute Value to the World

Sometimes remembrance seems due because those who are now dead contributed value to the world and may have an interest or a claim to be remembered in light of this.

3.1. *Contributing Value*

We may think everyone has an interest, when alive, that their genuine contributions to the world persist and that they are noticed and correctly attributed to them even after they die. I do not mean here that people simply have an interest to be noticed, although I think everyone has an interest to be noticed the right amount, but, in particular, an interest to be noticed for what they contributed given that they oriented their lives around it and what they contributed is magnificent. I will grant that there is such an interest and that this interest can at least sometimes generate a reason to commemorate people or their achievements in public commemoration (e.g. not just history textbooks).¹⁷

But does this reason for commemoration translate into a duty to commemorate? I do not think it does. We can see the interest as important, but our question is whether its existence can constrain our own freedom to decide for ourselves whom and even whether to commemorate. I claimed above that people do not have the freedom to decide whether to mitigate injustice if they can do so at a low cost to themselves. So why do I resist the conclusion that they also have a duty to commemorate those who had an interest that their great contributions be commemorated?¹⁸

Deciding where to allocate our commemorative attention expresses and shapes who we are. Against this, we can balance having one's contribution noticed and remembered. What explains why we can give priority to the former over the latter here is that the former – our ability to express and shape our agency – is what makes the latter – having our contribution noticed and remembered – so significant to us. That is, it is because our contributions will be noticed by people who have a fair amount of freedom to develop their worldview that this noticing is of particular value. Perhaps if we had plenty of attention including commemorative attention to spare, the balance would not fall this way. But, of course, our commemorative attention competes with all other legitimate objects of attention.

This is not to say that we should not remember those who contributed to our world. I say only that we retain our freedom to decide in this respect. So an institution or a state could still vote to commemorate those with great contributions once they have attended to their duties to commemorate those for whom commemoration can be a form of mitigation of injustice.

3.2. *Legitimate Expectations of Remembrance*

Could a case for a duty to commemorate those who contributed value be strengthened by recognizing that they may also have had legitimate expectations of public remembrance? Certainly, our current commemorative practices signal to many that if they are heads of states or fight in wars or if they become best or first at something of significance (or at something idiosyncratic that a given society values, such as cricket) they are likely to be commemorated in special ways. Our practices may even encourage people to pursue these activities in order to secure public remembrance.

It would seem that if people's expectations of public remembrance here were legitimate, this might give them a claim to it. Moreover, when it comes to the living, we sometimes allow that mitigating injustice can take a back seat to helping people achieve things – so, for example, we fund scholarships rather than repair wrongs. Given this, perhaps legitimate expectations of remembrance can trump remembrance that is owed to those victims of injustice, at least, who did not have such expectations.

Legitimate expectations of public remembrance from those who are not victims of injustice, however, are not easy to come by. To count as legitimate, expectations of some good cannot themselves reflect the person's unfair advantage. In such cases, a person may have the expectation, but the expectation is not legitimate. The person may still qualify for the good on other grounds, of course, but not on the grounds of legitimate expectations.

What would count as an unfair advantage here? Would any expectations of, say, Janusz Korczak, to be publicly commemorated for setting up an orphanage in the Warsaw Ghetto, count as legitimate? It was a horrific injustice, combined with his heroism, that made his specific contribution possible. But, clearly, Korczak was not himself advantaged, let alone unfairly, as a result of being imprisoned in the Warsaw Ghetto, even as he acted heroically in looking after the orphaned children there. His expectations, were he to have any, would have been legitimate (although in any case, the fundamental grounds for commemorating him ahead of many others are that he contributed value while also being a victim of injustice).

By contrast someone such as, say, Voltaire, who achieved so much as a beneficiary of the unjust class system, would have been unfairly advantaged. And, clearly, most heads of powerful states, for example, would not enjoy legitimate expectations of public remembrance. Even aside from the fact that many such figures would be disqualified from remembrance by their objectionable actions, most heads of powerful states have been unfairly advantaged by injustice in securing their ability to contribute to the world. This may be because they unfairly benefited from an unjust class system or the unjust power yielded by their states. It means, for example, that we can disqualify expectations as the grounds for commemoration of British monarchs.

Similarly, being the best or first or unusually courageous at something of significance will often, although not always, involve benefiting from great wrongs. Oskar Schindler was advantaged by the war, even as he eventually used this to save lives.¹⁹ Voltaire may not have wronged anyone in contributing to the Enlightenment, but any expectations of public commemoration he may have had will need to be dampened by the fact that it was a brutal class system that likely contributed to his achievements. His writings should be read and he should be known as a historical figure, he may also be entitled to private commemoration, but this is not the same as saying that he is entitled, on account of legitimate expectations, to rest at the Pantheon, let alone when the places are limited.²⁰

That said, I am not arguing that anyone who is not a (special) victim of injustice must have been the beneficiary (or even a perpetrator) of injustice and so their expectations cannot be legitimate. One can be neither. Think here, for example, of Chiune Sugihara, the Japanese vice-consul in Lithuania who, against direct orders from Tokyo, issued thousands of transit visas to Jews helping them escape.

So legitimate expectations of remembrance for one's achievements are hard but not impossible to come by. But it is still unclear against whom any claims for remembrance could be lodged on such a basis by those who were not victims of injustice. It is hard to imagine that those currently alive, or that the societies to which these people belonged, bear responsibility for any expectations they might have developed. Even if societies encouraged, and encourage, such expectations, those who form them should be seen as carrying the risk of a change in public willingness to commemorate.

One way of thinking about who should carry the risk is that people should form only the expectation for one's fair share of remembrance. What would it mean in this context to have a preference for one's fair share of remembrance? At the very least it would mean accepting that after some time has elapsed those who come later would get their turn at being remembered. One's preference, that is, should still make room for the remembrance of others. And, in particular, it should make room for the remembrance of those whom the person herself would have a duty to help commemorate.²¹ If this is right, then our interest in being commemorated on the basis of our achievements and legitimate expectations of remembrance should make space for prioritizing the commemoration of the victims of injustice.

4. Commemorating Donors

There is another source of duties of remembrance that exerts its force on our public commemorations. Perhaps the most popular strategy for extracting commemoration from strangers is through (formal or informal) agreements or promises that accompany donations. I have in mind here, for example, the naming and renaming of buildings or the erecting of statues to donors. Often commemoration in such cases is problematic given the donors' role in the chain of injustice that secured for them resources that they can now devote to seeking commemoration. But what of the commemoration of donors whose past deeds do not disqualify them from being commemorated?

In the type of situation I have in mind, someone offers to make a donation in order to have his statue displayed in the most prominent location on a given site and that the statue is bound to attract and keep attracting the commemorative attention of the passersby – the attention that was intended by the donor.²² Suppose also that the initiative for commemoration comes from the donor. Often donation-based commemorative practices are more complicated, of course, but my focus here is on this simpler case. There may be nothing problematic about securing commemoration this way but let me extend the case. Suppose that, at least absent the donation, our duties of mitigation of injustice through remembrance require that a statue commemorating the victims of injustice be erected in that same place. You may think that an institution could always erect both statues. Often this may be possible, and I return to this at the end of this section. Moreover, we may think that the donor is never entitled to attention but rather, at most, a statue or a name on a building and, therefore, has no complaint when our attention is directed elsewhere by another

memorial. This reduces the scope for any conflict, but adding a statue of a donor next to a statue of a victim may do neither of them justice.²³ In any case, since a prime location is a scarce resource, conflicts may arise. Such conflicts need not be typical for us to learn about our commemorative duties by analyzing them. Assume, then, that we have to choose. Specifically, assume that in the absence of the donation we would be required to commemorate the victims, and we now face a choice whether to commemorate them or the donor. For simplicity, assume also that the institution has either not yet accepted the donation or can fairly easily return it.²⁴

To get a grip on the problem, I will put aside many complicating considerations that may count against remembrance in a given case but that are not focused on the interests or claims of the donor. For simplicity, suppose, then, that the institutional decision-making processes that led to the undertaking of remembrance are impeccable, and the relevant collectives are deemed appropriate agents for entering any such undertaking. Suppose also that third parties do not have complaints against the commemorative statues or practices simply on the grounds that their attention should never be nudged through names or statues one way or another.

More generally, I am only focusing here on the moral implications of the undertakings (which I will interchangeably call agreements or promises since my points are meant to be general enough to apply to all such forms). I will assume that such undertakings can, in principle, bind even after the donor's death and can generate duties on institutions that undertake them that stretch over time. Of course, that agreements can bind at all, and on institutions and posthumously at that, is a mammoth assumption. But if such undertakings cannot bind then my argument for why we must prioritize the remembrance of victims rather than the donors is even easier. Here I will simply argue that even if such undertakings to commemorate could bind, on a plausible view of the limits of our obligations, they usually will not in the cases at hand.²⁵

One way of thinking about the problem at hand is that any duties to the donors to commemorate them are choice-dependent duties (sometimes known as obligations) that arise as a result of optional choices people undertook.²⁶ By contrast, the duties based on the need to mitigate injustice are choice independent: they arise even if people did not opt into them. My answer below that the duties to donors do not trump the duties to the victims will depend on us already accepting that our choice-independent duties constrain our ability to bind ourselves with our choice-dependent duties. In what follows, I explain what this would mean in cases of donation-based commemoration.

4.1. *Violation of Duties of Remembrance*

An immediate consideration may be whether all the parties – the donor and the institution – are aware that there is potentially a conflict between commemorating the donor and others including victims of injustice. Consider, first, a case, in which they do all know that the institution has an as yet unfulfilled duty of commemoration to the victims of injustice. In such a case, the institution must prioritize the commemoration of the victims of injustice (and not accept the donation that would prevent it from meeting this duty). Why? Since absent the donation and the undertaking, there is no duty to the donor to commemorate him, the institution must prioritize its choice-independent duty to commemorate the victims and not enter the agreement with the donor.

There are different ways of capturing the idea that the parties lack the moral power to enter a binding agreement here. On one view, we can appeal to chronology to point out that a promise cannot be given if the parties were already under a duty to do something else: they lacked the power to promise. On another view, the parties lack the moral power to enter a binding agreement when this would wrongly weight their interests or claims ahead of the more weighty interests or claims of others. Being able to make binding promises (and enter agreements) is valuable to us in that it extends our freedom to act and coordinate with others to secure various ends, but this freedom is subject to the constraint that arises due to the fact that others have interests and claims.²⁷

It could be objected, however, that the duty to commemorate victims of injustice, as stipulated above, only exists if commemoration is possible at a low cost, but, once the donor appears on the scene, the costs to the institution of not entering the agreement become very high. To see why this objection does not work, however, consider an analogy that is unrelated to remembrance but concerns other choice-independent duties: the duties of rescue. Suppose that a passerby who (for the sake of how this scenario will unfold) also happens to be a surgeon is by one of the famous Singerian ponds in which a child will drown unless the surgeon reaches in and, at a low cost to herself, saves the child. The surgeon has a duty of rescue to save the child. Now suppose that someone else (who has not been involved in the child ending up in the pond and who cannot save the child) – call him a contractor – offers the surgeon ten million pounds so that she undertakes a simple (and cheap) knee surgery on the contractor. Suppose that the surgeon cannot do both: save the child and perform the knee surgery. Clearly, the offer from the contractor does not mean that the surgeon is no longer under a duty of rescue to the child even though rescuing the child means forgoing ten million pounds.

This intuition can be explained by the fact that the cost to the surgeon can be discounted since the contractor is not permitted, in effect, to try to lure the surgeon away from rescuing the child. Thus the only thing that makes the costs to the surgeon of rescuing suddenly appear too high to require the rescue is that people are acting impermissibly in altering her costs in order to gain undue advantage for themselves. We can therefore discount the costs.

Similarly, a donor who offers ten million pounds to be remembered ahead of victims of injustice towards whom the institution has an unfulfilled duty (that it cannot meet while acting on the terms of the donation) is acting wrongly, and the institution may not count the costs of rejecting the donor's offer in the calculus of whether it has a duty to commemorate the victims of injustice. In offering the money the donor is acting wrongly, even if all he wanted was the same as what the victims would be getting: commemoration. This is because he would still be attempting to gain undue advantage for himself: he is due commemoration only if it would be permissible for him to jump the queue ahead of the queue of commemoration, which it is not.

Nor can the donor advance a simple instrumental case for commemoration by appealing to the worthy goals that can be achieved if the donation is accepted. They may try to say: 'look, if you commemorate me, you will have so much money to spend on education!' But in that case, they can simply donate the money for those goals without requesting remembrance as the price. Put differently, if the commemoration of the donor were morally required, it could not be simply because the donor has made his donation conditional on receiving it. Rather, we need to ask whether the donor is permitted to extract commemoration as the price for the donation. But in this instance, we are assuming that, absent the

donation, victims of injustice would need to be commemorated, and so the donor cannot buy his own commemoration instead.

4.2. *Ignorance of Duties of Remembrance*

How is the moral picture affected if we add some ignorance into view? After all, we may think that in real cases donors who make the financial offer, and institutions that receive it, do not realize that delivering what the donor asks for would require violating any preexisting duties of commemoration. So the ignorance may consist in the parties not realizing what their duties are (moral ignorance) or what their circumstances are (factual ignorance).

What matters in cases of ignorance is whether it is in line with or against the evidence. If there is reasonably available evidence about the facts of the matter, then ignorance of the facts does not absolve one of one's duties.²⁸ Cases of public commemoration are almost always cases where a choice is made about whom to commemorate. Even if people do not think about remembrance in terms of duties, it is pretty clear that donors are purchasing commemoration at the expense of or at least ahead of others. There is ample evidence that there is a queue of people who could be commemorated and that donations for the purpose of commemoration are ways of jumping that queue or at least exiting the standard queue to join the fast-track lane. So reasonable factual ignorance of the fact that there is a choice to be made about whom to commemorate – even if we are not sure who might be on the other side – is unlikely.

What of moral ignorance? Perhaps the donors believe that remembrance is due not because they requested to be commemorated ahead of others but because of their contribution to the worthy cause they make: if there is a case for contribution-based commemoration then such commemoration, as suggested in Section 3 above, will itself be constrained by our duties to commemorate victims of injustice. But what if an agreement to commemorate is entered when the parties do not consider that victims have priority for commemoration?

The donors and the institution may well tell themselves the story of it being perfectly permissible to pick the donor for commemoration. But such a coherent story is hard to advance, at least for the donors. Or, rather, it is hard to tell in the cases I focus on where the donation is made in order to secure commemoration. This is because donors presumably care about remembrance, so they cannot appeal to the thought that remembrance is a trivial good that, on account of its triviality, can be allocated in whatever way.

Nor can they – in our world – claim that it is entirely just that they have the money to buy commemoration while the others who want it do not. Of course, a general principle that prohibited buying anything that others want but cannot afford due to injustice would prohibit all transactions. But that is not the principle I am endorsing. Rather, when there are moral reasons to prohibit a given purchase then the fact that a person is unaware of those reasons does not make the transaction permissible in a context where there is ample evidence that commemoration is a good that others may wish to have but cannot access.

But in this case, we are assuming, an agreement had been made. Suppose too that the donor has since died. Given this, one way to think about this problem is to ask whether both parties would, in effect, have a duty to unwind the agreement or, if one party is no longer alive, would have a complaint against the other side doing so. A duty that prohibits

entering an agreement may also prohibit persisting with it once it has been entered, provided that costs (and benefits) to either party remain within what would be expected for the duty to be triggered.

Would the costs be low enough to the donor to insist that the duty to commemorate the victims trumps his commemoration?²⁹ Of course, either side would be getting commemoration, but only in the case of the victims would such commemoration amount to a mitigation of injustice. The costs to the donor are, first, that he will not get the remembrance he wanted, and, second, he had to forgo spending ten million pounds differently. There is also the cost of the undertaking being broken (since, following his death, it cannot be mutually dissolved), but whether that cost weights in the form of a moral wrong hinges on whether we think that the other two costs eliminate the duty to redirect commemoration towards others and away from the donor.

Take the cost of forgone remembrance first. Even as we grant that remembrance matters and that people may care greatly about it, the claim of the donor to remembrance, as I set up the case, is that he really wants it and took costly steps to get it. It is unlikely that this is sufficiently important to shield the donor from being under a duty, while alive or were he alive, to help commemorate victims of injustice who are owed it as mitigation even at the expense of his commemoration. It is, of course, hard to make a confident call about the relative importance here. We are not used to weighing the value of remembrance. To the donor, we can assume, remembrance may be worth as much as he is willing to pay for it, if not more. But when assessing what costs people have to absorb, we cannot be guided simply by subjective valuations of those costs. Although I do not offer a formula or even a principle here, it is likely that it would, at least, be acceptable to commemorate the donor for a shorter period or less prominently.

What of the second cost, that of the ten million pounds not being used to achieve the agreed end? This cost to the donor may be listed as the costs of (i) not having ten million pounds to use himself (let us assume there were no additional transaction costs to him) and (ii) the loss of the opportunity to have used ten million pounds differently.³⁰ Normally, the cost of (i) would be pretty high, but in the case of the dead, it is zero.³¹ What of the second cost? It is a bit unclear what this cost involves in this particular case, given that the donor is no longer alive. If the donor chose differently, he could have achieved other ends, but the fact that there is an opportunity cost to the donor here does not seem sufficient to tip the moral scale in favour of persisting with the commemoration. After all, I am assuming that the institution did not manipulate the donor into making the donation: the donor chose to pursue an end that as a matter of fact would, if successful, wrongly privilege his interests ahead of others. In effect, the question becomes who should bear the risk of loss if commemoration cannot be delivered. We may think that for the risk to be acceptable for the donor it must be limited, and so the institution has duties to return the donation, or some fraction of it, to the donor's estate. But the mere fact that the opportunity to act differently cannot be returned to the donor is not enough to persist with the agreement when other costs to the donor are not too high.

I am appealing here to the general picture according to which our choice-independent duties radically constrain people's options to predictably reshape their world by irrevocably binding one another.³² According to this picture, the fact that we have choice-independent duties to one another limits our ability to put ourselves, through our choice-dependent undertakings, out of reach of those choice-independent duties by invoking lost opportunities to bind ourselves differently. This picture still leaves a lot of

space for choice to shape people's lives – people can still enter agreements, make promises, and enrich themselves and others. If our binding ourselves together or enriching ourselves generates costs to unbinding that are high enough when measured by what we now have but would have to sacrifice, then we can remain bound. So people can still set up families, for example, and feed their children ahead of other children since the costs of not feeding your own child or not setting up a family are enormous even in comparison to not feeding someone else. What we cannot do is bind or enrich ourselves at the expense of fulfilling our duties to those with whom we are bound by the fact that we are sharing our world, by invoking the costs of what our lives could have looked like otherwise. That consideration is not irrelevant in that it can guide us in what remedy needs to be offered next, but it does not block the fulfilment of our choice-independent duties.

Not everyone will be happy with this picture of our normative landscape. If so, they may think that duties to very generous donors may trump duties of remembrance to the victims in cases of conflict. This still leaves, of course, many instances where donations are not of ten million pounds but of 50 pounds that buys a name above a door.

Finally, I should note that there is an important limit to the pond analogy I used above that can help me revisit the assumption of conflict between remembrance to the donors and the victims of injustice. In the pond case, the conflict invariably meant that the surgeon had to choose between saving a particular child and operating on the contractor. But the duty to commemorate victims of injustice that falls on bystanders is not a duty to commemorate specific victims in the order in which they have died, or a duty that can only be fulfilled at a specific moment in time. So while it may be problematic in the pond case to perform the knee surgery to later save a different child, something akin to this would be fine in the commemorative case. It would be fine, for example, to commemorate a donor in order to better commemorate victims of injustice in the future: they may even be the same victims. This means that an institution could stipulate that commemorative donations can only be accepted if they increase the institutional capacity to commemorate victims of injustice.

This does not mean that an institution will never face a conflict: our commemorative resources are scarce so eventually run out. But it means that our public commemorative practices should be set up in such a way that any commemoration on offer in light of donations conflicts as little as possible with the duties of mitigation through remembrance.

5. Whom to Prioritize?

Even if the Spartans who fell at Thermopylae could qualify as victims (rather than perpetrators), the Spartans who later learnt of it, let alone the passersby, may have other victims they wish to commemorate.³³ I did not say here how to think about the difficulty of prioritizing among the victims of injustice. But being able to establish some priority rules between those whom we may commemorate on different grounds can already guide our public commemoration: we have good reasons to prioritize the fulfilment of our duties of remembrance to the victims of injustice, and our willingness to commemorate others should fit around that.

Nor did I consider whom it is permissible to commemorate despite any wrongs they committed.³⁴ The United States and the United Kingdom commemorate George Washington or Winston Churchill, both of whom sanctioned terrible racism, even as they

also fought the racism and wrongdoing of others. Even if it were permissible to commemorate them, we should still commemorate first the enslaved people whose teeth were used to give Washington false teeth and the victims of the British Empire who helped Britain win the Second World War. It is a further urgent question how to do it if, due to injustice, we do not know enough about those victims or, in some cases, even their names.

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NOTES

- 1 In some translations, the task is given to a 'stranger'. Above, I used the popular version by Frank Miller. Wikipedia's 'Battle of Thermopylae' really is the best source here for comparing the translations: https://en.wikipedia.org/wiki/Battle_of_Thermopylae#cite_ref-118. Accessed 26 September 2019. There is also a Polish version of the epitaph written for the Polish soldiers killed in the 1944 battle of Monte Casino.
- 2 Chaumont, Jean-Michel. 2000. "Du culte des Héros à la Concurrence des Victimes." *Criminologie* 33: 167–83; Chaumont, Jean-Michel. 2002. *La concurrence des victimes. Génocide, identité, reconnaissance*. Paris: La Découverte. Chaumont uses the phrase 'competition' to capture some of this element of scarcity. By invoking his phrase, I do not mean to take sides on the historical question, to which the use of the phrase was tied, of whether the competition fuels claims that the historical circumstances of a given group of victims are unique, and, if it did, whether this is a good or bad thing.
- 3 More strongly, I think that commemoration is public when it involves resources that should be under any nonfamilial and democratic collective control, but I do not need to rely on this more expansive definition here.
- 4 How to ensure commemoration of victims of injustice without making their victimhood the only fact about them that needs to be commemorated is a difficult question that I take up elsewhere.
- 5 For worries about commemoration, see, for example, Baer, Alejandro, and Natan Sznajder. 2017. *Memory and Forgetting in the Post-Holocaust Area*. Abingdon: Routledge.
- 6 Benefiting from injustice would not disqualify one from having a duty to commemorate – it would increase the costs that one would need to absorb to do so. So were it to turn out that bystanders were all beneficiaries, this would not invalidate my argument. I say this because I fear that many who appear to be mere bystanders are in fact beneficiaries.
- 7 I draw in this section on Stemplowska, Zofia. 2020. "Duties to the Dead: Is Posthumous Mitigation of Injustice Possible?" *Oxford Studies in Political Philosophy* 6: 32–58.

- 8 Cf. Tadros, Victor. 2010. *The Ends of Harm*. Oxford: Oxford University Press, p. 130.
- 9 I think that duties to respect or promote impersonal value can also be thought to be owed to people although, of course, in a different sense than when it is done for their particular sake. This is a controversial claim, however, that I do not need for my argument here, hence its location in a mere footnote.
- 10 Feinberg, Joel. 1984. *Harm to Others: The Moral Limits of the Criminal Law*. Oxford: Oxford University Press.
- 11 This raises an important problem, which I cannot address here, of which of the posthumous preferences become surviving preferences if the former conflict with one another.
- 12 This is clearly a complicated issue. For challenges, see, for example, Fabre, Cécile. 2008. "Posthumous Rights." In *The Legacy of H.L.A. Hart: Legal, Political, and Moral Philosophy*, edited by Matthew Kramer, Claire Grant, Ben Colburn, and Antony Hatzistavrou, 225–38. Oxford: Oxford University Press. But see also Fabre, Cécile. 2019. "Peace, Self-Determination and Reckoning with the Past: A Reply to Butt, Lippert-Rasmussen, Pasternak, Wellman and Stemplowska." *Journal of Applied Philosophy* 36: 391–404, p. 401. To be clear, I am not suggesting that we can speak, literally, of the dead as having an interest in or claim that their surviving preferences be advanced. But even though the dead body does not have interests or claims, we can use this phrase to refer to the fact that the now dead had an interest or claim, while alive, that their preferences about posthumous states of affairs be advanced. It is this interest or claim that can make it fair or unfair/just or unjust when some but not other surviving preferences are or are not advanced. I also put aside the further question whether we can say that the fulfilment of surviving preferences advances people's interests understood as part of their wellbeing. I do not take a side on this issue here, but see, for example, Boonin, David. 2019. *Dead Wrong*. Oxford: Oxford University Press, for an argument that wellbeing can be affected posthumously.
- 13 This quote is attributed to Woody Allen and appears in Kolodny, Niko. "Introduction" as cited in a book by Scheffler, Samuel. 2016. In *Death and the Afterlife*, edited by Niko Kolodny. Oxford: Oxford University Press, p. 3. Kolodny explains that the second line of the quote may be apocryphal but cites Wikipedia as evidence of its attribution to Allen. I tackle the problem of paying attention to controversial figures of history in a different paper.
- 14 Kassow, Samuel D. 2007. *Who Will Write Our History? Emanuel Ringelblum, the Warsaw Ghetto, and the Oyneg Shabes Archive*. Bloomington: Indiana University Press, pp. 3–4.
- 15 In the sense of being out of proportion for what's needed rather than inappropriate, all things considered, given how little can be done.
- 16 I thank Andrew Williams for this point and the phrasing.
- 17 I say 'at least sometimes' since it may be that some achievements do not qualify for *public* commemoration. I thank an anonymous reviewer for pointing out that my argument can be further strengthened by the fact that some magnificent achievements cannot dislodge victim commemoration since they may fail the test of what is suitable for public commemoration.
- 18 Some may think that we cannot fulfil such a duty anyway as people simply wanted their contributions 'to speak for themselves'. But we could have a duty to set up the conditions such that they can speak for themselves more readily.
- 19 I accept that there are sufficient instrumental reasons to make a movie about him.
- 20 The French may be permitted to commemorate him there for other reasons, such as advertising or honouring the Enlightenment, but that is a separate reason and one that is unlikely to generate a duty to engage in such commemoration.
- 21 So one could hope that there be no more victims to commemorate while also accepting that more commemoration might be needed if the hope is unfulfilled.
- 22 I assume the donor wants the attention for himself (or himself and his family). If the agreements serve to commemorate a victim, this may be permissible. Think for example of parents who set up a scholarship in the name of their murdered daughter. This still raises questions of equality, which I address elsewhere. I also put aside situations where some statues start to attract attention that would be unwelcome to the donor, although as Wilde knew some might prefer even that to oblivion. Sometimes the donor gives money, and the institution expresses gratitude by erecting the statue. Sometimes institutions say how they will commemorate in light of donations when the donors make no demands and may even go along with this since it's easier than donating differently. Such cases raise different questions, and it is easier to see then why it is fine to now relocate the statue.
- 23 Problems of conflict may arise without scarcity. It could be that putting up both statues changes their meaning.
- 24 If returning the donation has significant costs to the institution as measured in its important goals, this may mean that no return is required and that commemoration of the donor is required.

- 25 I will put aside any concerns about the instrumental disvalue of anticipating that some promises may not bind under some conditions. Assessing the impact of a particular instance of an arrangement not binding on the whole practice of such arrangements strikes me as purely speculative (although I accept that repeated violations can undermine the entire practice). Although I side-step the question of whether promises may legally bind simply because such a practice would be valuable, for a defence of this position, see Murphy, Liam. 2020. "The Artificial Morality of Private Law." *University of Toronto Law Journal* 70: 453–88. I am grateful to Chris Mills and Rebecca Stone for invaluable comments relating to this section.
- 26 I put aside what precisely grounds such obligations (promising, consent, choice, etc.). I am interested in the moral question of promissory obligation rather than the question of contractual legal obligations. Cf. Shiffrin, Seana Valentin. 2007. "The Divergence of Contract and Promise." *Harvard Law Review* 120: 708–53.
- 27 Cf. Charles Fried argues that contracts can convert something that was morally optional into something that is morally required to bind each other in pursuit of our ends. Rebecca Stone offers a discussion of how such a power might be possible despite the assumption that it must be limited by the rights of others. See the unpublished paper by Stone, Rebecca. "Normative Uncertainty, Normative Powers, and Limits on Freedom of Contract." See Seana Shiffrin for a discussion of the ways in which immoral and conflicting promises might differ in the reasons and extent to which they do not bind or do not bind all things considered (Shiffrin, Seana Valentine. 2011. "Immoral, Conflicting and Redundant Promises." In *Reasons and Recognition*, edited by R. Jay Wallace, Rahul Kumar, and Samuel Freeman, 155–78. Oxford: Oxford University Press). See David Owens for an alternative account, which suggests that even if immoral promises are valid, it does not follow that they ought to be kept (Owens, David. 2012. "Which Promises Bind?" In *Shaping the Normative Landscape*, 231–49. Oxford: Oxford University Press).
- 28 Cf. Parfit, Derek. 2011. *On What Matters*, Volume 1. Oxford: Oxford University Press. Parfit names the distinction between fact, evidence, and belief-relative reasons and requirements. I simply assume that belief-relative and fact-relative duties are more problematic than evidence-relative ones.
- 29 Costs to institutions are not irrelevant and will sometimes determine if it is merely permissible or also required to redirect commemoration.
- 30 Although I analyze here moral rather than legal rights, theorists of law identify similar costs. Fuller, Lon L., and William R. Perdue. 1936. "The Reliance Interest in Contract Damages." *Yale Law Journal* 46: 52–9.
- 31 There is also the cost of not having 10 million pounds for use by someone else, including the donor's estate, to fulfil the donor's surviving preferences. An institution could wipe out cost, if applicable, by returning the donation to the estate.
- 32 Steiner, Hillel. 2009. "Exploitation Takes Time." In *Economic Theory and Economic Thought*, edited by John Vint, Stanley Metcalfe, Heinz D. Kurz, Neri Salvadori, and Paul Samuelson, 20–9. London: Routledge. Steiner argues that given historical injustice, very few contracts can bind given widespread exploitation and the duty not to exploit.
- 33 The more recent victims may even have a claim to priority. I do not defend this here. On the relevance of the passage of time to claims in general, see, for example, Sher, George. 1981. "Ancient Wrongs and Modern Rights." *Philosophy & Public Affairs* 10: 3–17; Waldron, Jeremy. 1992. "Superseding Historic Injustice." *Ethics* 103: 4–28; Butt, Daniel. 2013. "Inheriting Rights to Reparation: Compensatory Justice and the Passage of Time." *Ethical Perspectives* 20: 245–69.
- 34 See Alfred Archer and Benjamin Matheson. 2022. *Honouring and Admiring the Immoral*, London: Routledge. See also Frowe, Helen. 2019. "The Duty to Remove Statues of Wrongdoers." *Journal of Practical Ethics* 7: 1–31. I focus on one wrongdoer in particular in Stemplowska, Zofia. 2021. "The Rhodes Statue: Honour, Shame and Responsibility." *Political Quarterly* 92: 629–37.