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RESPECTING CORPSES: THE ETHICS OF GRAVE RE-USE

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ABSTRACT

The paper argues that grave re-use cannot be ethically evaluated simply by adverting to cognate issues, such as archeological and medical ethics, since grave re-use comprises a very specific type of disturbance. Whilst there is no general ethical prohibition against disturbing the dead, a more detailed analysis is required in the case of English Victorian 'perpetuity graves'. It is argued that, even granted that posthumous harms exist, on a proper understanding of what motivated purchase of perpetuity graves their re-use does not constitute a prohibitive posthumous harm. Objections to grave re-use on the grounds of the wellbeing of the living are then considered. Repugnance towards grave re-use is grounded in solicitous attitudes towards the dead and ontological anxiety about the fate of our own and our loved one's bodies. Nonetheless, repugnance should not be a weighty consideration in the policy debate. Finally, major pragmatic considerations in favour of grave re-use are reiterated. In sum, arguments against grave re-use are weak, and pragmatic arguments for grave re-use are strong, so re-using graves is ethically permissible.

KEY WORDS: burial, corpse, ethics

RESPECTING CORPSES: THE ETHICS OF GRAVE RE-USE

INTRODUCTION

Grave re-use: motivations and methods

Shortage of burial space is a pressing issue in many jurisdictions. The problem arises in countries with expanding urban settlements and high population density, and cultural preferences which preclude cremation or dictate that burial is restricted to one interment per grave. For example, news stories have recently emerged about shortage of burial space in Hong Kong and New York, China, Jamaica and Namibia (Biegelsen 2012; Coutts *et al*. 2011; Gilpin 2014; Nuhuhe 2014). Grave re-use has been proposed to achieve sustainable and affordable municipal burial provision and extend the working capacity of cemeteries. Reception of the proposal is mixed. In South Africa, for example, new cemetery regulations have recently been introduced to permit grave re-use despite public opposition (*Terra Daily* 2010). In other, particularly Anglophone, countries there is a cultural presumption against some systems of regular grave re-use.

To help focus the discussion, the situation in England is taken as a case study.[1] Systems of grave re-use have been in place in cemeteries throughout Continental Europe since the eighteenth century, in part as result of the diffusion of scientific principles based on Enlightenment philosophy. Grave re-use in cemeteries has never successfully been established in England, despite early regulation encouraging its adoption (Rugg 2013). An acute shortage of burial space has developed, as evidenced by recent surveys in London, and across England more generally (Rugg and Pleace 2011; Strangwayes-Booth 2013). This is despite the fact that the United Kingdom was one of the first countries to embrace and adapt cremation technology; cremations began to exceed burials in the 1960s, and in 2014 followed 75 per cent of deaths (Jupp 2006).[2] The vast majority of burial places in England fall into

[1] Although much of the ensuing discussion focuses on England, as already stated, shortage of burial space and grave re-use are issues in many other countries. Some of the arguments in this paper can be directly applied to other jurisdictions, others can be adapted to suit other contexts or, at least, the sort of considerations discussed can be raised elsewhere. But of course policy evaluations must be context-specific and culturally sensitive, and it might be that some of the discussion in this paper is too Anglo-centric to be applied directly to other jurisdictions.

[2] See http://www.cremation.org.uk/ for regularly updated statistics.

one of two categories (Rugg 2000). Churchyards are consecrated areas owned by the Church of England and governed by ecclesiastical law. These are not the focus of our discussion because the re-use of churchyard graves is long-established, legally permitted under Church law and routinely performed. Our focus is on the second sort of burial space, namely, the numerous municipal cemeteries created since the mid-nineteenth century. Regarding these, there is a further distinction: municipal cemeteries contain both unconsecrated burial space subject to civic law and – in the vast majority of cases – consecrated burial space which is under the control of the Church of England and governed by ecclesiastical law. Unconsecrated burial space in municipal cemeteries is under discussion here.

The main relevant legislation is the Burial Act 1857, parts of which are still in force. The legislation was originally intended to allow graves to be re-used after a specified time period but, since the 1930s, it has been interpreted as prohibiting systematic grave re-use (Rugg 2013). According to the Act, it is illegal to remove interred human remains without specific licence from the relevant government department. Originally, this measure was taken largely in response to concern that, without prohibitive regulation, bodies might be removed from cemeteries, for example by a family member in disagreement over where a body was to be buried (Cunningham Glen 1858). At the time of writing, the relevant government department is the Ministry of Justice, which has so far refused to issue any licences permitting re-use of graves in the unconsecrated part of municipal cemeteries, though successive Ministers have stated that the issue is 'under review'.[3] The upshot is that municipal cemeteries – the principal source of burial space in England – are unsustainable.

Graves could be re-used in various ways. For example, existing cemeteries could be razed, human remains being removed, reduced to dust through a mass cremation process, and then strewn, or disposed of by being placed in a large communal burial pit. Such extreme options are not considered here because they are unlikely to gain ministerial or public support. The proposal under review has been termed the 'lift and deepen' method which facilitates re-use on a grave-by-grave basis and is favoured by the burial industry. The vast majority of graves contains more than one body, with coffins located one above the other, separated by six inches of earth between each, and at least two feet of earth above the final interment. For example, where a grave is to contain two bodies, the grave is dug to seven feet, the first

[3] See http://www.parliament.uk/briefing-papers/SN04060/reuse-of-graves. Licences permitting disturbance of human remains are often granted for reasons other than grave re-use, such as to facilitate forensic investigation.

coffin is interred and the grave backfilled; when the second interment takes place, the grave is re-opened to the depth of six inches of earth above the original interment. Hence, the second interment does not disturb the first. The process can be repeated for more interments providing the first burial takes place at sufficient depth. Using the 'lift and deepen' method, the grave would be excavated to double or single depth and any remains found within would be placed in a container and reburied at the bottom of the grave, leaving space for new interments. Re-use would take place only after sufficient time had elapsed for the contents of the grave to be in a state of advanced decomposition such that any remains comprise, at most, scant fragments of bone and coffin material.[4]

The proposal to deal with the shortage of burial by reusing graves creates an ethical dilemma. On the one hand, there is a strong pragmatic justification for re-using graves: the constant need to find new land for interment provides impetus towards the policy; and grave re-use would help to avoid burial fees becoming unaffordably high due to scarcity of space. On the other hand, there are strong ethical misgivings based on wanting the dead to rest in peace, and reluctance to disturb the dead to make way for new burials. Hence, a wide-scale public opinion survey which included over 1,600 respondents concluded that 'the re-use of graves is a topic to which people respond in different ways depending on the information with which they are provided' (Davies and Shaw 1995: 50).

Cognate debates: archeological and medical ethics

A strategy to deal with this dilemma is to appeal to other more advanced debates about the ethics of our treatment of the dead. For example, there are sizeable bodies of literature on the ethics of archaeological research (Bahn 1984; Scarre and Scarre 2006) and the use of cadaveric material for medical purposes (Chadwick 1994; Gareth Jones (2000). These seem cognate to the issue of grave re-use. In particular, re-using graves, like archeological research, disturbs the dead; and the right to bodily integrity, which is central to the medical ethics of the use of cadavers – principally as sources of transplant organs and tissue for experimentation – seems pertinent to grave re-use.

[4] Decomposition rates vary, making it difficult accurately to anticipate the state of interred remains; nonetheless, the policy in question would only apply to remains that had clearly had sufficient time to naturally decompose: 'Remains must be in skeletal form only – they must not be offensive in any way; as with cremation we do not want to disturb remains until there is no human tissue remaining' (Hussein, 1993). As a rule of thumb, re-use would be permitted only after a period of at least seventy years since the last interment.

But this strategy will not work because of relevant dissimilarities between these debates. For example, archeological ethics generally centres on the long-dead, the appropriation of the remains of subjugated peoples, pre-historic and indigenous cultures and removal from sacred sites. Likewise, in medical ethics the therapeutic rationale for using body parts – to support medical research or save lives by transplanting organs – is typically pitted against issues such as consent and commodification; and religious requirements to maintain bodily integrity entailing that retention of cadaveric tissue or organs has eschatological significance. As we go on to argue more fully below, such features are not relevant to the policy of grave re-use under consideration so the strategy of importing conclusions from debates in archeological and medical ethics will not work. Nonetheless, in the following discussion it will be useful to *contrast* grave re-use with the uses we make of the dead for archaeological and medical reasons.

Here, a different strategy is adopted to evaluate the policy of grave re-use. Objections to grave re-use are presented and analysed in detail. The first objection, considered in the next section, is based on the general ethical prohibition against disturbing the dead. An illustrative case study is discussed, namely, English Victorian 'perpetuity graves'. It is argued that, even granted the existence of posthumous harms, the re-use of these particular sorts of graves would not create a prohibitive posthumous harm. Then, in the following section, objections to grave re-use based on the wellbeing of the living are considered. Intuitive repugnance towards grave re-use is explained in terms of solicitous attitudes and behavior towards the dead. Nonetheless, intuitive repugnance should not be a weighty consideration in the policy debate. In the last section major pragmatic considerations in favour of grave re-use are reiterated: notably, the policy will ensure the sustainability of cemeteries and affordability of burial space. It is concluded that, since arguments against grave re-use are weak, and pragmatic arguments for grave re-use are strong, re-using graves should be allowed; in particular, legislative change should be made permitting reusing municipal English graves.

DISTURBING THE DEAD

General moral prohibition against disturbing the dead

The first objection to grave re-use to consider is based on the moral prohibition against disturbing the dead, who should be left to 'rest in peace'. There is intuitive support for this. But there cannot be a universal or absolute prohibition because there are some circumstances

in which disturbing the dead is generally considered to be a good thing, such as respectful re-interment following the discovery of victims of atrocities in mass graves, or the exhumation of soldiers from battlefields and their re-interment in Commonwealth War Graves (Ferrándiz 2006). This suggests a more detailed analysis is required, a more exact account of what makes some disturbances of the dead morally permissible, and some objectionable.

It is useful to begin by recalling from the Introduction, above, the contrasting cases of disturbing the dead for archaeological and medical purposes. What makes disturbing the dead in archaeological research dubious are features such as the appropriation of human remains from sacred sites. This includes removing a body from a sacred place of interment to be stored indefinitely in a non-sacred location, and bodily disarticulation due to the process of excavation – as when only part of a body is removed – or due to the handling of the remains. Likewise, in the medical case bodies and body parts may be treated with little respect due to the laboratory setting, including inappropriate storage and disposal of human tissue as waste.

As argued in the Introduction, such features make the disturbance of the dead for archaeological and medical purposes ethically dubious but they are irrelevant to the policy under consideration. The re-use of municipal graves by the 'lift and deepen' method clearly does not entail appropriation, and there is no intent to remove the body from the interment site, or from a sacred to a non-sacred place. There is no equivalent to the de-humanizing effect of treating bodies in a laboratory setting. Rather, the proposal in question is to re-use graves that contained a body which is now in such an advanced state of decomposition that little more than fragmentary bone exists. Placing those remains at the bottom of the grave in which they were buried does little more than accelerate well-advanced decomposition. Natural decomposition already disarticulates the body and no worse physical damage would occur. In fact, collecting remains and reburying them at the bottom of the grave might be thought of as a way of re-defining or 'reconnecting' a naturally disarticulated individual.[5]

[5] Arguably, Christian theology would not preclude disarticulation or re-siting bodies anyway. The 'sacred' nature of the soil in which people are buried carries no spiritual benefit. Consecration is a legal and ritual act, but Protestant denominations do not hold that this action has consequences for the fate of the soul. Certainly by the nineteenth century it was unlikely that grave re-use was regarded as having eschatological significance. England in the nineteenth century was overwhelmingly Christian, and comprised mostly Anglicans and Nonconformists (Snell and Ell 2000). These denominations did not carry a strong belief in whole-body resurrection, and no adverse spiritual outcome was anticipated in the event of bodily disarticulation. Nonetheless, we acknowledge that eschatological beliefs vary within and between religious frameworks.

Specific prohibition: the English Victorian 'perpetuity grave'

There is no general moral prohibition on disturbing the dead; and the features which make disturbances for archeological and medical purposes dubious do not pertain. Still, this does not entail that the grave re-use policy under consideration is a permissible disturbance of the dead because it might be morally objectionable to disturb the dead in order to re-use certain very specific sorts of graves. Here we consider a case study, namely, re-use in England of the nineteenth-century graves of our Victorian ancestors. Many of these are 'perpetuity graves' i.e., family graves purchased in order to guarantee that one's loved-ones would lie together in a grave that would remain 'inviolate' for all time. Is re-use of this particular sort of grave morally impermissible?

To address this, the 'perpetuity grave' has to be understood as a distinctively nineteenth-century innovation and placed in the context of nineteenth-century cultural sensibilities and social change. At that time, it was considered that, 'inviolability of sepulchre is one of the dearest and most ancient rights of mankind' (Arnold in Gilbert v Buzzard (1820), 3 Phillim., 341). This grounds their sense of a right to be buried with the assurance of non-disturbance forever. Fulfilling this right was harder to achieve than one might think. For one thing, although all parishioners had a right to burial in the churchyard, this was no guarantee that remains would lie undisturbed because, as mentioned above, churchyards – and burial vaults within the church – were subject to periodic re-use generation after generation. Indeed, some Anglo-Saxon churchyards still remain open to new burial despite little change to their boundaries in hundreds of years. In addition, from the end of the eighteenth century, urban expansion meant churchyards were increasingly unable to accommodate new interments whilst allowing sufficient time for earlier burials to decompose. Furthermore, by the 1810s, grave-robbing – to meet the demand for cadaveric specimens driven by new anatomy schools – created a degree of moral panic (Richardson 1987).

In response to such pressures, from the 1820s private cemetery companies began to finance new burial sites through the sale of shares, offering – in contrast to the churchyard – the possibility of interment in a family grave with a guarantee that the grave would remain 'inviolate' for all time. More generally, 'perpetuity graves' were made available through the course of the nineteenth century. A burial right to a perpetuity grave was purchased for a fee above the cost of interment alone. The purchaser did not thereby own the ground itself but did indefinitely retain control of the grave and could decide who would be buried in it. From the mid-nineteenth century, new 'burial board' cemeteries, established under statutory

regulations, were permitted to offer perpetuity graves; it remains the case that cemetery usage is split between sections of graves where control of the space rests with the owners of burial rights, and areas of what are generally called 'public' or 'unpurchased' graves that contain unrelated individuals unwilling or unable to pay for a burial right, and where the rights to burial remain with the burial authority.[6]

An individual or family that made the decision to purchase a burial right in perpetuity evidently had a concern for the integrity of their remains. So disturbing nineteenth-century perpetuity graves could be considered detrimental to Victorian purchasers and their family by frustrating their desire to remain, or thwarting their interest in being, undisturbed. Might this cause a posthumous harm sufficiently serious to ground a moral imperative to leave these graves, at least, undisturbed? If so, whilst there is no general prohibition against disturbing the dead, re-using this very specific sort of grave – the sort which is central to a policy of grave re-use in England – might be ethically impermissible. Evaluating this argument raises two questions: first, are there posthumous harms at all; second, if so, would the posthumous harm of reusing Victorian perpetuity graves be sufficiently serious to prohibit the policy?

Posthumous harms

Regarding the former question, one might argue that there are no posthumous harms so reusing perpetuity graves obviously does not constitute a posthumous harm sufficiently serious to rule out the policy. But this is too quick because there is a standard defence of posthumous harms in the philosophical literature, which goes as follows. First, it is natural to associate harms with felt experiences or mental states; for example, my hitting you on the nose harms you by causing you pain. This suggests that an action is harmful only if it changes the victim's experience. But a standard assumption in the philosophical literature on posthumous harms is that death marks the end of an individual's existence – i.e., there is no 'life after death' – so a decedent is no longer capable of any experience and, in turn, whatever happens after their death cannot harm them (Belshaw 2009: 128). Proponents of posthumous harms respond by defining 'harm' widely to allow that harms can involve non-experienced states. For example, suppose harm is reduced wellbeing and wellbeing is defined as involving

[6] 'Pauper' graves constituted a third type of burial. It often remained possible for 'unpurchased' graves to have some kind of monumentation, and a highly complex quirk in the legislation meant that an unpurchased grave could in some circumstances be reserved for the use of a single family, (Rugg 2013).

more than just mental states. If someone is systematically betrayed by their closest friend but never finds out, the betrayal makes no difference to their experience; still, their wellbeing is reduced so the betrayal harms them. Since a change in experience is not necessary for harm to occur, posthumous harms cannot be ruled out on the grounds that nothing makes a difference to a decedent's mental states.

This ushers in another objection to posthumous harms: who is the subject of the harm? Posthumous harms are not simply unexperienced, as in the case of being betrayed by one's closest friend; rather, the putative subject of the harm does not exist post-mortem. Could the subject of harm exist ante-mortem? But then the event which causes the harm must occur after the subject is harmed which requires 'backwards causation' – the harming event occurs after its effect – which is impossible (or, at least, prohibitively philosophically problematic). Proponents of posthumous harms meet this objection by identifying the ante-mortem person as the subject of harm and avoiding backwards causation by invoking the following distinction. What is true of someone can depend on intrinsic changes; for example, if I grow two inches then 'I am six feet tall' was false, but is now true, of me. But what is true of a person can depend not on changes intrinsic to them, but on changes elsewhere in the world. Suppose my height stays the same but Tom grows two inches; 'I am shorter than Tom' was false, but is now true, of me. The philosophical term for the latter sort of change is 'Cambridge change'. If having desires frustrated or interests thwarted amounts to harms, and posthumous actions can make 'A's desires/interests are frustrated/thwarted' true, then posthumous harms are possible: the person of whom it is true is the ante-mortem person; this does not require any intrinsic change (such as changes to their experience) and its being true is not a matter of cause and effect (the change is merely logical) so backwards causation is avoided.

But this argument for posthumous harms introduces another problem. When does the harm occur? In light of the previous paragraph, the timing of harms must be tied to the ante-mortem person. But then the available options are equally unattractive. One is to link the harm to the ante-mortem person's acquisition of a desire/interest that will be posthumously frustrated/thwarted. Suppose they acquire the desire/interest when they are fifty and retain it for the rest of their life; this entails they are in a harmed state from age fifty onwards, which is very odd. Alternatives, such as that their harmed state is timeless – i.e., they are in a state of being harmed by the relevant posthumous actions and events at all points in time – are even odder. Wilkinson (2011: 40) illustrates how proponents of posthumous harms solve this

timing problem: the ante-mortem person is harmed when the posthumous harming event takes place; the air of paradox disappears once we recall that the relevant change is merely logical – i.e., a change in which propositions are true of the ante-mortem person – as opposed to a real change involving backwards causation.[7]

A number of commentators subscribe to this defence of posthumous harms but there is no philosophical consensus on the matter and at least one of the present authors is unconvinced by it and remains skeptical about posthumous harms.[8] Nonetheless, this standard defence of posthumous harms, or some equivalent, is taken here to succeed. This is for dialectical purposes, i.e. in order to argue that, even granted that posthumous harms exist, re-using graves does not constitute harm to Victorian purchasers of perpetuity graves serious enough to prohibit the policy. Presented thus, the argument for grave re-use does not require the contentious claim that there are no posthumous harms.

The harm of re-using a Victorian perpetuity grave

To explain why re-using perpetuity graves does not create a serious posthumous harm requires revisiting the motivations of nineteenth-century purchasers. The Victorian's desire for, or interest in, perpetuity burial is rather less straightforward than one might imagine. The obvious thought is that perpetuity graves were intended to be permanently inviolable, but doubts about the validity of the notion of burial 'in perpetuity' were raised even in the nineteenth century. For example, in 1820, John Gilbert brought a case against John Buzzard and William Boyer, churchwardens of St Andrew's, Holborn, based on their refusal to allow the burial of his wife in an iron coffin. In making his judgement on the case, Lord Stowell asserted that '"man" and "for ever" are terms quite incompatible in any state of his existence, dead or alive, in this world'. Consequently,

> with reference to men, the *domus aeterna* is a mere flourish of rhetoric. The process of nature will resolve them into an intimate mixture with their kindred earth, and will

[7] Wilkinson is aware that this move threatens to make posthumous harms trivial; after all, how important can merely logical changes be? But he points out that the significance of a change does not depend on how it comes about; harms due to real causal changes can be minor, whereas some harms of the sort described as logical can be very serious.

[8] For classic discussions of posthumous harms, see Feinberg (1984); Levenbook (1984); Pitcher (1984); Fischer (2001). More recent advocates of posthumous harms include Wilkinson (2002), (2011); Scarre (2012); Papineau (2012). For a more sceptical treatment, see Belshaw (2009).

> furnish a place of repose for other occupants of the grave in succession … The common cemetery is not *res unius aetatis,* the exclusive property of one generation now departed; but is likewise the common property of the living, and of generations yet unborn, and subject only to temporary accommodation (Lord Stowell in Gilbert v Buzzard (1829) 3 Phillim., 357)

As this indicates, even in the nineteenth century the idea that a burial might be genuinely 'in perpetuity' was in question. The natural decomposition of the body, and the claims of successive generations on the burial site, were clearly recognized; and the notion of perpetuity was thought of as a 'rhetorical flourish', not to be construed as a realistic objective by the purchaser of a burial right.

If not perpetuity, then what was the motivation for purchasing perpetuity graves? What desires or interests were being met?[9] Evidently, perpetuity graves were purchased in order to ensure close control over what would happen to the body once interment had taken place. But this desire for control reflected a number of interrelated concerns with regard to the fate of the post-mortem body in the nineteenth century. Two seem particularly prominent. First, there was a fear that the body would be subject to disturbance too soon after interment had taken place, such that depredation of a corpse would take place in its fleshed and identifiable state. For example, by the end of the 1830s, the ghastly state of city churchyards, which were overwhelmed with mortal remains and where decomposing bodies were often open to public view, was considered scandalous (Walker 1839). Second, there was a concern that bodies would be interred 'promiscuously' in graves with non-family members. For example, within the overcrowded churchyard, mothers, sisters and daughters might lie between non-related adult males.

In these circumstances, the purchase of a burial right in perpetuity is not motivated by the unrealistic desire for bodies to remain perpetually undisturbed. Rather, the important motivations are, first, for bodies to remain undisturbed whilst in their fleshed state and, second, to ensure that family members were interred together (Rugg 2013). Strange's (2005) study of working-class burial practice in cemeteries located in the North West of England in the late Victorian period supports this analysis. Strange reports that it was often the case that

[9] In contrast with our discussion, much of the debate about posthumous harms in the philosophical literature avoids this messy business of reconstructing the relevant ante-mortem desires or interests, by positing scenarios in which the individuals' wishes are very straightforward, such as to have a book manuscript published or a business thrive, or that one's children flourish or specific infelicities remain undiscovered.

families who could afford only a common grave at times of limited income would, when finances allowed, pay for disinterment and reburial of a family member in a private grave. This indicates a readiness to set aside any prohibition against disinterment in order to achieve a higher purpose, namely, to ensure that the family was buried together in the same plot.

Given this reconstruction of their motivations, reusing Victorian perpetuity graves by employing the 'lift and deepen' method would not frustrate the desires, or thwart the interests, of Victorian purchasers. First, grave re-use would not disturb occupants whilst in a fleshed state because sufficient time would have elapsed for remains to be no more than fragmentary bone. Second, family members would continue to be united in death because skeletal remains would stay within the grave in which they are discovered, albeit at a deeper depth. That subsequent interment would occupy space above them neither frustrates the desires nor thwarts the interests of the original occupants: there would be no precipitous re-use of the grave to disinter recognisable and fleshed remains, and no promiscuous intermingling of familial and non-familial occupants. In sum, even if we grant that there are posthumous harms, reusing Victorian perpetuity graves would not constitute a posthumous harm to Victorian purchasers sufficiently serious to prohibit the policy.

THE WELLBEING OF THE LIVING

This section addresses whether grave re-use is objectionable because of its effects on the living. The basic argument is that people are concerned about how their bodies will be dealt with after death, and allowing grave reuse will cause anxiety.[10] But this is deceptively simple and two things must be discussed to fully present and assess the argument: first, people's attitude towards the dead (which entails their attitude towards themselves when dead); second, how this attitude contributes to anxiety about the treatment of human remains.

Attitudes towards the dead

Of course, there is a very wide variety of culturally endorsed attitudes and behaviour towards death so we do not intend what follows to be a universal account; nonetheless, we suggest that attitudes and behaviour described here are widespread and discernible in various

[10] One might think grave re-use is objectionable because the bereaved would be upset by the disturbance of their loved ones. But, to reiterate, grave re-use would not occur until a period of at least seventy years, so the effect on the bereaved should be inconsiderable. Nonetheless, safeguards could be built into ethical and regulatory frameworks to avoid re-using graves in a way that would cause any distress to relatives.

cultures, and particularly pertinent to the proposed policy of re-using English graves. The distinction between the recently and long-term dead is vague in the philosophical sense that there are no 'bright lines' between them; rather, there is a temporal continuum from the recent to the long-term dead. At the former pole, solicitude for the material welfare of the recently deceased is apparent in ways in which people interact with, and behave around, the fresh corpse.[11] For example, the faces of dead bodies are covered as soon as possible following accidents; corpses are not shown in a state of undress or posed in what might be considered an undignified fashion; and the newly dead bodies of identifiable individuals are not subject to public gaze. Exceptions prove the rule through contravention. Further along the temporal continuum, solicitude continues to be shown for some time after death.[12] For example, the bereaved might locate a grave for a loved-one with a pleasant view (perhaps under a tree to provide a degree of shelter), worry that the grave is cold for the person who has died, and leave food and drink at the grave to benefit the deceased (Francis *et al.* 2005). Solicitous behavior of such sort imputes sentience to the dead, and implies that dead bodies are hyper-vulnerable, creating a moral obligation to advance a degree of care, an obligation made greater by the decedent's defenselessness.

A response to features such as solicitude towards the dead, and a sense of their continued sentience and vulnerability, is that they are irrelevant to the issue at hand, for two reasons. First, grave re-use would take place after at least seventy years so, notwithstanding the vagueness of the temporal categories, the policy sits much further along the temporal continuum: the graves in question would contain only fragmented or decomposed human remains, not the recently deceased who elicit solicitude.[13] Second, the attitudes and behavior toward the dead just described are internally inconsistent, as is much of behaviour relating to the dead body in the modern West (Tarlow 2011). Mourners who do not believe in life after death know that the corpse is insentient so no longer physically vulnerable; those who believe in life after death think the soul has departed. In neither case is solicitous behavior based on

[11] The ongoing debate over defining and determining death – see, e.g. Belshaw (2009); Holland (2010) – is not germane since the solicitude for the corpse we go on to describe is undertaken after death has taken place on any account.

[12] Gareth Jones (2000: 57) recognises this solicitude as a respect for the 'intrinsic value' of a cadaver, quoting May as recognising that 'while a body retains a recognisable form, even in death, it commands the respect of identity'.

[13] 'The dead' are not perceived as a static entity, in that the identity of the person who has died does not remain fixed; as time passes, relatives and acquaintances who knew the dead individual will themselves die; the vast majority of people who die will in time become forgotten.

the belief that the dead body really is sentient, or that a corpse will enjoy the view from the grave.

The significance of repugnance

However, this response might be too quick because, arguably, solicitous attitudes explain and ground repugnance at the prospect of certain sorts of actions towards the dead. In particular, such attitudes ground the intuition that disturbing the dead in order to re-use their graves is repellent and ethically suspect. The reaction to grave re-use rests on the ontological insecurity visited on the living, as they contemplate this threat to the solicitude of their own or their loved one's sentient, vulnerable corpse. Reciprocity seems clearly related to attitudes and behaviour towards grave re-use, in that the best protection that we can afford our own dead self is the protection that we display to the newly dead. Negative responses to grave re-use – that it is repugnant or ethically dubious – can be grounded in the 'the difficulty in regarding the human body in an impartial, rational way' (Chadwick 1994: 55).[14]

But even if this succeeds in displaying and explaining repugnance at the prospect of grave re-use, there is a further question as to the weight such attitudes should have in the policy debate. A way to argue for giving such intuitive responses weight in the debate contrasts the municipal cemetery with the English village churchyard. Grave re-use has taken place in churchyards since the Anglo-Saxon period, as successive generations have informally instituted a 'lift and deepen' process. In the ethical framework for this, individual bodily integrity is less important than respect afforded to the dead communally, united as they are through extended kinship ties. In effect, the whole of the churchyard becomes a single familial plot, controlled by the Church at parochial church council level through churchwardens elected from the congregation. By contrast, little trust obtains in the municipal setting because communal identity is less strongly articulated and degrees of direct democratic control have been weakened. In a context of generalised distrust of large-scale government institutions, we can no longer feel assured that our dead are safe in the cemetery. Hence, the prospect of grave re-use is disturbing; arguably, sufficiently so as to prohibit its introduction.

This is a plausible line of thought and, as has been suggested, repugnance towards re-using graves is understandable and explicable, if not altogether rational. Nonetheless, great weight

[14] For a direct parallel to this line of thought see Kass (1992) who describes and explains our repugnance and, in turn, ethical qualms about uses of body parts to argue against a market in transplant organs (see also Kass 1997).

should not be attached to such attitudes and responses to grave re-use. There is a cumulative case against taking it overly seriously in the policy debate. As suggested above, our strongest intuitions and clearest behaviour pertains to the recently deceased whereas grave re-use would take place much further along the temporal continuum. Furthermore, distrust towards cemetery governance can be dealt with by careful regulation of grave re-use. And, as argued below, there are strong countervailing reasons for allowing graves to be re-used. In addition, one might argue that anxiety about the appropriate treatment of the newly dead might count in favour of a policy of re-use: after all, how else are those who want to be buried to get their wishes respected, given the shortage of burial space?

In sum, the sensibilities of the living do not present a strong argument against a policy of grave re-use. Nonetheless, repugnance of the sort explicated above and, in turn, ethical disquiet, are unlikely to disappear.[15] This is one reason for carefully developed and rigorously enforced regulation of a policy of grave re-use, including ethical protocols and guidelines similar to those governing other activities which disturb the dead, such as archaeological research and medical practice. This is required for other reasons. The slippery slope objection to grave re-use is that, if this step is taken, graves of the past will be raided with impunity. Although this is a somewhat implausible objection to the policy, it confirms the need for strong regulation. For example, grave re-use is permissible only in certain tightly-defined circumstances where there is a guarantee that fleshed remains are not disturbed, that the process is not subject to public gaze, and that all human remains stay within the grave in which they were buried. Families should be advised that a lift and deepen process had taken place in a particular grave, and would not be obliged to take that grave. It may also be the case that additional safeguards should be in place to heighten the degree of community engagement and control; for example, through ensuring that individual objections to the re-use of a particular grave be honoured, and a steering group be convened to agree local and site-specific protocols.

[15] Arguably, extended delay in the production of ministerial guidance in this area might be taken to suggest that, although the permissibility and policy of grave re-use ought to be addressed through philosophical debate, irrational intuition continues to hold a good deal of sway. Of course, political expediency is likely to be a factor too.

PRAGMATIC JUSTIFICATION FOR GRAVE RE-USE

The previous two sections found arguments against grave re-use based on disturbing the dead and the wellbeing of the living to be uncompelling. This section reiterates the main arguments in favour of grave re-use, which are essentially pragmatic. First, the policy will ensure the sustainability of cemeteries. This is a major consideration because the need to find new land for interment is a pressing issue for local authorities. There are basic economic exigencies in play. Cemeteries are largely financially unsustainable and so generally require subsidy (Rugg, forthcoming). At the same time the complexities of burial law mean that no local authority is obliged to provide burial space, so could decide to close its existing sites and withdraw altogether from cemetery provision. Local authorities are unlikely to take this step; for the majority, options are limited to making better use of existing space within cemeteries, so that existing graves are not disturbed. For example, many London boroughs have already taken steps to bury between existing graves, along pathways, and in land originally set aside for car parking or floral display. In some instances, additional soil has been brought in to raise the level of the site to allow for burial above existing graves. But these policies – termed 'cramming' by one planning official – do not make the space any less finite, and cannot provide a long-term solution to the problem (Halcrow Fox 1997).

The second pragmatic consideration is that a policy of grave re-use will help ensure the affordability of burial space. This is clearly connected to the previous point: the greater the shortage of burial space, the scarcer this resource, with the inevitable economic result of price increases. This is a major consideration because funeral poverty is a substantial issue for many people. In particular, the cost of burial itself currently constitutes a large proportion of any funeral bill (Woodthorpe 2012). In itself, this consideration suggests that grave re-use is not only permissible but, arguably, an ethical imperative.

CONCLUSION

In the UK, there are in principle strong moral objections to the undue disturbance of bodies. The notion of disturbing a grave for the purpose of re-using that grave for further burial carries particular resonance with regard to the sanctity of the grave and a desire to let the dead 'rest in peace'. This paper has addressed the ethical dimensions of the issue, and found that ethical debates that relate to ostensibly associated practices – attached to archaeological study, or the use of cadavers in medical research – do not pertain to the issue of grave re-use

largely because the proposed treatment of the body does not include removal from its original burial site. Ethical issues then pertain to particular cases, and this paper has reviewed the proposal to re-use English Victorian perpetuity graves in which rights were purchased and used in the nineteenth century. This specificity allows for interrogation of the concept of 'perpetuity' in a particular historic and cultural context, and the underlying intent of individuals taking this option. We argue that perpetuity burial was a favoured option not because of a desire to rest in peace 'for all time' but because it could guarantee that a family would be buried together. A legal judgement from the period found that perpetuity should be regarded as more of a 'rhetorical flourish' than a realizable intent. Even where a purchaser might believe themselves to be buying interment for all eternity, there are philosophical problems in defining any posthumous harm that might be visited on such a purchaser whose wishes are thwarted.

The paper then considered the possible harms to the living that might follow the introduction of a system of grave re-use. These harms stemmed from the threat to the dead body inherent in the concept of grave re-use and which runs counter to a desire to protect the corpse. However, this solicitude tends to be directed most strongly to the body in its 'near-alive', identifiable and fleshed state. The passage of time reduces the intensity of this solicitude which is generally absent entirely where human remains have decomposed to the state of fragmentary bone and where identity is no longer known. Solicitude can be assured by achieving control over the fate of the body. This control is readily exercised through the more immediately democratic governance of village churchyards, where grave re-use is commonplace. Within the municipal cemetery context, the prospect of immediate control of the incidence of re-use and its regulation is absent. There is, simply, a distrust that re-use will be conducted in an ethical fashion, with due regard to sensitivities on the period of time left before re-use is undertaken, and a guarantee that any distinterred remains will not be removed or 'lost'. The paper concluded that these fears may be allayed through the introduction of appropriately strong regulations or protocols defining the re-use process. Even where those protocols may be set in place, grave re-use will remain an uncomfortable concept for some individuals. Nevertheless, ethical arguments against the prospect of grave re-use are not compelling, and the more pragmatic considerations in favour of the policy are strong. Hence, this paper concludes that it is ethically acceptable for Victorian perpetuity graves to be re-used to tackle the problem of shortage of burial space in England.

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