

# SURVIVING RIGHTS OF THE POSTHUMOUS

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[Ölüm Sonrası Hayatta Kalan Haklar]

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## **ABSTRACT**

Whether posthumous harm is possible has been discussed among philosophers for many years. While thinkers like Feinberg, Pitcher, and Keller, as will be mentioned throughout this paper, accept such possibility, on the grounds that some of our interests could extend beyond our life spans, and thwarting of them is essentially harmful, Partridge denies this possibility by claiming that dead people cannot have any interests that could be thwarted since their interests die with them. In this paper, I will claim that posthumous harm is possible, not because of our surviving interests but because of our surviving rights. I will show that the protection of our rights would enable us to have better lives and posthumous violations of them could affect us both alive and dead.

**Keywords:** Posthumous harm, surviving rights, surviving interests, rights of the dead, relations to others.

## ÖZET

Ölüm sonrası zarar görmenin olasılığı filozoflar arasında yıllar boyunca tartışıldı. Feinberg, Pitcher ve Keller gibi düşünürler, bu makale boyunca değinileceği gibi, çıkarlarımızdan bazılarının yaşam süremizi aşabileceği ve bunların engellenmesinin bizim için esasen zararlı olduğu gerekçesiyle böyle bir olasılığı kabul ederken, Partridge bu çıkarlar bizimle birlikte öldüğü için ölümlerin engellenebilecek hiçbir çıkarının olamayacağını iddia ederek bunu reddeder. Bu yazıda hayatta kalan çıkarlarımız nedeniyle değil, hayatta kalan haklarımız nedeniyle ölüm sonrası zararın mümkün olduğunu iddia edeceğim. Haklarımızın korunmasının daha iyi hayatlara sahip olmamızı sağlayacağını ve bunların ölüm sonrası ihlalinin bizi hem hayatta hem ölüyken etkileyebileceğini göstereceğim.

**Anahtar sözcükler:** Ölüm sonrası zarar, hayatta kalan haklar, hayatta kalan çıkarlar, ölümlerin hakları, diğerleriyle ilişkiler.

## **1. Introduction**

In a world, that everything kept changing one thing stays permanent for everyone - death. The effect of death on our lives is undeniable. It shapes our lives and behaviors while we are still alive. Throughout our lives, most of us, in some way or another, try to leave some trace behind, so as to be remembered by the living or at least be remembered once in a while. That trace could be a child or a work of art, or whatever else, and any harm that could get to those possessions would harm us in return. Could it also be possible the harm our possessions get would harm us when we are dead as well? Any harm that could reach beyond our graves is called posthumous harm, which means the harmful event that happens to someone after their death. As one would notice right away though, the concept of posthumous harm is paradoxical. If someone ceases to exist when dead then there is no subject of interest left. If that is the case then how could one find themselves in a harmful situation after their death? While many deny posthumous harm, some still claim it is possible.

In this paper, I will first clarify some concepts that affect the progression of the paper. After that, I will introduce Feinberg, Pitcher, and Keller's arguments for the possibility of posthumous harm as well as Partridge's attack against their views. I will then give out my own views, which would claim that posthumous harm is a real phenomenon based on the 'surviving rights' of someone, and violation of surviving rights, posthumously, could affect both the living and the dead.

## **2. Preliminaries**

Clinically, death is defined as the cessation of blood circulation and breathing. However, the definition I will embrace in this paper is slightly different. A patient who lost blood circulation and was unable to breathe, in other words dead, could be resuscitated if the loss of those functions don't exceed a certain time limit. Death, in that case, should be defined as losing the potentiality to become alive, to be resuscitated. When you lose your potential for resuscitation then you are actually dead.

We tend to regard death as an end to one's conscious life. Since that is the case, the posthumous harm thesis is problematic. If one is not conscious of anything anymore then one

could not be conscious of any harm she is getting after she dies. Among the many, this is one of the main problems about death and posthumous harm, and it is known as ‘the problem of the subject’ (Feinberg 1984, 172). In order to harm someone, there needs to be a ‘someone’, and if when someone dies, she stopped being someone then it is not possible for her to get any harm after death. For people who consider death as the absolute end for everything, posthumous harm is not possible. Epicurus too, while trying to show that death couldn’t harm anyone, had said “If I am, then death is not”. This saying could be a motto for the ones that support the impossibility of posthumous harm. A being is either alive or dead and cannot be both at the same time, just like P is not non-P as Aristotle’s law of contradiction states. A living being is not dead and dead is not a living being. In order to be someone you need to be alive and if you are not alive then you are not someone. If you are not someone, you cannot be harmed. Death then is retiring from the ontological ground, and harm comes to the beings in the ontological ground. Harm after death is not possible. However, as Feinberg, Pitcher and Keller will claim it is possible to accept death as an end and have a subject of harm.

We have a dual understanding of nothingness; one version of it is adopted by the ones who deny the possibility of posthumous harm while the other is adopted by the ones who accept such possibility. It was mentioned above that when a person has died they become nothing, but it is important to make clear what is meant by nothingness since there are two interpretations of it: nothingness with a background and nothingness without a background (Sen & Agarwal 2016, 30). For example, think about six apples, six of them have been eaten by a person. Imagine then someone comes to you, asking for the apples. ‘Nothing left’ would have been your answer. ‘Nothing’ here is used as the former meaning of nothingness, which is nothingness with a background. We could not claim that those apples ontologically do not exist anymore. They just changed in form. Become softer and squishier, yet they definitely continue to exist in my stomach, in my digestive system, or in the pipes that are connected to my house’s restroom. We think of those apples with a background in other words.

The other type of nothingness, which is nothingness without a background, on the other hand, is where the background itself did not even exist - absolute nothingness. The absolute nothingness is certainly a very difficult concept for a person to understand, and even if she does understand, it is very hard to act upon. In the context of death, for example, I imagine

even if one's view of it is the absolute end (the dead is nothing without a background) she would still want to have a funeral or attend a loved one's funeral or become uncomfortable when someone mistreats a corpse – even though she believes the dead could not get any harm anymore.

To claim that death is becoming nothingness without a background, one needs to exclude their senses of the outside world, their minds, and their very essence of existence. It is to claim that one's relation with the ontological ground is completely gone, which is just another way to state the problem of the subject. Advocators of the possibility of posthumous harm then believe that the dead has still some connection to the world of the living and/or still keep some of their interests/rights even when they are dead (even if death is an end, it is nothingness with a background). In order to defend the possibility of posthumous harm, one needs to believe that death is not simply wiped out one's interests/rights that they had when they alive. Even a being dies; they still have some connections to this world. This claim, however, is in definite need of some support. The supporters of the posthumous harm thesis should give an account of why that is the case.

### **3. Posthumous Harm through Surviving Interests**

There are two ways to conceive a dead person; (1) as he was when alive, and (2) as he is now, as a rotting corpse six feet under the ground. When we talk about a dead person in the context of (1), we are talking about him ante-mortem. That is, "as he was at some stage of his life" (Pitcher 1984, 161). This sort of understanding depends on the nothingness with a background. The subject of our conversation (the dead person) might not be among us anymore but he isn't exactly gone out of existence since he had left many things (like a child, a house, a piece of art, reputation, etc.) behind that still carry pieces of him, and that still has in his interests. The things we have done within our lifetimes are usually aimed to occur outside of our immediate experience, and in that sense, they have a longer lifetime than we have (Feinberg 1984, 179). The dead person's ontological relation to the living world then is his surviving interests and any harm that could get to them harmed the man in return ante-mortem (so they don't harm the now corpse man) (Pitcher 1984, 161; Feinberg 1984, 183).

Since that is the case, it is not like there is backward causation that plays role in this account. Feinberg, Pitcher, and Keller all seem to agree on this. A person has interests that could be thwarted or satisfied after the said person dies and the harm that may come to their interests affects their ante-mortem selves, not their alive-selves (Pitcher 1984; Feinberg 1984; Keller 2011).

We may now have a subject of harm when talked about posthumous harm; however, we are far from done. Even if the dead could be harmed posthumously, ante-mortem, how a person could be harmed if they don't know about the misfortunes that happen to them? To build a case against the knowledge argument, Feinberg has claimed that the harmful occurrences that affect my interests are irrelevant of me knowing about them. If someone, somewhere, spread rumors about me that would affect my reputation negatively, granted that a good reputation is within my interest, I'm harmed by those rumors, even if I have never heard of them. Pitcher, similarly, has claimed that. For example, given that my child's well-being is within my interest if a plane my child has boarded on were to crash; I got harmed by this event even before I heard about the incident (Pitcher 1984, 165). Knowledge then is irrelevant whether I'm harmed or not. Since knowledge of whether my interests are thwarted is irrelevant to their harmfulness when I'm alive, this sort of knowledge is also irrelevant when I'm dead. In other words, even if I may never know my interests are thwarted since I'm dead, I'm still harmed by those occurrences, just like I would be by vicious rumors spread about me or my child's demise when I'm alive. Knowledge is irrelevant to harm.

Feinberg gives three cases in which such posthumous harm is the case. Imagine a person that is very invested in an institute that is working toward the ends of her certain ideals and ambitions. She spends a serious amount of time and money and pours her soul into the advancement of this institution. The wellbeing of this institution then matters to her dearly. Consider the following three cases.

**Case A:** The institution has gone out of business before she dies. Still, her colleges and friends hide this fact from her. Not knowing this, she dies contently.

**Case B:** The intuition goes out of business after a short while following her death. Not knowing this, she dies contently.

**Case C:** After her death, some malevolent individuals that promised her otherwise, cause the intuition to collapse through lies and rumors they spread. Not knowing any of this, she dies contently. (Feinberg 1984, 181-182)

According to Feinberg, the woman is harmed in Case A when she is alive and doesn't know what happened to her institution. If knowledge is irrelevant to harm in Case A, then we couldn't claim that it would be relevant in Case B and C, in which she is dead. In that sense, she is also harmed in Case B and C. Posthumous harm is possible.

Keller and Pitcher have made similar arguments as Feinberg. While Keller claims that a dead person's welfare could be affected at the rate of how much he values his interests that could be rewarded or thwarted even after his death (Keller 2011, 194), Pitcher gives his example through parental interests (through Berkeley and Berkeley's son William, more precisely). If I invest most of my life to raise my child well –money, labor, love, and likewise– and if my child dies at an early age, with so much potentiality, then I would be harmed, even if I too am dead (Pitcher 1984, 166). In those cases, according to Keller and Pitcher, (and Feinberg as well) I'm harmed seriously even if I'm already dead when those tragedies strike since I would be harmed in similar situations, when alive, even if I don't know about them.

#### **4. Knowledge Argument Strikes Back**

In this section, I will introduce Partridge's attacks on Feinberg, Pitcher, and Keller, and will claim how these attacks could be thwarted by Nagel.

##### **A. Partridge's Argument**

In the above section, it was claimed that a person could be harmed within their lifetime even if they have never learned about the harmful situation. Since knowledge is irrelevant to harm then we couldn't claim that the dead wouldn't be harmed because they wouldn't know about the harmful things that happen to them after their deaths. However, Partridge denies this by claiming that a person couldn't be harmed by something she doesn't know about, since this is the case, the dead cannot be harmed as well.

According to Partridge, a person should accept, either both the living and the dead are harmed by their thwarted interests without knowing, or deny that any harm has taken place (Partridge

1981, 251). Partridge himself denies that any harm took place in either case. He claims that if, for example, we truly manage to satisfy the conditions that the living person has never heard of the vicious rumors about her, and those rumors don't affect her in any shape or form then there is no harm in this case. She would never hear any of the rumors and so her life would go unaffected. No harm detected in this case that falls upon her. Having claimed that however, he doesn't reject the idea that we have some responsibilities toward the dead, even if those responsibilities are born out of our own interest in what will happen to us after we die rather than any worries that we may cause any harm to the dead. Feinberg's 'knowledge is irrelevant of harm' argument is rendered useless. A living person wouldn't be affected by her thwarted interests if she never truly hear any of them and is not affected by them in her daily life, in that case, a dead person too will go unharmed. A person may have interests that extend beyond her life span, but from the moment she dies, her interests will die with her, and whether those interests are being achieved or not after her demise, there is no harm that could fall upon her any longer. Still, we strain to honor a dead person's will and keep our promises to them, not because they would get harmed posthumously if we don't, but because if we deceive them into thinking we will honor those wishes and then not follow through with our promises, then the in society we live in, promises wouldn't have any meaning and that would affect the quality of our daily lives negatively. That is why we should honor the dead, not because they would get any harm, but because it is good (and moral) to do so for the sake of the wellbeing of our society. There is no posthumous harm because the dead has no interests left after his death.

### **B. Answer through Nagel**

Partridge seemingly adopted the saying "what you don't know cannot hurt you", but is this the truth? Partridge, as it seems to me, adopted a theory of harm in which knowledge is essential to harm and harm should have a negative effect in or on the subject. However, are those features really essential for an event to count as harmful? It doesn't seem so.

Nagel illustrates this through an example. Think about a man that goes through a brain injury. After his injury, he was reduced to a three-month-old – his needs were satisfied by a caretaker and he is free from any care. This is certainly a tragic event and we feel sorry for the man. Not just us, but the man himself also would have regarded his situation as a misfortunate event.



However, when thought about it, the man has the mindset of a three-month-old, and so long as he has a full stomach and clean diaper, he is very content with his life. He is unaware of this tragedy so we shouldn't feel sorry for him. Nagel rejects this line of thought by claiming that good and evils can befall us unrelated to a particular time. Sometimes, experiential states are unimportant.

...most good and ill fortune has as its subject a person identified by his history and his possibilities, rather than merely by his categorical state of the moment and that while this subject can be exactly located in a sequence of places and times, the same is not necessarily true of the goods and ills that befall him (Nagel 1970, 77).

The man, then, even unaware of his own situation, is harmed. Partridge would still have to claim that the man isn't harmed because of this unawareness. His situation doesn't cause any negative feelings in him. However, this conclusion is certainly absurd. He may claim that the man is harmed because his life is affected negatively. But this doesn't seem to be true as well. Not only, if claims that, Partridge would have to accept that harm could take place outside of our experiential states which is against his main claim – what you don't know can't hurt you, but also the man's life, to him, isn't negative. Clean diapers and full stomachs are the new normal for the man – he isn't aware anything other than those exist. Since in the example, the man is harmed, and the harm takes place outside of what he knows, it is possible what I don't know can hurt me. Someone, in the remote corner of the world, maybe spreading rumors about me that I will never hear about. Still, as long as I'm making a great effort to keep my reputation clean, for example, I'm not lying and cheating in situations that would be more beneficial to me to do so for the sake of my reputation, etc., then those rumors are still harmful.

## **5. Posthumous Harm through Surviving Rights**

Thus far, we have seen that there is a subject of harm in the conversations revolving around posthumous harm, and it is possible to be harmed by the unknown. In this section, I will give my own account of the posthumous harm partially through Feinberg, Pitcher, and Keller, and surprisingly partially through Partridge as well.

We have seen a dead person could be harmed posthumous. I agree with this statement. However, I disagree with the claim that what is harmed is a person's interests as long as what is meant by interests are things that the subject cares about. Feinberg, Pitcher, and Keller always insist that the interests in question here should be things that the subject puts great efforts toward, yet I'm not convinced that thwarting of some interests, no matter how much effort we may put into them, could have harmed the dead. It is important to keep in mind that this thesis is about the posthumous. When it comes to the dead, we need a theory of harm that excludes the possibility of any feelings. I claim that the object of harm is a person's surviving rights<sup>1</sup> which is different from surviving interests on two points. (1) Rights aren't about subjective feelings so any harm comes to me through the violation of them, though may cause discomfort and sadness if known, isn't considered harmful because of the negative feelings it may cause, but because of certain violations I suffer. (2) I own my rights while I usually don't have ownership of my interests. As an example, although my child's well-being is within my interest, I cannot claim any rights on it. In that sense, any bad thing that happens to my child, unless it is somewhat about my own rights, cannot harm me after my death - (1) there isn't any violation of my rights, (2) there isn't anything that I could call as 'my right'.

Even for further clarification, through the cases given above by Feinberg – people have no rights upon the business market while they have rights to know the truth about their institutions, and retain the good reputation they have worked so hard for (e.g. they didn't lie, cheat, and had helped people, etc.). In that sense, the woman in case A and C is harmed, even after her death, because in A it is within her rights to know the truth about the institution she worked for her heart out and in C she was betrayed by others and robbed of the reputation she has every right to keep. Moreover, her institution's right to compete in a fair market has been violated. In Case B, on the other hand, the woman isn't harmed since she has no rights in the business market, and how, in a naturally evolved way, it eliminates her institution out of the business. In all cases, her interests are thwarted, but not in all cases, she was harmed. She was harmed in her dead only when her rights are violated. In that case, what I mean by posthumous harm is the violation of the subject's rights.

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<sup>1</sup> Rights, in this paper, closer to mean 'rightly owned', and are used in the context of ownership for the things we gain through hard work (So basic human rights, like, 'right to live' cannot be included here, since they should be within our rights without any hard work).

Moreover, violation of these rights, which affect me after my death, could also affect me while I'm still among the living. In that sense, the possible violations that might fall upon my rights after my death affect my living self while I'm still alive. However, I'm not talking about any backward causation here. Let me explain. Knowing one's rights are going to be protected even after their deaths would certainly influence the quality of one's life when they are alive. I would be harmed, when alive, if I know the things within my rights could be forcefully taken away from me once I'm dead. If that is the case, there is a high possibility that a person wouldn't try as hard to do some good deeds when alive which would certainly affect the quality of the said person's life and probably would even impact the quality of others' lives. For example, let's say that I have a great idea for a book that would be beneficial for many others as well. If I know the book I have written with great labor, and hope to share it with others, would be burned away or published under someone else's name (I want to be the one that create the book and not the book to merely exist, regardless), I may not put the effort I would have otherwise, that is if I bother to write it at all. If I know that the house I bought through hard work, with my blood, sweat, and tears, would be taken away from me after I died, then I wouldn't work as hard, I wouldn't enjoy having a house (nor do I enjoy inherit a house from my own parents nor my children could enjoy inheriting the house left from me). If I know my reputation could be torn into pieces after I died, and there would be no one to protect it, no one would be held accountable for the lies they spread about me, then I wouldn't work as hard to be a good person. I'm prevented to do something that would have a positive impact on my life, as well as on others'. The fact that my rights could be violated once I'm dead because they won't be protected on the grounds that I'm dead, would affect my living self by preventing me from living my life in the most fruitful way. This is another way to see how posthumous harm is possible. Violation of my rights once I'm dead has the power to affect my life when I'm alive. It is posthumous not in the sense the protection of them would affect my dead self, but because it is about the protection of my dead self's rights.

Partridge seems to agree with me on this. Even if he doesn't think posthumous harm exist, he believes posthumous respect does. He claims due to the social contracts we have, it is a moral thing to do to protect the interests of a dead person since otherwise people who witness the violation of the rights of the dead may start to deviate.

“The survivors, having similar motives, are well-advised to protect their interests by respecting the wishes of the deceased, thus strengthening the just traditions and social contracts that protect the interests and expectations of all, while alive, to have posthumous influence.” (Partridge 1981, 254)

According to the rules we live in, in today’s world, I have some rights, i.e. right to own property. To have a claim on most of one’s rights, excluding basic human rights, an individual needs to work hard to get them. I work hard for my business to thrive or to buy a house, and therefore I have claims on them. The same could be said for my reputation. I work hard to maintain a good reputation by not lying to people, staying faithful to my spouse, and being a good and caring parent to my children<sup>2</sup>. My interests regarding those cases would die with me, but my rights would survive. My interests die with me, but my rights don’t. Therefore, any thwarting of my interests wouldn’t harm me since I no longer have possession of them. My rights on the other hand are a different story. A business wouldn’t start itself, a book wouldn’t come into existence out of blue, a good reputation wouldn’t appear detached from the person who has it. There is a person that owns those, and those things have become the rights of that person, and those rights, usually, outlives the said person.

In short, dead could be harmed through their rights, and not their interests, since as we have seen above (for example in Feinberg’s cases) sometimes thwarted interests isn’t a cause of harm to the dead but violation of rights always are. Moreover, the posthumous violation of our rights affects our daily lives. As long as the rights I strive so hard to claim are violated, and there is no one to protect them, the quality of my daily life would diminish significantly, alongside any contributions that bright individuals might have made to our society otherwise. It is not just the living, like Partridge claimed, that may be harmed by these violations but also the dead since knowledge is irrelevant to harm and it’s their rights that get violated. Posthumous harm is possible.

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<sup>2</sup> One may work as hard to maintain a good reputation through lying, and hiding their misconducts, but we couldn’t claim that she, therefore, had a claim on her a good reputation since she gain that reputation through violating other people’s rights. We live in a society according to some social contracts and honesty is one of them. After all, knowing you live in a community where everyone lies, a good reputation would have had a different meaning than what we mean in the above context.

## **6. Conclusion**

Posthumous harm is possible because there is a subject of harm in the posthumous (the ante-mortem), and harm is irrelevant to the subject knowledge of it. If a subject's rights are violated after her death, then her ante-mortem self is harmed. Protection of those rights then is not only necessary for the posthumous but also for the living. We are living in societies in which our rights are under protection. If this protection were to expire once we died then we wouldn't be living as fertile and satisfying lives as we would have been otherwise. In that sense, violations of rights posthumously, affect not only the dead but also the living.

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