

Can Death Be a Harm to the Person Who Dies?. Vol. 73 of Philosophy and Medicine series. By Jack Li. Dordrecht / Boston / London: Kluwer Academic Publishers, 2002. Pp. x + 193.

Charles Tandy*

Jack Lee of Tamkang University (nee Jack Li of the Fooyin Institute of Technology) has produced a fine monograph successfully espousing a new theory of harm to persons despite his decision not to explore therein the meaning of personhood. However he does try to do more than construct and defend his new theory. These additional attempts are admirable if not always convincing.

In rough outline, Lee proceeds as follows: (1) Show that the Epicurean argument (that it is impossible for death to be a harm to the person who dies) is defective. (2) Construct a theory of harm to persons that is more defensible than other theories — and thereby convincingly argue (with respect to the person who dies): (a) death *can* be harmful; (b) premature death is *always* harmful; and, (c) posthumous events *can* be harmful. (3) Use the new theory to ask or answer related questions (e.g. issues related to the Lucretian Symmetry Argument).

According to Epicurus (341-270 BCE), it is impossible for death to be a harm to the person who dies because death cannot be experienced (a dead person can have neither experiences nor harms). Via example cases (thought experiments) Lee shows that, contrary to Epicurus, one can be harmed without experiencing harm. This includes cases in which one does not experience harm because one is no longer alive (i.e. one has become a permanent *experiential blank*). Thus, so to speak, there is neither an *experience requirement* nor an *existence requirement* in order to be harmed. A person can

* Associate Professor of Humanities, Fooyin University

be harmed without experiencing harm (no experience) and a person can be harmed after death (no existence).

Lee examines two major theories of harm to persons and then constructs a third theory of his own. Thereby he explores three possible definitions of *harm to persons*. His analysis finds that harm to persons (*alive or dead*) involves the impairment of their objective interests:

(1) Is harm to persons *the thwarting or frustration of desires*? But dead people are “experiential blanks” and have no desires. Dead people have no sensations, experiences, hopes, or fears. *Yet, contrary to Epicurus, we have found that dead people can be harmed*. Moreover, sometimes a particular desire can be harmful instead of helpful. Thus, objectively, the thwarting of such a desire would be good or beneficial rather than bad or harmful.

(2) Is harm to persons *the deprivation of goods*? But dead people have no goods in that they have no life, liberty, or property. Dead people cannot pursue happiness or act to achieve goals or dreams. *Yet, contrary to Epicurus, we have found that dead people can be harmed*. Moreover, in this context, the term “goods” seems more ambiguous and less accurate than the term “objective interests.” Sometimes a particular “subjective interest” (e.g. a particular “desire” or a particular “good”) can be harmful instead of helpful. Thus, objectively, the thwarting, deprivation, or impairment of such a “subjective interest” or “desire” or “good” would be beneficial rather than harmful.

(3) Is harm to persons *the impairment of objective interests*? Persons can indeed be harmed without experiencing harm; moreover, persons can indeed be harmed after death. A dead person is a (dead) person; every person (*alive or dead*) has objective interests.

Lee, following Joel Feinberg and John Kleinig, differentiates *subjective* interest (“X is interested in Y”) from *objective* interest (“Y is in X’s interests”). But unfortunately Lee then goes on to follow Feinberg and

Kleinig further¹: (A) “Y is in X’s [objective] interests” equals “X has a *justifiably claimed* stake in Y”; and, (B) “X has a stake in Y” equals “X is likely to gain or lose from Y ...” Below I show that assertions (A) and (B) are seriously flawed.

(A) Here the phrase “justifiably claimed” is presumably used in order to differentiate objective interests from merely subjective interests (such as certain desires or goods that are not in our objective interests). A problem with “justifiably claimed,” however, is that our objective interests remain our objective interests whether or not we “claim” them. Likewise, our objective interests remain our objective interests whether or not we “justify” them.

(B) Here the phrase “likely to gain or lose” is used. It is perhaps natural to think of our objective interests as somehow connected to gaining or losing. But in fact our objective interests remain our objective interests whether or not some gain or lose is “likely” or unlikely, more probable or less probable.

As just explained, the ordinary meaning of “impairment of objective interests” includes the rejection of faulty assertions A and B. But let me point out also that here impairment is to *persons* (persons have objective interests). Thus it would be clearer to think of persons advancing toward their objective interests, including the advancement of their *ethical* learning. Moreover, we can think of the objective interests of all persons *living and dead*.

We now have a clearer definition of harm: Harm to persons is the impairment of their *advancement* toward their objective interests, including the advancement of their *ethical* learning. Accordingly, we do not say a person is harmed because utopia is not achieved in the next three seconds. Failure to secure utopia in the next three seconds is not necessarily an impairment (major setback) to the advancement of my (or our) objective interests.

¹ Jack Li, *Can Death Be a Harm to the Person Who Dies?*, vol. 73 of Philosophy and Medicine series (Dordrecht / Boston / London: Kluwer Academic Publishers, 2002), 68.

For the practical purpose of delimiting the scope of the monograph's research project, Lee defines "death" so as to be permanent and an experiential blank. Indeed, the term "death" in the present context is often defined something like this: The permanent (irreversible) cessation (end) of life, existence, or consciousness. I now point out, however, that even given our present philosophic intent and context, death defined as permanent or irreversible is not without its problems. For one thing, what is deemed permanent or irreversible may be relative to the state of our empirical learning (the level of our science-technology). Moreover, if empirical tests necessarily involve empirical corroboration or empirical refutation (either or both), then "permanent death" is in principle potentially open to eventual refutation but not to eventual corroboration. In other words, death viewed as a temporary condition that is potentially reversible by far-future science-technology ("temporary death") is open to empirical corroboration in the far-future but is not open to empirical refutation.

Is it possible that death is (or can be made to be) a comma instead of a full-stop? (The reality of "temporarily" dead persons being revived using CPR and other existing biomedical technology says that already, at least sometimes, the answer is YES.) Is it possible that the set of all "permanently" dead persons can be (or, using far-future science-technology, can be made to become) a *null* set? Is it possible that the set of all "temporarily" dead persons can include (or, using far-future science-technology, can be made to come to include) *all* dead persons? It seems that both logically and empirically the answer to both "possibility" questions is YES. Moreover, let me point out that this answer apparently applies not only to people and the set of all persons, but also to worlds and the set of all universes.

Lee claims "that the death of an elderly person who has led a full and worthwhile life is not a great misfortune for him."² Lee is saying that it is NOT a great misfortune or harm if a hundred year old person *permanently*

² Jack Li, *Can Death Be a Harm to the Person Who Dies?*, 81.

becomes an *experiential blank* (dies). On the contrary, our analysis above seems to tell us that being “elderly” (in the sense of age-related debility) and being (permanently) “dead” are not in the objective interests of persons. Becoming disabled or being mortal does not contribute to an optimal “never-ending” journey of a person toward ultimate personhood. In the following example by Feinberg, Lee makes modifications in brackets to support his “one-century” view³

“Thus, if I have an annual salary [life] of one hundred thousand dollars [100 years], and my employer [God] gives me a fifty thousand dollar [50 year] raise, I benefit substantially from this largesse. If he [God] fails to give me a raise, I am not so benefited, but surely not harmed either...If he [God] reduces me to five thousand [50 years]...however, he [God] not merely fails to benefit me, he [God] causes me harm...”

Lee’s analogy does not hold up. First of all, God is love (not our harmful or helpful employer) and wishes us to take the initiative and to self-advance toward ultimate personhood. Such an adventure in discovering and advancing one’s objective (ethical and other) interests will take much longer than a mere one-century. Secondly, life is not like a mere job or salary. If one is alive and healthy, one may be able to obtain another job or salary. But (permanent) death ends one’s life and life-plan; one does not then obtain another life or life-plan. Beyond this, self-improvement and world-betterment are in our objective interests. Nature (not God) indifferently causes events like drought, earthquake, crop failure, smallpox, AIDS, cancer, age-related debility, and death. Via the advancement of our objective empirical interests, we learn to regulate nature; via the advancement of our objective ethical interests, we turn the world from indifference into love.

³ Jack Li, *Can Death Be a Harm to the Person Who Dies?*, 81.

Lee discusses many issues and all of them cannot be entertained in the limited space of this presentation. But I will now mention the so-called *missing subject problem*. Epicurus would ask Lee: “Who exactly is the subject of the alleged *posthumous* harms?” Is it the living person before they died, before they were harmed (the “*ante-mortem* person”)? Or is it the “*post-mortem* person” moldering in their grave? Since a decaying dead corpse can obviously not be harmed, Lee opts for the “*ante-mortem* person” in his response to Epicurus. *Ante-mortem* persons can be wronged after their death.

My response differs from Lee’s analysis while sharing much in common with it. Harm to persons is the impairment of advancement toward their objective interests. It is in the objective interests of persons to advance toward ultimate personhood. This includes the advancement of empirical-scientific learning and of ethical-moral learning.

Persons can indeed be harmed without experiencing harm; moreover, persons can indeed be harmed after death. A dead person is a (dead) person. Considerations above suggest to me the following, a new principle of personhood: “Once a person, always a person.”

When is one harmed—and who is the subject of the harm—if one’s harm is posthumous (i.e., if the harm is to a “dead person”)? In the absence of being able to make clear sense of my new principle of personhood (“Once a person, always a person”), I was tempted to give in to Lee’s view. But fortunately for my new principle, Troy T. Catterson came along.

Typically when we think of a *person*, we think of a person with a healthy body and a bright mind. Yet sometimes we meet persons with unhealthy bodies and unbright minds. But have we ever met a *person* without a body or without a mind? Even a ghost would have a (ghost kind of) body. And a statue has no mind. If ghosts exist, we would say they are persons (even if their bodies and minds function somewhat differently from yours and mine). Certainly medical mannequins, “talking” dolls, decaying corpses, and cremated ashes exist—yet we do not call them *persons*.

Lee states: “*Post-mortem* person strictly speaking is an oxymoron, because all *actual* persons are living and therefore *ante-mortem* persons.”⁴ Is the term “*post-mortem* person” or “dead person” an oxymoron? My answer, following Catterson, is NO. Dead persons exist now as real facts about the past. The past is a fixed (determined) unity that *will always exist* even if the universe dies. This is one reason why scientists and philosophers say that time travel into the past is in principle possible but that changing the past is impossible even in principle (However time branching seems logically possible).

Catterson presents a plausible account of time where the past exists in the present. Indeed, Catterson argues that “there can be no coherent conception of an A-series that posits the passing away of the past ... thus there could be no possible world where the dead do not exist.” Accordingly, both dead persons and living persons have no choice but to be presently existing. A presently existing dead person may be characterized as person-identity (fully complete and up-to-date) *fact-information* that: (1) lacks a mind that functions as a living person at the present moment (e.g., is an “experiential blank”); and, (2) lacks a body that functions as a living person at the present moment. These two “lacks” correspond to two aspects of posthumous harms: a person can be harmed without experiencing harm and a person can be harmed even if not presently alive.

It is false that a dead person does not presently exist *at all*. Thus there is no *missing subject problem*. It is the (presently existing) dead person (fact-information, not cremated ashes) who is the subject of (present) posthumous harms *and benefits*.

Moreover, as previously stated, it is possible that the death of a person is not permanent. As John Hick points out, “permanent death” *cannot* be empirically corroborated in a finite period of time; but “permanent death” can

⁴ Jack Li, *Can Death Be a Harm to the Person Who Dies?*, 163.

be empirically refuted in a finite period of time (and in individual cases has in some sense been refuted often via CPR or advanced medical techniques). In addition, as I have pointed out, this logical principle applies not only to the death of persons but also to the death of universes. (To empirically show that universe U will never be resurrected, we would have to wait forever.)

If the popular “big bang” theory of the universe (or any number of alternative theories) is correct, then presumably most of what is real lies in the future (not in the present or the past). Thus our present and past experiences (such as: “Nothing is certain but death and taxes”) probably do not constitute a very good representative sample of reality. However the fact that person P really existed in the past as a living person means that it really is empirically possible for person P to exist as a living person. (This is something that cannot be said of fictional- or fantasy-characters.) Based on considerations above—scientists, philosophers, and other living persons, in advancing their objective interests (including their empirical, artistic, and ethical learning) should love all dead persons and take into account the objective (real) interests of dead persons.

Unburying the dead—resurrecting all dead persons by scientific means—may not yet be at hand. Indeed, developing a beloved community consisting of all the living and all the dead will offer great challenges—but also great benefits. As we look toward the future, as we consider the vast varied ranges and regions of reality ahead, it would seem arrogant in the extreme not to engage with reality in our sacred “common task,” the beloved community.

From the foregoing it should now be obvious that I consider *personhood* to be important to the issue of harm to persons even though Lee’s monograph does not examine the concept. So before I close, let me refer the reader to the work of Michael Tooley. Here I briefly articulate four sets of conclusions taken from Tooley’s insightful arguments: (1) An entity that is not a person but is a potential person (e.g. a human fertilized egg) does not have

the intrinsic moral status of a person. (2) An entity that is not a person but is a member of the human species (e.g. a brain-absent human infant) does not have the intrinsic moral status of a person. (3) Probably some non-human animals are persons (and thus have the intrinsic moral status of persons). (4) We should not confuse the (objective) interests of persons with the interests of other entities (i.e. non-persons). Anything that contributes to the proper functioning of something is in that thing's interest, as when we say that it is in the interest of a radio or television not to be exposed to high temperature (and thus dysfunction). But interests are another matter with reference to persons, as when we say that it is in the interest of a human person not to be exposed to high temperature (and thus die). When making moral decisions, these two uses of the term "interests" should be kept in mind. *And I would add:* Once a person, always a person.

Now a few "housekeeping" chores. Lee states: "Throughout this book I use 'he', 'him', or 'his' as gender-neutral pronouns."⁵ In previous decades this would have been interpreted as progressive; in today's setting, this kind of too-easy blanket statement is often seen as sexist. In terms of grammatical and typographical mistakes, they are numerous (given the standards expected from Kluwer Academic Publishers). Cryptographers and information theorists point out that often such errors do not in fact prevent us from successful deciphering. Occasionally however it created for me difficulty. In the quotation above regarding "Lee makes modifications in brackets to support his 'one-century' view"⁶—he says: "reduces me to five thousand [50 years]" but I was unsure if he meant to say "reduces me to five thousand [5 years]" although either seems to work adequately enough since either is considerably less than 100 years.

Finally, my summary recommendation. Lee's monograph deserves to be widely read and circulated. It is an excellent contribution to the literature. I

⁵ Jack Li, *Can Death Be a Harm to the Person Who Dies?*, 139.

⁶ Jack Li, *Can Death Be a Harm to the Person Who Dies?*, 81.

中央大學人文學報 第三十三期

believe that most scholars interested in the philosophy of death or in the concept of harm to persons will find it stimulating them to deep and fruitful inquiry.

- Catterson, T. "Letting The Dead Bury Their Own Dead: A Reply To Palle Yourgrau." In *Death And Anti-Death*, vol. 1, *One Hundred Years After N. F. Fedorov (1829-1903)*, edited by Charles Tandy, 413-426. Palo Alto, California, USA: Ria University Press, 2003. Also available at <http://cetandy.tripod.com/troycatterson/index.html>.
- Hick, J. H. *Philosophy of Religion*. Englewood Cliffs, NJ: Prentice-Hall, 1963.
- Li, Jack. "When Is One Harmed By One's Own Death?." In *Death And Anti-Death*, vol. 1, *One Hundred Years After N. F. Fedorov (1829-1903)*, edited by Charles Tandy, 397-412. Palo Alto, California, USA: Ria University Press, 2003.
- Tandy, Charles. "Toward A New Theory Of Personhood." In *The Philosophy Of Robert Ettinger*, edited Charles Tandy, 157-188. Palo Alto, California, USA: Ria University Press, 2002.
- . "N. F. Fedorov And The Common Task: A 21st Century Reexamination." In *Death And Anti-Death*, vol. 1, *One Hundred Years After N. F. Fedorov (1829-1903)*, edited by Charles Tandy, 29-46. Palo Alto, California, USA: Ria University Press, 2003.
- . "Unburying The Dead: Posthumous Harms And Posthumous Benefits—A Solution To The Missing Subject Problem." In *Death And Anti-Death*, vol. 1, *One Hundred Years After N. F. Fedorov (1829-1903)*, edited by Charles Tandy, 427-430. Palo Alto, California, USA: Ria University Press, 2003.
- . "Types Of Time Machines And Practical Time Travel." *Journal Of Futures Studies* 11, no. 3 (February 2007): 79-90.
- Tooley, M. "Personhood." In *A Companion to Bioethics*, edited by H. Kuhse and P. Singer, 117-126. Malden, MA, USA: Blackwell Publishing, 2001.

中央大學人文學報 第三十三期