The Moralist. A conversation with John Harris about bioethics[1]

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The interview is usually regarded as a form of writing, reserved for newspapers or popular magazines, keen to reveal the 'person behind the books'. As such it would be an inappropriate form for a journal like *R&R*. But is it? The editors thought it possible to defend the interview as a genre in its own right, that may elicit insights that cannot be gathered by analysing or by reviewing written material only. The positive reactions to the interview with Duncan Kennedy seem to confirm this. For this issue we chose someone who is particularly equipped to arouse strong feelings: the moral philosopher exploring new domains like genetic engineering and biotechnology.

John Harris (1945) is Professor in Bioethics at the University of Manchester and well-known for his strong views on medical ethical issues such as research on embryos, cloning, prenatal screening and organ donation. He is a member of the United Kingdom Human Genetics Commission and the Ethics Committee of the British Medical Association. Apart from this, he is a prolific editor and writer. His publications include *Violence and Responsibility* (1980) and *The Value of Life* (1985); in 1998 a revised and updated edition of the comprehensive *Wonderwoman and Superman* (1992) was published under the title: *Clones, Genes and Immortality: Ethics and the Genetic Revolution*.

I speak to Harris late at night after he spent an exhausting day of waiting in a plane which didn't take off due to snowy weather and after a lecture to a somewhat bewildered audience of Dutch law students. Yet, he speaks with unflagging ardour, sometimes repeating – literally – whole phrases from his writings. He will not object, therefore, to the decision to supplement his oral comments with written excerpts from articles and books.

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1 I want to thank John Griffiths and Wilma Huizing for their help in getting this interview ready. I present it in English for no other reason than that the interview was conducted in that language.

Organ donation

Harris achieved fame with his article 'The Survival Lottery'[2] which he wrote when he was still a graduate student. The argument developed there looks perfectly fit for explaining to students what kind of moral theory utilitarianism is. It is about organ donation and starts with a thought-experiment which is not too far-fetched. Suppose, it says, that Y and Z are about to die from fatal diseases. Y needs a new heart, Z needs a new pair of lungs. They can be rescued if there would be a supply of lungs and hearts. But there isn't. Suppose – and this is the only fictional part of the story – that Y and Z refuse to be let alone to die. They tell the doctor that if he refuses to kill one person in order to save both their lives, he will be guilty of murder. How could the doctor defend himself? It is no good to say that there is a difference between murder and giving free reign to nature.

> 'Many philosophers have for various reasons believed that we must not kill even if by doing so we could save life. They believe there is a moral difference between killing and letting die. On this view, to kill A so that Y and Z might live is ruled out because we have a strict obligation not to kill but a duty of some lesser kind to save life. [...] The dying Y and Z may be excused for not being much impressed by [this argument]. They agree that it is wrong to kill the innocent [...] They do not agree, however, that A is more innocent than they are. Y and Z might go on to point out that the currently acknowledged right of the innocent not to be killed, even where their deaths might give life to others, is just a decision to prefer the lives of the fortunate to those of the unfortunate. A is innocent in the sense that he has done nothing to deserve death, but Y and Z are also innocent in this sense.'

Harris: *The problem is that nowadays in many cases we can do something in order to prevent death. I cannot see any fundamental difference between the failure to do what one can do and deliberate killing. If the doctor would have the requisite organs in stock and nevertheless would allow Y and Z to die, we would be justified to blame the doctors and eventually sue them for their behaviour.*
Westerman: But there are no organs in stock.
Harris: *Precisely. And that shortage can be remedied. So we cannot be excused for our failure to do so.*

2 Philosophy 50, p. 81-7; reprinted in Peter Singer (ed.), Applied Ethics, Oxford U.P. 1986.

The remedy Harris proposes is not that of doctors going out on the street to get hold of the innocent passer-by to kill him in order to get his organs. In order to strengthen the case of the dying patients and to prevent political counter-arguments against unchecked power on the part of physicians, the proposal is somewhat refined by the introduction of a lottery-scheme, in which every citizen is given a lottery-number. Each time there is need of a donor and no suitable organs available, a central computer is asked to 'pick the number of a suitable donor at random and he will be killed so that the lives of two or more others may be saved.'

Harris points out that it is in vain that one looks for one compelling argument that can sustain our feelings of disgust at such a reasonable proposal. Even arguments of security are discarded. It is true that in such a society one can never be sure of one's life, but on the other hand overall security is increased, if there are always enough organs available. Under this scheme fewer people are compelled to die than in our society.

Westerman: It is quite a haunting thought-experiment. At least, that is what I suppose it is; or is it a serious proposal?

Harris: *It is not just a thought-experiment but it is certainly not a proposal. It is an argument, which I think is correct. And I think has rational appeal. But it is not a proposal. In England we have a distinction between the sorts of documents that the government issues. The government issues green papers and white papers. White papers are proposals for legislation. Green papers are something that is much short of that; green papers are discussion documents putting forward ideas seriously but not necessarily for implementation in legislation. I think of the survival-lottery as a green paper, not as a white paper.*

Westerman: But if we would like to regulate organ donation, I think there is an important difference, which you deny, between positive and negative duties, so to speak. You write in your article that in the proposed society 'saintliness would be mandatory'. Isn't that exactly the problem? People should be regulated as to the kind of behaviour they should abstain from, they should not be compelled to saintliness.

Harris: *Well, you have to remember first that I am not writing as a lawyer, I am writing as a philosopher. And philosophers, whom I regard myself as being, are interested in what people ought to do. So they are naturally interested in, not just in what you should refrain from doing, but what you should positively be committed to. And of course that is different. It is very difficult to frame legislation in that sort of way, but moral philosophy is supposed to be in the classic phrase 'action guiding', it is supposed to tell us what we should do. Not simply what we should not do. So in that sense...*

Westerman: But if you moralise about the kind of rules we should draft, we are back to...

Harris: *Well it may be, that we should legislate about refraining from a class of actions, but we should moralise about duties.*
Westerman: You may be right after all. If we think of the practice of sending young people as soldiers to war, this may also amount to mandatory saintliness. But although it is hard to point out why, there still seems to be difference between going to war and being sacrificed for organ-donation.
Harris: *Well, I don't think sending soldiers to war is allowing people to die. It is certainly putting people in harm's way. But putting people in harm's way is not causing death by omission, although it may amount to that. Let's go slightly further. Let me give you an example, that was a famous case. In the Second World War, Prime Minister Churchill, because we had broken the German codes, knew that the Germans were planning a bombing raid on the city of Coventry. And Churchill took a decision that if he tried to evacuate Coventry, if he tried to take the people away, so the city would be empty, the Germans would realise that we had broken the codes and this would disadvantage us in the war. So Churchill took a deliberate decision to allow the people of Coventry to be killed, because in the long run he believed that would shorten the war and save lives. That is a classic case where his decision was responsible for the extra deaths; it seems to me that clearly he was responsible for those deaths.*
Westerman: But allowing the people of Coventry to die, is something different from selecting an unhappy few who are about to be sacrificed. One of the differences may be that the death of the latter is a certainty but in the case of Coventry there was only a risk involved that they would die eventually as a result of German intervention.
Harris: *The difference is not related to a degree of certainty. If somebody shoots at random into a crowd, it is not certain whether they would kill anybody or not. The fact that is not certain does not excuse the action in any way. If I see that they are about to do this and I can stop them, and I fail to do so, I am not excused either. The fact that it was not certain that they would kill anybody does not lessen my responsibility.*

Research on embryos

In his book *Wonderwoman and Superman*[3] Harris devotes much attention to the question how the moral status of embryos can be determined and manages to dispel quite a few classic conceptions. The conventional conception that embryos acquire their moral value at the time of conception is refuted on the grounds that its elements (gametes and sperms) existed long before that. Yet, we don't see these as worthy of our protection, prob-

3 J. Harris, Wonderwoman and Superman: the Ethics of Human Biotechnology, Oxford U.P., 1992.

ably because of our preoccupation with 'the individual' as a morally important category. The argument that embryos owe their significance to their potentiality to evolve into human beings is likewise discarded: 'We are all potentially dead, but no one supposes that this fact constitutes a reason for treating us as if we are already dead.'[4] Harris concludes his analysis by asserting:

> 'At no stage does the embryo or the fetus become a creature which possesses capacities or characteristics different in any morally significant way from other animals. It differs from other creatures to be sure in its membership of the human species and in its potential for development to human maturity. But in these respects it does not differ from the unfertilised egg and the sperm [...].'[5]

Westerman: You do not refute the argument of potentiality as such, but you also deny that there are moral differences according to the stages of development. You explicitly criticise the idea that moral significance depends on 'how far [embryos] are along the road to becoming fully human'[6]. So you don't see any difference indeed between a fertilized egg and a baby of about 22 weeks old. That strikes me as odd. It is not for nothing that we have to pay more money for a fully grown plant, for instance, than for a small sprout. It just took more energy to raise it, it took more care and we invested more into it. Likewise you may attach not only an economic but also a moral price for something which took more care and energy.

Harris: *Two things have to be said about this. The first is that for me the borderline of personhood, you either cross it or not. You either have what it takes, which is the capacity to value existence, or you do not. And if you don't have that capacity, it doesn't matter whether you might acquire it tomorrow or you might acquire it in ten years time: you still haven't got it. So it doesn't chance your moral status. But the other idea, which you mentioned, is a very different idea. The idea that creatures are valuable in proportion to the investment made in them, either by nature or by people. And this is an idea Ronald Dworkin uses in Life's Dominion. In great detail he develops a theory that the sanctity of life must be understood as a function of the investment made in that life and he distinguishes between the investment nature makes by building this organism and the investment that human individuals make by nurture and birth and care and all of that.*

4 Op.cit. p. 34.
5 Op.cit. p. 48.
6 Op.cit. p. 37.

I think that there is something in that argument. My problem with the investment argument is that it implies that the more investment, the more value is acquired. So it implies that a child that has had lots of complications, that was produced by IVF and very expensive technologies before it was implanted, or that was born after a difficult pregnancy would be more valuable, because of the extra investment that has been made in its life. That seems to me to be implausible.

Westerman. So what then is the threshold for personhood?

Harris: *The ability, the capacity to value one's existence. And that capacity is exercised as much by disvalueing existence as by valueing it. So somebody who exists and wishes to die demonstrates her personhood as much as somebody who exists and wants to live. We demonstrate our respect for that capacity by helping them to live if that is what they want and by helping them to die if that is what they want. Which is why my development of the theory of what it is that makes life valuable, also indicates that we should support suicide as a demonstration of our respect for the value of life.*

Westerman: The problem is that here you make a clear distinction between animals and persons on the assumption that animals lack the capacity to value their own lives. But I am not so sure about that.

Harris: *Well, I am not fully sure either. I think we have to ask the question: what reason do we have to suppose that they posses that capacity? Can they demonstrate possession of that capacity in any way? Now, there is a difference between having that capacity and being able to demonstrate that capacity. But with humans we tend to assume that they have that capacity even when they are not presently capable of demonstrating it, because they have demonstrated it in the past. So that for example, I have the capacity to speak French and Italian not well but adequately, and it is true of me that I speak those languages even if I am not able to demonstrate that capacity because I am asleep or unconscious.*

Westerman: But how do you know that animals lack this capacity?

Harris: *I have no proof that they lack it. The question is what reason do I have to believe that they posses it. What I am saying is, that we don't know what to say about animals. I don't think we have any reason to think that they do posses self-consciousness. And as with anything else when there is no reason to think that they do and all of the reasons indicate that they don't, then we must assume that they don't. We may be wrong, but that is what a rational person does. A rational person, when all the evidence is one way, and none of the evidence is the other way, concludes that this is not the case.*

Westerman: But in the case of Alzheimer patients, you cannot tell either whether they have the capacity to value their existence. The only thing you know is that they did have the capacity in a distant past. Like when

we were eighteen and knew how to read Greek, but we wonder whether we will be able to do so now.
Harris: *At least we know that you could once do it. So that shifts the burden of proof. Instead of having no reason to think you could do it, we now have the strong reason to think that you probably lost this capacity.*
Westerman: If it transpired that animals would value their existence, would that change your argument into an argument against embryos being utilised only for experiment?
Harris: *If I thought there was a good reason to suppose they were self-conscious, yes. It is because I don't think it is a good reason and indeed in the early embryo has no structure in which self-consciousness could exist. The very first beginnings of the central nerve system don't occur until day fourteen. So clearly the early embryo has no capacity for consciousness. Because all that happens is the very first sign of the beginning of the central nerve system, which would eventually result in the creation of the brain. But it seems to me that one cell of the brain is not the brain, and the primitive streak is even a long way from even being the first cell of a brain. I don't think that there is any reason to think that the developing human has this capacity [to value one's life, PW] until after the end of the third trimester. Until after birth, in other words. Sometime after that it clearly starts to happen, I have no idea when. But because it matters so much, we must stay on the safe side and I have no quarrel with treating forty weeks.*
Westerman: So birth is a sort of watershed.
Harris: *Well, the time at which birth normally occurs may be right. But not 28 weeks or 22 weeks.*

Wrongful life

One would expect a utilitarianist like Harris to take the position that wrongful life suits should be successful. Aren't these severely handicapped people right in their claims that they should be compensated for the fact that they are brought into an existence which doesn't seem to bring them but misery? And indeed we find that Harris approvingly reminds the reader of the fact that J.S. Mill had remarked long ago that bringing children into the world without any prospects at all was nothing short of a moral crime, 'both against the unfortunate offspring and against society'.[7] One might expect Harris to be sympathetic to those who regard their own existence as an instance of suffering that had been avoidable.

7 Quoted at p. 52, op. cit.

Yet, he concludes his chapter on wrongful life, which is devoted to a large extent to a critical, but not altogether clear refutation of Feinberg's position, by writing that these suits should not succeed. I ask Harris to elucidate his position. Aren't these doctors to be sued for bringing 'avoidable suffering into the world'; suffering that could have been avoided by abortion?

Harris: *I believe there is a difference between harming and wronging. If you deliberately create an individual with disabilities, you harm that individual. If it might have existed without these disabilities you have also wronged it. But if you have created an individual that could not have been other than harmed, you have not wronged it, because you have not made it worse of than it otherwise had been. And if it has an existence that is worthwhile, then existence is overall a benefit to that individual. So it has been harmed but not wronged. So it is not entitled to wrongful life, because it is not wrongful that it is coming to existence, because existence is a benefit.*

Westerman: You seem to think that suffering is only 'avoidable' if there are remedies available. But somehow you do not include the decision not to have children at all as a measure to avoid suffering. Isn't that strange?

Harris: *A child can only bring a wrongful life suit in my judgement, if it has been wronged. If existence is a benefit overall then the child has not been wronged. But the parents might nonetheless have done wrong. Because they have created a world that is less good, objectively speaking, than an alternative world that they might have created. So although they have not wronged the child, they have done wrong. It is a question of locating precisely the wrong that has being done. The parents have done wrong, because they have created a world that was worse than the one they might have created. But they have not wronged the child they have created, because it was that child's only opportunity for existence, and existence is a benefit to that child.*

Westerman: The problem is that in wrongful life suits, the children are doubting the very fact you seem to assume: that existence is beneficial to them. I always thought they say non-existence is preferable.

Harris: *No, I don't think they do say that.*

Westerman: I thought these people say: 'I wish I had not been born.'

Harris: *Fine, then give them a gun! But I don't think they are doing that.*

Westerman: I thought that this is the whole issue. That the problem for judges was precisely the fact that they are required to compare existence with non-existence...

Harris: *Yes, but you cannot compare existence with non-existence. But what you have to say is, do they think that death is preferable. And I don't believe they say that.*

Westerman: No, they don't say that death is preferable, they say non-existence is preferable. That is something else.

Harris: *If that is true, then we have to make an objective judgement as to whether that is a plausible thing to believe given their condition. Only if we think it is plausible to suppose, that nobody would chose life in that condition that would be wrongful life.*
Westerman: And would you then conclude that such suits should be successful?
Harris: *Well, if they have been wronged by existence, I still don't think it should be successful, because they have the opportunity not to exist. So the remedy is in their own hands, and it is a very clear remedy. As long as the society allows suicide. And assisted suicide if they cannot kill themselves. That would mean that they might succeed in the UK, because we don't allow assisted suicide, but here in the Netherlands...*
Westerman: But they would still claim that non-existence is different and that we should have spared them the trouble of getting themselves killed.
Harris: *But what is the point of compensation for that? They are seeking compensation, which prolongs their life!*

Moralism

Writing about the desirability of genetic engineering, Harris makes use, once again, of a thought-experiment and this time it is deliberately a less repulsive one.

> 'Suppose a school were to set out deliberately to improve the mental and physical capacities of its students, suppose its stated aims were to ensure that the pupils left the school not only more intelligent and more physically fit than when they arrived, but more intelligent and physically fit than they would be at any other school. Suppose that a group of educationalists [...] has actually worked out a method of achieving this. What should our reaction be? [...] And if the school our own children attended was not run according to the new educational methods, would we want these to be adopted as soon as possible? *We ought to want this* [my italics, PW].'[8]

It is not difficult to guess the sequel of this argument:

> 'Our question is this: if the goal of enhanced intelligence and better health is something that we might strive to produce through education [...] why should we not produce these goals through genetic engineering?'[9]

8 Op.cit. p. 140.
9 Op.cit. p. 142.

The whole argument, then, seems to rest on the assumption that there are certain states of affairs that are objectively preferable to other states of affairs. This induces me to ask, not about genetic manipulation, but about the kind of utilitarianism he advocates.

Westerman: I always found it sympathetic in utilitarianism that they start with people's actual preferences. But it seems to me that you don't ground your arguments on that which is actually preferred by people but on that which according to you *should* be preferred. In other words, on a kind of critical morality. My question then is: if you introduce such a critical concept of the 'preferable' or of the 'desirable', on which basis do you erect such a concept? And if you deny that it is based on people's actual preferences, what other kind of basis do you invoke in order to judge that this objective is desirable, instead of merely desired?

Harris: *Well, look: utilitarianism or consequentialism (a term I prefer) is not a religion. I don't have to worry about whether or not what I say is a consistent utilitarian position. What I have to worry about is whether what I say is a consistent position overall. But it doesn't have to be consistent with consequentialism. Conseqentialist is what other people call me. I don't have to be a consequentialist; I don't have to be a catholic. I am not worried about whether what I say is orthodox. So there are a number of perspectives from which one can evaluate decisions and policies and conduct. What I say, I think, is consistent with a consequentialist approach. But one of the consequences is whether or not the world that results from the decision, is a better or a worse world.*

Westerman: But how can you tell?

Harris: *There are many different ways, one is a traditional consequentialist way by estimating the most happiness or misery. One is whether it causes harm or benefit to persons; a third is independent of whether or not it satisfies the preferences because people classically have self-harming preferences. So a harm perspective is not necessarily a preference satisfaction perspective. It involves paternalism but sometimes paternalism is not wrong.*

Westerman: My problem is: how do you know what happiness is, if you do not think that happiness can be estimated in terms of the satisfaction of preferences. Because it amounts to suffering if my preference is not satisfied.

Harris: *Yes, it amounts to suffering for you. But it may amount to less suffering overall.*

Westerman: The same problem recurs with estimating the happiness or suffering overall.

Harris: *Every decision we make creates a new world. It creates a world in which the decision went this way rather than that way. So when we make a decision, however trivial, we are always determining the state of a possible*

world. And then I think that the tested morality is whether the world that our decision creates is a better or a worse world. Now there are millions of ways in which a world might be better, sometimes it is a world that contains more happiness than misery, sometimes it is a world that has more preference satisfaction, sometimes it is a world in which there is less of this and more of that, more beauty. And a whole range of other things.

Westerman: So would you say there is something like happiness even in a world where all people's preferences would not be satisfied.

Harris: *I have no idea; probably not. I think it is certainly plausible to say that even in a world in which everybody wanted a car, it might be right to say that the abolishment of cars is what was morally required. Because wanting to drive is not the only satisfaction or preference that people have. And sometimes people don't realise that the satisfaction of one preference may obstruct the satisfaction of other preferences.*

Westerman: But I don't think that there is an objective way of telling which preference would count for more than other preferences.

Harris: *Well, I am not sure about that either; you have to say: – and this is back to consequentialism – what consequences do those preferences produce? And there are lots of really complicated ways in which we have to try to analyse this, and one is the question of whether the preferences are for important or trivial things.*

Westerman: But to tell people that their preferences are important or trivial, is to my view paternalism.

Harris: *It is only paternalism if you force people to accept. It is not paternalism if you make recommendations for people to accept. It is not paternalism if you try to provide convincing arguments as to what people should prefer and what people should believe. So it is only paternalism if you force them to do so. On the other hand: I am very happy with the sort of paternalism that is behind the idea that a moral philosopher is able to develop ideas about what is really worthwhile and what is really...*

Westerman: Like when you write: 'you ought to want this'.

Harris: *Yes, I am a moralist. What is wrong with that?*