

A Brief Note of a Disagreement with John Harris on the Range of Applicability of the Kantian Imperative

JOHN HARRIS'İN KANT'Çİ YAKLAŞIMIN UYGULANABİLİNECEĞİ SAHALARA İLİŞKİN GÖRÜŞÜNE MUHALİF KISA BİR NOT

Charles A. ERİN*

* Centre for Social Ethics and Policy, University of Manchester, Manchester, UNITED KINGDOM

Summary

In this brief note, it is argued, contra Harris, that the so-called "Kantian imperative", is and should remain one of the fundamental principles of modern bioethical thought. It is agreed, with Harris, that in the loose and inaccurate way in which several authors have deployed Kant's second formulation of his Categorical Imperative, it can be unhelpful and misleading. However, if put to use with due care and attention to the way Kant phrased his formula, the intuitive force of the imperative can be seen to be consequent upon its crucially important role in moral reasoning, and its scope for application is far less limited than Harris contends.

Key Words: Kantian imperative, Bioethics,
Moral reasoning

T Kim J Med Ethics 1999, 7:17-21

Means and Ends: 'The Kantian Imperative'

On 12th February 1998, up at Oxford, John Harris gave one of the 1998 Oxford Amnesty Lectures. The 1998 series of lectures, run by Justine Burley, was entitled *The Genetic Revolution & Human Rights*; Harris's lecture was entitled 'Clones, Genes and Human Rights'. (1) Therein he makes some interesting comments about the Kantian imperative.

During 1997, Harris had engaged in a debate with the distinguished molecular biologist Axel

Yazisnia Adresi: Dr. Charles ERİN
Centre for Social Ethics and Policy,
Faculty of Law, University of Manchester
Oxford Road, Manchester, M20 4QA
UNITED KINGDOM

T Klin J Med Ethics 1990, ?

Özet

Bu kısa notta Harris'in aksine olarak, Kantçı yaklaşım olarak bilinen kuramın modern biyoetik öğretinin vazgeçilmez kurallarından olduğu ve böyle kalması gerektiği iddia edilmiştir. Bu yazıda Kant'ın kategorik yaklaşımının ikinci formülasyonunun birçok yazar tarafından müphem ve uygunsuz biçimde yayıldığı şekliyle yetersiz ve yanıltıcı olduğu konusunda Harris'le hemfikir olunmuştur. Ancak, Kant'ın formülünü ortaya koyduğu şekliyle ve belli bir özenle ele alınacak olursa yaklaşımın içsel gücünün aldaki akıl yürütme sürecinde önemli rolünün gerekli olduğu ve uygulanabilirlik sahasının Harris'in iddia ettiğinden çok daha az sınırlı olduğu görülecektir.

Anahtar Kelimeler: Kantçı yaklaşım, Biyoetik,
Ahlaki akıl yürütme

T Klin Tıp Etiği 1999, 7:17-21

Kahn in the pages of *Nature*. Kahn had originally invoked Kant's principle in the following way:

The creation of human clones solely for spare cell lines would, from a philosophical point of view, be in obvious contradiction to the principle expressed by Emmanuel [*sic*] Kant: that of human dignity. This principle demands that an individual - and I would extend this to read human life - should never be thought of as a means, but always also as an end. Creating human life for the sole purpose of preparing therapeutic material would clearly not be for the dignity of the life created. (2)

Now, I don't want to become distracted by the debate over the cloning of Dolly. As provocative as sheep as Dolly surely is, that debate is certainly beyond my current scope. Also, for reasons which will become apparent shortly, I am going to pass

over the problems I see with Kahn's formulation *here* of Kant's principle. What I think is worth drawing attention to is Harris's response to Kahn at this point, Harris writes:

The Kantian principle, invoked without any qualification or gloss, is seldom helpful in medical or bio-science contexts. (3)

I suspect that here Harris is referring to the lack of qualification or gloss offered *by Kahn*, but, to be fair, if Harris is to be interpreted literally, then I would probably have to go along with him. (4) In the crude and inaccurate form in which Kant's second formulation of his Categorical Imperative is usually deployed, it is true to say that the principle can have little of interest to offer; but much depends on the specifics of the formulation.

Let me just look briefly at Kant's own formulae. The Kantian scholars among us, and certainly I do *not* count myself among their number, will be aware that in the *Groundwork*, Kant offers three different formulations of the Categorical Imperative. For Kant, logic dictates that there can be but one ultimate moral law, (5) and thus the 'three ways of representing the principle of morality are at bottom merely so many formulations of precisely the same law, one of them by itself containing a combination of the other two.' (6) Kant continues:

There is nevertheless a difference between them, which, however, is subjectively rather than objectively practical: that is to say, its purpose is *to bring an Idea of reason nearer to intuition ... and so nearer to feeling.* (7)

Let's briefly remind ourselves of the three formulae which Kant is reviewing here. The first formula, which I suspect most Kantian scholars proper would identify as the genuine article, Kant refers to in *the Metaphysics of Morals* as "the universal principle of right" (8) or the "universal principle of justice", (9) depending on which translation one prefers. These are not official titles for the first formula, and I prefer Roger Sullivan's title, *'The Formula of Autonomy or of Universal Law'*. (10) It runs like this:

I ought never to act except in such a way *that J can also will that my maxim should become a universal law.* (11)

The second formula, which Sullivan calls *'The Formula of Respect for the Dignity of Persons'*, (12) is the formula which gives rise to the debate at hand:

Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end. (13)

And, finally, and only really for completeness, the third formula, which Sullivan entitles *'The Formula of Legislation for a Moral Community'*: (14)

All maxims as proceeding from our own making of law ought to harmonize with a possible kingdom of ends as a kingdom of nature. (15)

So much for Kant on Kant.

I want now to look at the gloss offered by bioethicists (and molecular biologists). Kahn's response to Harris's criticisms involves a glossed (re-) formulation of Kant's principle. Says Kahn:

Harris contests the validity of arguments based on the Kantian principle. But Kant did not say that respect for human dignity requires that an individual is never used as a means, but that an individual must never be used *exclusively* as a means. The word 'exclusively' makes all the difference between idle talk and one of the fundamental principles of modern bioethical thought (16).

We can see that Kahn gets closer to Kant's original here, and he essentially accuses Harris of having ignored the significance of the term 'exclusively'. I have no doubt that this is unfair criticism, and I can speak with some authority here. The first bioethics article I ever had published was a piece I wrote with Harris entitled 'Surrogacy'. (17) There, *inter alia*, we laid out, in quite some detail, a rebuttal of the accusation, levelled by Mary Warnock and others, that surrogacy is exploitative. In *the Warnock Report on Human Fertilisation and Embryology*, (18) we find the following:

That people should treat others as a means to their own ends, however desirable the consequences, must always be liable to moral objection. (19)

Now, as I say, our response to Warnock's censure of surrogacy was long and detailed, but let me just give you a short extract:

Surely the main point is this: that it is not wrong of itself to use people as means to our ends; what is wrong is using them *merely or solely* as means to our ends. (20)

I do not think too many people would be upset if I say that, in this context, 'merely' and 'solely' may be viewed as interchangeable with Kahn's 'exclusively'. And, whenever we have encountered the Kantian principle in other co-authored pieces since the 'Surrogacy' article, Harris and I have been careful to emphasize, in various contexts, the crucial importance of this term in the formulation of Kant's principle.

What I had not realized, and neither had I suspected it, is that Harris, nevertheless, believes that the areas in which Kant's principle, so formulated, may usefully be employed are severely limited. Consider this, from Harris's Amnesty lecture: (21)

It is not that Kant's principle does not have powerful intuitive force, but that it is so vague and so open to selective interpretation and its scope for application is consequently so limited, that its utility as one of the 'fundamental principles of modern bioethical thought', as Kahn describes it, is virtually nil. (22)

And bear in mind that here Harris is talking to Kahn's *glossed* version of Kant's principle, with which version Harris admits to being happy. (23)

This sounds, to my mind, like the so-called 'good utilitarian' speaking. And it is with this that I must part company with John Harris. To say that the utility (24) of Kant's principle is 'virtually zero' is, I believe, plain wrong. Clearly, the 'usefulness' of Kant's principle *is* context sensitive. But, as a general principle, I think it ought to be-it *ought to* remain-one of the "fundamental principles of bioethical thought". (That it *is* a fundamental principle of bioethical thought, surely, is not in doubt.)

Not only does Kant's principle have "powerful intuitive force", it is in tune with real people's moral intuitions, their 'feelings'. (And, as we have seen, this was Kant's professed intent when he devised the second formula.) We all, or most of us at least, feel guilty if, and when we use people merely, or solely (or exclusively) as means to our ends. And those of us who do not, *ought to!* Kant's principle is a statement of a basic element of the moral back-

ground to any discussion. It informs our moral reasoning, even if we are not conscious of the fact that it does so. We are, or those of us who may fairly be termed 'right thinking people' are, habituated to it, and happy with it. (25) Its range of applicability remains extensive, and even if, in many instances, the principle is not called upon directly, it often remains at the foundation of whatever considerations are directly invoked.

More than this, the refined version of Kant's principle-whether you go for Kahn, or for Erin & Harris-strikes me as a statement of a natural, direct, and logical implication of the principle of respect for persons, (26) a principle which I doubt very much Harris would wish to disparage. Certainly, *our* glossing of Kant's principle came of an elucidation of the principle of respect for autonomy. (27)

An Example: Employment and Exploitation

Let me reiterate the quote from Warnock:

That people should treat others as a means to their own ends, however desirable the consequences, must always be liable to moral objection. (28)

This passage continues as follows:

Such treatment of one person by another becomes positively exploitative when financial interests are involved. (29)

To be sure, Warnock is somewhat blinkered when she says this. She is talking to the issue of paid surrogacy, and referring, it seems pretty clear, specifically to the paid labour of a woman acting as a 'surrogate mother'. However, Warnock has been less than circumspect in this: there is no obvious reason why what she says about the Kantian principle in *this* context should not be applied to any form of labour in any context.

Employers tend not to be saints: first and foremost, employers employ people because they are the best suited to the particular post. Nothing wrong with that, necessarily. Most businesses are not charities, and do not employ people irrespective of their C.V. unless they are forced to do so, by, for example, affirmative action legislation. I have worked many jobs where I knew full well that if I did not produce the goods, that is serve the ends

laid out in my job description, I would be asked to move on. And this, irrespective of what a morally good chap I am, and irrespective also of my desperate need for the paltry pay packet. To this extent at least, it does seem fair to say that employers do treat employees as means to their own ends. And thus, by dint of the fact that most forms of employment involve "financial interests", Warnock's gloss (or lack thereof) on Kant's principle would seem to label all employment as "positively exploitative".

I do not have the space here to develop an *a priori* argument to show that there is something decidedly wrong with this implication of Warnock's version of Kant's principle, but, surely, 'we do not think that people are coerced into working for a living because they do so for money'. Kahn's gloss on Kant, which, as we have seen, echoes that of Erin & Harris, is fine, as far as it goes, but even this might not be sufficient. Much depends, I suppose, on just what we see as being implied by 'merely' or 'solely'. I am sure that many of us have been employed in jobs where we have *felt* as though we were being used merely or solely as means to our employer's ends. But what defeats the charge of exploitation, or, as I prefer, the charge of *wrongful* exploitation, is the fact that we chose autonomously, and with such consequences forethought, to occupy those positions. Let me give you the 'full Monty' from our 'Surrogacy' piece.

Surely the main point is this: that it is not wrong of itself to use people as means to our ends; what is wrong is using them merely or solely as means to our ends. The Kantian imperative lurking in the background here requires us to treat people as ends in themselves, as persons, and we can do this, and we do do this, when we invite them to adopt their capacity to help us, their contribution to ends of ours, as one of their own ends. One way of doing this, one way of trying to ensure that we do not exploit others, is to ask for their consent to what we propose and to make sure they have a real option to refuse.

Now, I would argue that, in at least most cases of employment, we have consented to the terms of that employment. We have consented to being used as a means to others' ends. We have made a conscious and free decision to make those ends *our*

ends. And, even though I suspect I will get into big trouble with people 'on the dole', I would say that in countries like the UK, people will at least often have a real option to refuse employment. And, thus, in at least many cases, may we not conclude that employed people are *not* being used *merely* or *solely* as means to others' ends?

REFERENCES

1. Harris, John, 'Clones, Genes and Human Rights', draft of paper presented at Oxford Amnesty Lectures 1998: The Genetic Revolution & Human Rights, Oxford, February 12. 1998.
2. Kahn, Axel, 'Clone mammals ... clone man', Nature 386 (13 March, 1997) 119, as cited by Harris, *ibid*.
3. Harris, *op. cit.* See also his 'Is cloning an attack on human dignity?'. Nature 387 (19 June, 1997) 754
4. To clarify: if John is saying what he does say, then I would probably be forced to agree; However, if he is saying 'The Kantian principle, invoked here by Kahn without any qualification or gloss, is seldom helpful in medical or bio-science contexts', by which is intended 'The Kantian principle is seldom helpful in medical or bio-science contexts', then I must, and will, take issue.
5. Cf. Roger J. Sullivan, Immanuel Kant's Moral Theory (Cambridge: Cambridge University Press, 1989) p. 149.
6. Paton, H.J., The Moral Law: Kant's Groundwork of the Metaphysics of Morals (London: Hutchinson, 1948) pp.97-98.
7. *Ibid.* p.98, My emphasis. I think the part of this passage I have emphasized rather important, and will return to this below.
8. Kant, Immanuel, The Metaphysics of Morals transl. Mary Gregor (Cambridge: Cambridge University Press, 1991), p.56
9. Ladd, John, The Metaphysical Elements of Justice (Indianapolis: Bobbs-Merrill, 1965), as cited by Sullivan, *op. cit.*
10. Sullivan, *op. cit.*
11. Paton, *op. cit.*, p.67. Emphasis in original.
12. Sullivan, *op. cit.*
13. Paton, *op. cit.*, p.91. Emphasis in original.
14. Sullivan, *op. cit.*, p.150.
15. Paton, *op. cit.*, p.98.
16. Kahn, Axel, 'Cloning, dignity and ethical revisionism', Nature 388 (24 July, 1997) 320. emphasis in the original.
17. Erin, Charles A. & Harris, John, 'Surrogacy', in W.A.W. Walters (ed.), Human Reproduction: Current And Future Ethical Issues, Bailliere's Clinical Obstetrics & Gynecology 5 [3] (September, 1991) 6! 1-635.
18. Warnock, Mary, A Question of Life - The Warnock Report on Human Fertilisation and Embryology (Oxford: Basil Blackwell, 1985) 110pp.

19. Ibid., p.46.
20. Erin & Harris, *op. cit.*, 628, emphasis added.
21. See also John Harris, 'Cloning and bioethical thinking', *Nature* 389 (2 October, 1997) 433.
- 22.1 Harris, John, 'Clones, Genes, and Human Rights', in Justine Burley (Ed.), *The Genetic Revolution And Human Rights - The Oxford Amnesty Lectures 1998* (Oxford University Press, 1999) p.68.
23. Ibid.
- 24.1 am assuming here that by 'utility' Harris is simply referring to 'usefulness', and not some bizarre utilitarian notion.
25. So habituated to it, and happy with it that Harris is to be congratulated for putting us on a back foot: it is, clearly, a good thing that we are made to continually question the basis of our beliefs, even if the result is that our beliefs are reinforced by the consequent effort.
26. Kant himself writes (Paton, *op. cit.*, p.97): Autonomy is ... the ground of the dignity of human nature and of every rational nature.
27. Although I can see why some might think that the converse is true.
28. Warnock, *op. cit.*, p.46.
29. Ibid.