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Self-Regarding / Other-Regarding Acts: Some Remarks

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ABSTRACT: In his essay *On Liberty,* John Stuart Mill presents the famous *harm principle* in the following manner: "[…] the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. […] The only part of the conduct of anyone, for which he is amenable to society, is that which concerns others. […] Over himself, over his own body and mind, the individual is sovereign." Hence, there is a distinction between *self-regarding* and *other-regarding* acts*,* and only the latter are subject to moral criticism. However, while all acts are in some way self-regarding, it is not clear if there are any which are exclusively so. There are two additional difficulties. First, the "individual" may not be an individual person; self-determining communities, at least when they have the ability to decide for themselves, are also "individuals" in this sense. Second, it is claimed that groups of acts (activities and practices) have a different kind of justification from single acts. So what are the limits which "others" have in order to protect themselves from what "individuals" (personal or not) do, and what are *their* rights *to do* and *to protect*? If, in the final analysis, *protection* or *defense* is a source of justification, what should or must be protected, and why? Where does the demarcation line between self-regarding and other-regarding acts lie? In our age, as in Mill's, we encounter many situations where such a line is needed, yet is hard to determine or establish. One such example, the case of *same-sex marriages,* is further explored in this paper.

KEYWORDS: Cloning, harm principle, other-regarding acts, same-sex marriages, self-regarding acts.

In this short essay I intend to explore Mill's "harm principle", particularly the distinction between self- and other-regarding acts, in the context of social practices. For some of these practices we encounter cases that are extremely difficult to locate on either side of the demarcation line sepa-

rating self-regarding from other-regarding acts. This should be considered important in that the harm principle protects only self-regarding acts, carving out a space for freedom which, according to this principle, should be protected from external interference. Other-regarding acts, however, may be subject to control by others.

In the first section of this paper, I briefly discuss three problems related to the harm principle: paternalism, the difference between persuasion and compulsion, and the distinction between self- and other-regarding acts. I have focused in particular on the latter problem, attempting to define the possible scope of "self" in self-regarding acts. In the second section, I discuss some of the most influential past attempts to interpret this distinction and establish a demarcation line between these two types of acts. In the third section, I analyze, by way of example of these interpretations, Dworkin's concept of "external preferences", since this seems to offer the most extensive and promising means of distinguishing self-regarding from other-regarding acts. The example taken for analysis is the practice of same-sex marriages. Taking Anthony Ellis' formulation of Dworkin's external preferences as "other-regarding desires", I attempt to create an argument which shows that, in the context of social practices as well as individual actions, the demarcation line between self- and other-regarding acts should be located at the point of justifiable defense against a destructive attack. In the case of same-sex marriages, this proves to be the *naming* of that practice as "marriage". According to my interpretation, there is a sound reason for *demanding* that such a practice be named differently, for the sake of preserving the distinction between the new practice and the old one. Participants in the old practice have a *right* to defend such a distinction, and to claim that the difference between these two practices should be maintained. While they have no obligation to insist on this, their right constitutes a sufficiently good reason for *not* allowing the name of the old practice to be extended to the new one. This argument says nothing about the justifiability of the new practice as such; it is restrictive only with regard to naming it. If this argument is sound, it represents a new, interesting and successful application of Mill's harm principle. In the concluding part of the paper, the example of cloning, which is somewhat similar with regard to its being new and potentially destructive to an old practice (or institution) that might thus be considered worthy of protection, is briefly discussed as illustrating this application of Mill's principle.

I

In the "Introductory" to his famous essay *On Liberty*, John Stuart Mill writes:

> The object of this essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. […] The only part of the conduct of anyone, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his body and mind, the individual is sovereign. (Mill, 1971: 136)

Thus, within the scope of those acts which "concern" only those who act, their right is *absolute,* and they are "sovereign" to that extent. The most important goal of this "harm principle" (or "Simple Principle", as it is also known) is to establish that there are such acts, and that the freedom of actors in realizing or exercising them should *not* be subject to any external control. This is one of the main tenets of liberalism, and the harm principle obviously serves this purpose very well. It supports values such as *privacy* and all the other values and interests that depend on privacy and freedom.

However, this sovereignty has its limits. The most obvious one is discussed in the very next paragraph: "It is […] hardly necessary to say that this doctrine is meant to apply only to human beings in *the maturity of their faculties*" [my italics]. Children, non-adults in the legal sense, and those who "require being taken care of by others", whereby they "must be protected against their own actions as well as against external injury", are excluded from protection by the harm principle. Perhaps the most interesting among these exceptions is the status of those living in "backward states of society in which the race itself may be considered as in its nonage". For them, "despotism is a legitimate mode of government", and "[l]iberty, as a principle, has no application" until such time as they "become capable of being improved by free and equal discussion". Leaving aside the intriguing question of where to draw the demarcation line between "civilized" and "barbaric" societies, and the possibly paternalistic or even colonialist implication of this thesis (which could endanger one of

the most basic Millian principles, namely, that everyone is the best judge of his own interests), there remains the question of the applicability of our main distinction, i.e. that between self- and other-regarding acts, to those acts which cross the line dividing civilized societies and nations from barbaric ones – wherever that line might be drawn.

There is another problem which is relevant here. The difference between "remonstrating with", "persuading", and the like, on the one hand, and "compelling", on the other, is less clear than we might like it to be. Compelling is a very difficult notion to define, especially since, according to Mill, it comprises all kinds of non-physical manifestations ("moral coercion of the public opinion"). This is a deeper and more far-reaching objection than the previous one, for it retains its force even after we have distinguished who *is* and who *is not* possessed of the maturity of his faculties. There are indirect, negative forms of compulsion: threats of retaliation, various types of harassment or, as Thucydides would put it, "exercising a jealous surveillance over each other" (1993: 89). Furthermore, the line between persuading and compelling may be subject to one's perception and sensitivity. In order to be effective, the line must not be arbitrary; yet this is very hard to avoid, because perception and sensitivity are subjective and relative to a great extent, and cannot be measured by any constant means. Another aspect of this problem is its inherent conflict with the supreme criterion of utilitarianism. For if this criterion – the utilitarian calculus which considers only *final results*, expressed in terms of the achieved amount of good, or happiness – prevails in the end, why should it matter at all how those results are actually achieved? If harm can be avoided, why is it important how this is done? From a utilitarian point of view, what is important is that harm is avoided, regardless of who inflicts it and who suffers it; and if there is only one way of avoiding harm, there seems to be no good reason not to do so. In particular, how is one to justify the notion that it can *never* be appropriate to even try to prevent harm which is self-inflicted, i.e. which falls within the scope of self-regarding acts.

The third problem for the harm principle is the very distinction between self- and other-regarding acts – which are which? The answer to the two previous questions, of course, defines this most important demarcation line: in other words, what the scope of a self-regarding act is. This is much narrower in the case of those who are not fully possessed of mature faculties, since others have a much broader right to intervene in their affairs – a right which may, from the (strictly) utilitarian standpoint, become an obligation. Potentially very few, if any, of their acts will be their own "self-regarding" ones, while most of them will rightfully concern others whose right and even duty it is to intervene.

The distinction between persuasion and compulsion also affects and determines which acts are self-regarding and which are other-regarding. Therefore, defining or articulating this distinction has a considerable impact on what the scope of possible self-regarding acts will be. We should bear in mind that precisely *this* scope is to be protected by the harm principle, implying that the extent of its protection will be influenced by such prior definitions. On the other hand, the main purpose of the harm principle is to ensure a sphere of action that should be protected from *any* interference or intrusion by others. As this is to be achieved by prohibiting interference in *that* sphere, it may appear that we are moving in a circle. To make this point clearer, it should be said that only *direct* interference in the sphere of self-regarding acts in the form of *compulsion* is prohibited by the harm principle. Compulsion can be defined as making someone do something that he otherwise would not do if the decision were his own; yet this is to be prohibited only if we are *not* dealing with an other-regarding act. Compulsion is legitimate and justifiable in the sphere of other-regarding acts.

We may stop here for a moment in our search for a viable definition of self-regarding acts. According to the harm principle, there *is* a right of coercion within the scope of other-regarding acts, while within that of self-regarding acts no such right exists. What exactly does this mean? Let us approach this from the opposite side, and say: "One has no right over the behavior of others unless such behavior interferes with – *what*"? Now anything that can rightfully stand for "what" in the preceding sentence will *define* what the word "interferes" means there. Otherwise, quite literally *anything* could count as interference. For example, some action of mine may be disliked by others for whatever reason, and this would make it an interference in the affairs of those others. Or, to go even further, my action might be observed by someone else. If we were to accept that anything relating me to others could take the place of "what" in the question above, we would find ourselves in a situation where anything could amount to "interference".

If this were the case, it would imply that there are no acts which are "self-regarding", or at least that there are no acts which are exclusively so. While "self-regarding" would be an aspect of every act (the one relating it to its actor), all acts would also be other-regarding. Thus the demarcation line between the two, if it exists at all, needs to be defined, justified, and made plausible and relevant. This can be done if it carries some *normative importance* indicating that certain acts are *not* other-regarding, despite their possibly, or even actually, also being other-regarding in some respect. We need to define a sphere of action that is not the rightful concern of others; where others do not, and should not, have the right to interfere

or control. (This is not to say that they, in fact, do not interfere; rather that they have no right to do so.) Which criteria are relevant here?

II

The most natural interpretation of the distinction between "self" and "other" in this respect is the difference between those who *act* and those others upon whom their acts may have some effect. But who is *acting*? And who are *others*? We have seen how, in the case of non-adults, this distinction develops in a different direction. One thing that must be kept in mind is that neither of these aspects (actors, others) can be restricted to individuals only. Those who act are, in the first place, always individuals and/or aggregates of individuals; yet in the final analysis we may be dealing with real collectives capable of exercising decision-making powers. Likewise, others (those who are acted upon) may not just be aggregates of individuals, but rather genuine collectives. On the social and political level, but also in everyday life, this proves to be of the utmost importance: what we do has an impact not just on a certain number of individuals, but on collectives as well. These collectives are defined in advance, and are targeted or defended as bearers of "self" in the distinction "self-regarding vs. other-regarding acts". This is possible because they possess a certain distinguishing feature which, as a kind of constitutive principle, makes them real decision-makers and actors, either as a "we" or a "they". It is important that the basic normative force of the distinction between self- and other-regarding acts (and practices) should remain intact, regardless of whether we are dealing with individuals or collectives. There are examples which illustrate this in a vivid and striking way, and later I will attempt to analyze one of these. But before turning to examples, let us mention a few interpretations of the self-regarding/other-regarding distinction found in the literature.

C. L. Ten (1980) explores several such interpretations, three of which seem to be of interest here. First among them is the *traditional* interpretation, which says that acts which have no real effect on others without their consent should be viewed as self-regarding acts. In order to designate an act as self-regarding, it must not affect anyone besides the actors themselves and other consenting adults (for only adults possess the power of consent at all). The integrity of the harm principle is thus ensured by prohibiting acts that impact others *against* their will. However, as we have seen above, almost anything may be regarded as having an impact; for example, looking in others' direction can be interpreted as having an impact: e.g. giving them the "evil eye", or as a sign of resistance (in the Ottoman Empire there was a rule that Christians had to look down in public places,

to show that they were not rebels), or even as an act of aggression (this was how the Americans interpreted the activation of Iraqi radar in the "no-fly zone"). Similarly, there were once rules prohibiting "colored citizens" from using sidewalks or, nowadays, activists who oppose something we might find normal but which they, e.g. vegetarians, find abhorrent or disgusting. All such acts can be experienced as having a relevant impact on others, who might be genuinely offended when confronted with them. As we might expect, this interpretation has been heavily criticized, as it is too broad to satisfy the requirement of relevance.

The second of Ten's interpretations (1980: 11 ff) originates in a paper by John Rees (1960). Rees argues that it is not enough for an act to have an impact on others; what is needed to make it an other-regarding act is some effect on their *interests*. Whether an act has an impact is a factual matter, but whether it affects someone's interests is a normative one. Interests are much easier to connect with rights and obligations, and so may become relevant with regard to what one has a right to do or not do. This is a very elegant scheme, as it ensures a value component for the demarcation line between self- and other-regarding acts, assigning to the former all those rights which cannot be assigned to the latter. As interests are formed on the basis of a certain interestedness (which is factual), the interestedness of the actors themselves is obviously a natural candidate for a *prima facie* justification of acts. On the other hand, the interestedness of others should be supported by some additional justification which resolves one part of our dichotomy above (namely, who is acting), excluding from a *prima facie* justification any kind of *coercion to act.* Of course, this is not an exhaustive justification, either of the act itself (on the actor's part) or of its impact (on the part of others). But it can offer all the needed justification regarding the act's impact upon the actor himself, providing very strong corroboration of the idea that each person is the best judge of his own interests (or at least a good enough one). I consider this line of argumentation to be quite fruitful and worth exploring further. However, this obviously cannot be the whole story – some additional scheme of argumentation is needed to tell us how to discern exactly where the line between self- and other-regarding acts lies.

The third interpretation examined by Ten (1980: 30 ff) is the distinction made by Ronald Dworkin (1978: 234 ff) between personal and external preferences. Suffice it to say that this is also a highly promising viewpoint, as it provides a very good guideline for a liberal approach to the demarcation line between self- and other-regarding acts and practices. It states that only personal preferences constitute a legitimate basis for decisions with a relevant impact on others, while external preferences do not. Personal preferences refer to what someone wishes to do or have,

while external preferences are about "what others should do or have". This provides a rather sharp distinction between self- and other-regarding acts at the level of collective decisions. In the decision-making process in a democratic system, what the majority decides is right on the condition that everyone involved participates as part of the same whole that makes the decision. However, if the minority that loses is not included as part of the whole, i.e. if the minority and the majority are not both part of the same thing, then the majority has no right to decide, as the basis for this decision would then consist, in Dworkin's terminology, in external and not in personal preferences.

Therefore, all political decisions, and for that matter all other decisions potentially impacting "others", must be made on the basis of personal preferences alone. A dissenting minority has the right to *defend* its differing position to the point of not allowing decisions and actions that would inhibit or prohibit its freedom to act based on that position. If this difference may be established as justified, then there is no possibility of interference, even in the form of a collective decision based on the majority. The fact that the majority may regard a certain practice, e.g. homosexuality, as abhorrent and "immoral" is no justification for repressive measures against it. To take another example, "although the fact that cruelty to children harms them is a relevant consideration [for preventing and punishing acts involving such cruelty], the different fact that the majority have an external preference which regards cruelty to children as wrong does not count" (Ten, 1980: 30). External preferences have no power to justify any act of prohibition at all. Those who have a given personal preference may freely do whatever they want, on the condition that their acts are "self-regarding". Others, whether the majority or not, have no right to impose their external preferences upon them, regardless of what importance they assign to the object of those preferences – for themselves or, in their view, for everyone. We can follow Anthony Ellis (2003: 193) in considering all such external preferences as "*other-regarding desire,* the desire that others should live *their* lives in a certain way".

III

It is now the right moment to look at the example I mentioned earlier. Many such examples arise when we are dealing with new kinds of practices, or practices that have not been defined strictly enough. Although they do not prove much in themselves, they can serve to illustrate the difficulties arising from seemingly sound arguments which are, in fact, neither exhaustive nor comprehensive enough to ensure the necessary relevance. New practices sometimes emerge from new opportunities that did not ex-

ist before (such as animal or human cloning, or computer hacking), while at other times they arise from something which was already possible in the past, but only at high cost or great risk, or as an exception rather than the rule (abortion, for example: while it was always possible as an act, it became a practice only when it was made less risky and more affordable). What is common to all such practices is the fact that the Millian demarcation line between self- and other-regarding acts is both very much needed and quite hard to define. To repeat Ellis' formulation of external preferences: they are other-regarding desires commanding that *others* live *their* lives in a certain way. It seems obvious that others should have the right to defend themselves against such intrusions and not be forced to accept such commands.

Take the example of same-sex marriages. It would seem that this relates to the issue of homosexuality, i.e. defending the right of homosexuals to live in the way *they* choose, and not allowing others to decide how they should live their lives. Part of "living one's own life" comes from the socially recognized and legally established institution of marriage, from which many people – and not only those who are married – derive a considerable part of the meaning of their lives and the values they cherish. Everyone cares about their family, their parents and children, as well as other relatives like uncles, aunts, grandparents or grandchildren; and all of this depends in part on the institution of marriage. Marriage makes our life what it is. We can say that the practice of homosexuality does not, *prima facie*, endanger this framework of values in any *cardinal* way (even if the spread of that practice could endanger it in what we might call a *radical* way!),[1] for it concerns only those referred to as homosexuals. However, does this same logic apply to the issue of marriage?

Ellis would say it does. He would admit that same-sex marriages change the very nature of marriage "in societies in which marriage had previously been restricted, socially and legally, to members of the opposite sex". But he would also claim that the "desire to understand one's marriage in a certain way" does not generate "any rights over the behavior of others", thus referring to attempts by "others" to prevent and prohibit same-sex marriages *because they feel that they endanger their way of life.* And why should "others" think that? Because they *consider marriage* to be a sacrosanct institution which, as stated above, gives a very special

[1] The distinction between two kinds of *change* may prove to be useful here (especially if the change is a great one): *radical* change, i.e. a change whose extent is great, yet remains within the framework of the original subject matter, and *cardinal* change, i.e. a change which is such that the subject is no longer the same as before, but rather one of a different nature. This may have certain implications regarding how a change is justified, and perhaps also for the justificatory role of *defense* in this process.

meaning to their lives, and as such is to be defended from the aspiration of homosexuals and others to introduce a new element into this social and legal scheme that would, if approved, change the institution not only radically, but *cardinally*. What is at issue here is not the practice of homosexuality and its articulation (either via a specific institutional scheme or outside it), but rather only a certain very specific *institution* which has been, and continues to be, designated as "marriage". The reasons conditioning the proper extent and form of justifiable tolerance may not be quite clear here, especially concerning the issue of who is tolerating whom with regard to defining a specific institution. This is particularly true if there is a demand to destroy its specificity by annulling its line of demarcation with neighboring areas of institutionalized and non-institutionalized life. The reality of institutions, however, depends on our *thinking* about them in a certain way; and this fact, together with a sincere belief in what we think, may also be the reason why we feel compelled to defend that part of *our reality* from unwanted and (from the point of view of an institution) dangerous changes.

Ellis, however, would say that how one thinks about something cannot be a good reason for dictating what others should do (Ellis, 2003: 195). According to him, this line of reasoning does not take into account whose interests are more important; he claims that those who oppose same-sex marriages "have *no* rights in this matter at all, because we have no rights over the behavior of others grounded simply in the desire to attach a certain sort of significance to our own behavior". The form of this "attachment" should not count. However, if the "attachment" is such that a certain kind of cardinal change would destroy not only it, but also some particular feature or aspect of the institution of marriage – one which produces and maintains a certain system of values that gives those within this institution a significant part of the meaning of their lives, and which these "others" very much consider to be "self-regarding" – then how can we argue that they have no right to defend themselves by defending that institution?[2]

[2] "Others" here are a specific group who participate in a certain institution. In some institutions, the scope of tolerance is linked to the conditions of that institution's existence. Let us take the *police* as an example of "others". If someone else (i.e. someone who is "other" from the viewpoint of policemen) wishes to wear a police uniform, or paint his car to look like a police car, we might think that policemen (and any other people insofar as they participate in the institution of the police) have some grounds to *defend the difference*, which amounts to defending the "old" institution by attempting to prevent the loss of its definitional distinction. This could be done in two ways: either by preventing anyone outside the police from wearing such uniforms or driving such cars, or by *changing* these uniforms or cars into something visibly different. It seems that Ellis would allow the latter but not the former, thus entering into a vicious circle of endless change.

Of course, there is a very easy solution for *this* problem (which is not often the case with other, similar problems): to define *another*, parallel or analogous institution and give it some other name: not "marriage" but, for example, "sarriage" (or, as in Oregon, "domestic partnership", or "civil union", like in some other US states).[3] However, it seems most unlikely that this would satisfy those who seek to be allowed to "marry", insisting on the use of that very word and unwilling to accept any other name for it.

Thus it seems that the central notion here is that of "defense" and what may constitute its rightful object: how can we determine what we have a right to defend? While it is very difficult to answer this question, the answer could well be the best means of defining the demarcation line between self- and other-regarding acts. The difficulty of this question lies partly in the logic it contains: if one has a right to defend something, that right seems to be absolute and based on principles alone. The prospect of success does not form part of the right to defend. If someone has such a right, its existence cannot depend on the probability of success; nor does the absence of this probability diminish or annul that right if it exists. Of course, it is very hard to determine what we have a right to defend. What seems to be relevant at this point is that it depends on what constitutes the "self" in "self-regarding acts". This will make it possible for us to establish, in terms of principles, what content the right to defend has, showing us the demarcation line between self-regarding and other-regarding acts. Identifying what "self" might possibly represent in "self-regarding acts" – the *self* which is "regarded" by those acts – would certainly help us in determining what the object of justifiable defense is and defining the necessary demarcation line.

In a *prima facie* sense, this grants primacy to whatever the *existing* fact or institution is, and implies the additional burden of justifying any change, especially such change as could be designated "cardinal". As such, it may seem too conservative. In terms of the logic of justification, however, no change would be prevented if it could withstand the process of justification up to the point of actual change; it only entails an *asymmetry* between justifying something which is already accepted and something anticipated as the possible object of an intention or decision. This logic would partly imply that if there is a strong right to defend something, it is because there are strong enough reasons to produce such a right. If this is so, then the right to defend would pertain to the entire scope of self-regard-

[3] However, there might also be restrictions to this solution, such that adopting the term "sarriage" will not prove adequate. To take the example from the previous footnote, labeling a non-police vehicle (perhaps a car belonging to a gang) with the word "poleece" or "polyce" would be quite as likely to provoke a "defense of the old institution" as labeling it "police".

ing acts, independent of whether these acts belong to the private sphere or not (or, in other words, all such acts would be designated as "private" or, in Dworkin's terminology, "personal", in a certain sense).

Therefore, if a practice or, for that matter, a whole institution is subject to the right of justifiable defense, this would fall within the scope of Millian self-regarding acts, and the distinction that constitutes such a practice or institution would be protected by the harm principle. Another, even more conservative part of this logic is that there is a *prima facie* case for preserving all distinctions unless a change is justified. If this argument is sound, then there can be no right to *name* same-sex unions *marriages,* unless we are ready to accept a cardinal change in the institution of marriage, one which would amount to its abandonment and replacement by something else under the same name! The conclusion is that, unlike "domestic partnerships" or "civil unions", "same-sex marriages" cannot avoid harming others, and that a *change in name* would imply a *change in definition,* thus entailing that "same-sex marriage", unlike marriage, is not a self-regarding act or, in Dworkin's words, does not belong to the sphere of personal preferences. On the contrary, it is an other-regarding act, or one pertaining to the sphere of external preferences, for it impacts not only what people believe, but also what constitutes their area of rightful defense. To designate same-sex unions by the word "marriage" is obviously an other-regarding act, and thus seems to violate the hitherto protected institution of marriage, in which the act of calling a certain relationship a "marriage" functions as a self-regarding act and falls under the protection of the harm principle. Destroying the distinction that defines "marriage" in the traditional way would, therefore, constitute unjustified harm to others, whereas preventing the designation of same-sex unions as "marriages" would not. For while it is certain that the former would occur without the consent of some of those concerned, the latter does not violate the condition that all parties concerned should agree on what the collective decision will be.

Before concluding, let us look at another example involving a similar issue of what constitutes the self-regarding and other-regarding scope of a real action. Here this is not confined only to naming, as in the case of "same-sex marriages", but rather concerns an entire practice, i.e. cloning, and its impact on what we regard as "ourselves", such that we may believe we have a right to defend ourselves against this practice. Cloning is a form of *asexual* reproduction, human or other. *Prima facie* there is nothing visibly wrong with it, for, in principle, the form of reproduction has no special moral standing. The problem, however, is that it does indeed become relevant, since a great many of the values to which we "attach a certain sort of significance" are grounded in the *sexual* aspect of *our* reproduc-

tion. It is what makes *us* what we are. Although at some point in the future cloning might become a thing of great use, or even necessity (in a situation where it would be the best or only available means of human reproduction), in the present world cloning – if accepted as a general or semi-general practice – would certainly endanger and possibly destroy important elements of the values that make us what we are, by disrupting important parts of our current institutional network. This does not imply that a world created in such a way would be worse than the one we have now. It is quite possible that a world unburdened by the network of traditional family relations would be better and more agreeable than the present one. However, this does mean that it would not be *our* world. We might experience it as an utterly foreign world, one where our lives would not possess their usual condition and importance. And we may attempt to defend *ourselves* to the extent that this is in our power, by defending the basic institutions of our world and the conditions upon which they are founded. We may even feel we have a *right* to do so.

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We may conclude that, if the argument presented here is correct, we have the right to prohibit certain actions by others and thereby restrain them in what they may feel to be entirely self-regarding acts. In searching for a viable demarcation line between the two kinds of acts, the goal is to define a set of protected interests which, according to the harm principle, should be exempt from social control and interference by others. Yet if the freedom to act in a specific way (or, in the first example above, to call a practice by a specific name) wrongfully infringes on the interests of others and causes them unjustifiable harm, the only way out is to balance freedom of action, on the one hand, and the unjustifiable adverse effects of such action, on the other (cf. Cane, 2006: 36). In order to avoid such confusion and its possibly disastrous effects for the harm principle, it seems that, to preserve the distinction essential to that principle, we may forego *not* dictating to others how to live their lives to the extent that we may reject their right to freely name what they are free to do. Their insistence on also *naming* the acts within the scope of their freedom may be unjustified, even if the acts themselves are self-regarding ones.[4] The question becomes one of

[4] It is tempting to ask what would happen if members of the "old institution", in trying to avoid absorption into the "new institution" and thus preserve their old identity, decided to *change the name of their institution*: would members of the new institution follow them in that new naming, attempting to prevent their escape? Would they insist in being named with the *same* name (and so reject the difference), rather than be satisfied with

tolerance: defending a distinction and, for that matter, part of the world's diversity, which would be abolished by unifying two close but distinct practices. Defending a distinction does not imply any demand to "ban" or even to judge either of the differentiated practices. It simply represents a request that something remain specific via diversity. This indeed requires tolerance, for otherwise a new discrimination would take the place of the one now removed (and presumably this is the principal reason for demanding unification). An act of naming may not be a self-regarding act, despite the fact that the harm principle protects as self-regarding those acts which are to be named. If this were not the case, we would have to balance two competing sets of self-regarding interests and acts, which seems to imply a practical contradiction: namely, something which is not the legitimate concern of others is, nonetheless, their legitimate concern. If this were to happen, then *neither* of these competing interests and actions would be self-regarding and protected by the harm principle, for unjustifiable harm would exist on both sides. Therefore, as in criminal law, we should seek to reconcile the competing interests of those who act and those who are adversely affected by such acting (cf. Feinberg, 1984: 217), and not, as Ellis would argue, presume the primacy of freedom of action, wherein others "have *no* rights in this matter at all" (Ellis, 2003: 195). This "at all" seems to imply confusing self-regarding acts (doing what does not legitimately concern others) with other-regarding acts (calling those acts by a name already "taken", one which has a strong normative capacity). However, the purpose of the harm principle is to distinguish self-regarding acts from other-regarding acts, for the sake of protecting the former. It should not be used to confuse the distinction between them in order to provide unprincipled protection for an obviously other-regarding act, with the justification that it constitutes a different self-regarding act.

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having conquered the old name they had aspired to? If not, why should they not already accept a difference and a new name now, instead of insisting on the old, "occupied" name of something similar yet still different from their practice? The question is, finally, why they reject separation and the difference connected with it, insisting on a kind of counter-discrimination, as if diversity in naming, unlike diversity in behavior, implied hidden discrimination.

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