

Evangelos D. Protopapadakis

FROM DAWN TILL DUSK

Bioethical Insights into the Beginning and the End of Life

with a foreword
by Stacy Gallin

λογος

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BIOETHICAL INSIGHTS INTO
THE BEGINNING AND THE END OF LIFE

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*For Damianos E. Protopapadakis, my father.
In memoriam.*

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FOREWORD

As the Founding Director of the Maimonides Institute for Medicine, Ethics, and the Holocaust, I spend a lot of time emphasizing the importance of reflecting on the past in order to protect the future. What can seem like opposite ends of the spectrum – the past and the future – are inherently intertwined by the life that we lead in the present. Therefore, using the Holocaust, the sole example of medically sanctioned genocide, as the historical framework for exploring current issues and anticipating future challenges in ethics offers a valuable educational perspective, one that underscores respect for the dignity of the human being above all else. The Holocaust serves as a tangible example of what can happen when we place the possibility of societal progress above the human dignity of the individual. This is a concept that transcends time – it's relevance in the past, present and future remains equally essential to humanity.

The field of bioethics presents a similar challenge. Science and medicine are often thought of as being in direct conflict with ethics and philosophy; the former being more objective and practical in nature, while the latter is viewed as subjective and theoretical. Yet, while these two fields may seem vastly different – they, too, are intrinsically connected by their application to our daily lives and to the very definition of what it means to be human. Bioethics is the link that unites all of these ideas, bringing the past, present and future together and ensuring that the progression of scientific and medical technology never overshadows the ethics and philosophy essential to humanity.

In this very important work, Professor Protopapadakis embraces the conceptual challenges often associated with bioethics by taking the reader along on a journey that embodies the circle of life and what it means to be human. *From Dawn till Dusk: Bioethical Insights into the Beginning and the End of Life* encourages us to examine difficult, but necessary, questions: How do we define personhood? What rights do we have regarding the beginning and end of life? What responsibilities do we have, if any, to future generations? At what point can technology permanently alter what it means to be “human?” Who gets to make these decisions? These are questions that transcend time and educational silos. We must consider the past, present and future while also utilizing scientific, medical, technological, philosophical, and ethical knowledge. Professor Protopapadakis is unique in his ability to do just that. His capacity to incorporate the many varied components of bioethics provides different insights into beginning and end of life issues. More importantly, it provides an opportunity for the reader to learn to see the world and all those who inhabit it from different perspectives, a transcendent gift that remains long after the completion of the book.

Stacy Gallin, DMH

Founding Director, Maimonides Institute for Medicine,
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INTRODUCTION

The beginning and the end of life have always been an impossible riddle to humans, and probably the best – if not the only – explanation for our species' persistent commitment to philosophical meditation and religious faith: the lack of this kind of desperately needed *existential* knowledge has expectedly initiated a quest that has taken several paths, all of them leading to the same destination and with the same prize at the end of the road. Bioethics has no aspirations as high as to unveil utter truths regarding our origin, purpose and destination; on the contrary, its humble task is to settle controversial issues that arise within this finite, very fragile and vulnerable life, yet a life *we still have to live*, even though we may only speculate about its actual meaning and purpose. Nonetheless, the issues that concern the beginning and the end of life are still of pivotal importance also for Bioethics.

Bioethics emerged as a field of Applied Ethics over the past few decades – in any case during the second half of the previous century. Especially during the first decades after its emergence it was often assumed that Bioethics was either purposed to replace Medical Ethics as an updated, advanced version, or tasked with covering its back against the rapid advances in the field of medical technology; in any case, Bioethics was considered to be absolutely dependent on Medical Ethics or complementary to it at best. And while the last view is by no means unsubstantiated, since Bioethics and Medical Ethics indeed cross paths quite often, as it is for instance with regard to abortion and euthanasia, the former has long been

abandoned: now it is commonly acknowledged that unlike Medical Ethics, that is tasked with resolving conflicts of duties, rights and interests that emerge in relation to the medical profession, Bioethics' mission is to address controversial moral issues that arise from the immense and rapid advances in the fields of biosciences and biotechnology, such as human reproductive cloning, targeted gene editing, euthanasia, surrogate motherhood, abortion, sex selection etc.

In my view Bioethics emerged as a – typical for our species – defensive reaction towards the overwhelmingly immense potential of the biosciences: as much as we are attracted by the unseen and the unthinkable, we are equally hesitant, reserved and offish towards it – probably it is the same twofold adaptive psychological mechanism that has provided our species with the perfect survival advantage over the ages. Next to this, of course, we have good reasons to be somewhat reluctant to unconditionally open ourselves up to this brave new world: on the one hand our species has already experienced the disastrous effects of unreservedly giving in to challenges as such, and on the other this time the brave new world that is coming towards us is *more brave* and *more new* than any time before, definitely more than we can handle. Although the wheel, the gunpowder, the steam and the various applications of electricity have already dramatically affected our lives, compared to the miracles and the promises of modern science they look like childish drawings displayed next to Rembrandt van Rijn's *Night Watch*. Biotechnology, medical technology and genetic engineering seem to have entered the stage not to have *just some effect* on the life of humans, but to create *a brand new life* literally from scratch – arrogantly meshing even with the greatest of mysteries, the emergence and the eventide of life. Bioethics' task is to pave an as comfortable and secure road as

there can possibly be towards this bright, but unsafe future; to this purpose Bioethics needs to regulate research, safeguard interests, set and prioritize principles, and define boundaries, always keeping one eye fixed on progress, and the other on the lines of Goethe's *Wizard's Apprentice*, so as to eliminate the gloomy possibility of a second Holocaust, or a sequel of Hiroshima. If you ask me, the omens that Bioethics will succeed in this are as good as possible; the fact alone that mankind has decided to assign Bioethics the task of balancing benefits and risks in advance, is by itself a sufficient reason to entertain the best hopes. In a sense, Bioethics is a novelty in itself: to the best of my knowledge this is the only time that instead of the good services of Epimetheus, mankind first seeks the advice of Prometheus; indeed, it is the first time we are patient enough to engage in long, exhaustive debates, and not just rush headlong into the flashy new playgrounds we have created. In that sense, Bioethics next to anything else is also a sign of maturity for our species, the most convincing evidence that after all we may not be that much unfit for the future.¹

This book comprises of eight chapters, all discussing life and death related issues from a philosophical perspective: abortion and infanticide, genetic engineering, human reproductive cloning, the fear of death, suicide, euthanasia, and the right to die. What all these issues have in common, apart from their obvious connection with the most preposterous of scandals, that of existence, is also that they nourish the most controversial, heated and challenging moral debates: destroy-

¹ While the deep anguish Julian Savulescu and Ingmar Persson express in their book *Unfit for the Future: The Need for Moral Enhancement* (Oxford: Oxford University Press, 2012) is neither unsubstantiated nor erroneous, there are also bright sides that allow for an optimistic view; the establishment of Bioethics is a good proof for this.

ing life just before it emerges or right after, reprogramming the human genome, creating – better, duplicating – life from scratch, and deliberately putting an end to one's own life seem to constitute insoluble conundrums not only for ethics, but also for the human intellect in general. Impossible conundrums, this is what this book is about; its material has been selected with the purpose to provide the reader with philosophical insight into the most challenging and demanding debates in the field of Bioethics.

The first chapter sets out to reconnect the heated debate on abortion and the equally challenging one on infanticide with their philosophical background. To this purpose I decided to structure the material of this chapter around three viewpoints that are not the only key ones as far as abortion and infanticide are concerned, but still are probably the most dominant in the discussion, with the aspiration to trace these viewpoints back to their philosophical – that is, ontological and metaphysical – origins. The Pythagorean doctrine of 'ensoulment-at-conception' as connected with their teaching on the transmigration of the souls, Plato's and Aristotle's all pervasive view that procreation should be controlled, at least to some extent, and that the sustainability of the state should outweigh any other concern, as well as the emphasis the Stoics put on self-awareness as indicative of personhood and agency, have paved the ground for some of the most influential arguments against – as well as in favor of – abortion and infanticide.

The second chapter discusses Judith Jarvis Thomson's arguments in defense of abortion as a women's right to self-determination. Next to its other merits, what mostly makes Thomson's discussion engaging and inspiring is on the one hand the triumphant return of the *analogy* in moral argumen-

tation, and on the other the outstanding and out-of-the-box point of view Thomson adopts. As to the first, Thomson uses a set of sparkling analogies to make her case, which drives one's thought back to the 'ring of Gyges' narrative, by means of which Plato discusses justice; as to the second, Thomson's thesis that, even if we assume that the fetus has a right to life indeed, it still has no claim against the pregnant woman's body, and that the woman's right to self-determination outweighs the fetus' right to life, brought an invigorating breath of fresh air into the debate.

The third chapter sheds light on some ethical issues that arise from the magnificent advances in genetic engineering, especially in the light of the establishment of the CRISPR\Cas-9 technology that has already ignited a revolution in genetic engineering, and is expected to have immense impact on the future of our species. CRISPR\Cas-9, the most advanced tool available in the field of targeted gene editing, promises to make up for the most abhorrent, inevitable and invincible manifestations of natural injustice, the fact that some people are being born with genetic mutations responsible for burdensome or even fatal phenotypic expressions. But the gifts of technology, admirable as they are, are never throughout benign; the most obvious peril related to CRISPR\Cas-9 concerns the depletion of the human species' gene pool.

When it comes to human reproductive cloning we can only admit that it stands as probably the most iconic advancement in the field of the biosciences. After the successful creation of Dolly the sheep, the creation of human clones by means of somatic nuclear transfer seems to be only one step away. The prospect is equally challenging as it is alarming, since it seems that the uniqueness of the 'prototype' as well as of the 'clone' will necessarily be compromised. The fourth

chapter discusses on the one hand the effect that human reproductive cloning might have on our genetic uniqueness, and on the other the soundness and the consistency of a putative moral or human right to a unique identity.

The fear of death is definitely the most persistent and deeply-rooted in the human soul. Is it rationally justifiable, though? The fifth chapter examines Epicurus' seminal and innovative arguments against the fear of death, as well as the influence his line of reasoning had on the discussion ever since. Epicurus' argumentation against the fear of death, next to its undoubtedly philosophical merits, can also provide ethicists and bioethicists with invaluable insight into intentionally-choosing-death related issues; in this respect the Epicurean views are of great significance for the debates on suicide, euthanasia and the right to die.

The most controversial issue in regard to suicide is whether the decision that results to it could be considered as rational, at least under specific circumstances. What makes rational suicide a seemingly impossible oxymoron is that suicide brings about death, and death is considered to be *not just* an evil, but *the ultimate* evil. From this point of view the decision for suicide can never be rational. There is also much controversy, however, concerning whether the view that asserts that death is an evil anyway – let alone the ultimate evil – is grounded on reason, or it is just ‘gut feeling,’ an instinctive, affective aversion towards something that will have no effect on us whatsoever, as Epicurus argues. The sixth chapter discusses the Stoic views concerning the ‘rational removal from life,’ especially Epictetus’ recurring ‘open door’ allegory.

The fact that a constantly increasing number of patients request either to be put to death or be left to die is not by itself a sufficient reason to accept euthanasia and assisted suicide as

morally permissible; nonetheless, it is a quite good reason to engage into exhaustive debates concerning both issues. While still highly controversial, both euthanasia and assisted suicide undoubtedly seem to have some quite strong arguments on their side. The seventh chapter of this book examines the ethics of active and passive euthanasia particularly focusing on the moral relevance that is often attributed to the distinction between *action* and *inaction* – or, active and passive euthanasia respectively – with the aspiration to provide an insightful discussion to the reader.

The putative right to die is the most controversial among all rights, because it necessarily implies that life may on occasion be not worth living, or that death may be preferable to life under specific circumstances; while the first implication most of the times is being severely challenged as inconsistent, counter-intuitive and potentially dangerous, the latter is typically rejected as a common logical fallacy, since there is no common scale on which life and death could be compared: while we are aware of what it is to be alive, non-existence is simply inaccessible to human experience. This final chapter discusses the newly-coined right to die and whether it could be included within standard accounts of typical moral rights.

I am aware of the fact that the point of view of this book could strike some among the readers as unfamiliar, since there is a widespread tendency to assume that Bioethics is only remotely related to Ethics, while it is much more closely connected with the sciences and the law instead. To me this is a philosophically unhappy view, and I couldn't disagree more; it stands as a typical case of judging from the outcome, exactly as assuming that poetry is closely connected to typography, since at the end of the day typography next to anything else produces also poetic volumes. It is true that what is expect-

ed from Bioethics is to come up with solutions to the riddles posed by technology; it is also true that the issues that are debated in the field of Bioethics are intrinsically connected with the sciences. But one doesn't need to scratch very deep below the surface to understand why any bioethical debate is in the core an ethical one. In short, there is not even a single debate in Bioethics that couldn't be reduced to the simple question: "What we ought to do?" Bioethics is about choosing among potential future realities, and this can only be done on the basis of *good reasons*, to wit by showing that *this* option – unlike every other available or possible – is supported by solid ethical justification. In light of the above, this book is also an effort to exhibit that, no matter how dependent on the sciences and the law is, Bioethics is before and above all accountable to Ethics.

Evangelos D. Protopapadakis

Abortion and infanticide: The philosophical background

In their seminal work *Should the Baby Live?*² Peter Singer and Helga Kuhse discuss what is probably the most thorny, challenging and delicate issue in the field of reproductive ethics, that is, infanticide. The question concerns whether severely handicapped newborns should be allowed to live against what their parents wish, despite the fact that their condition hardly foreshadows a worthwhile and meaningful life, and as long as they will live their existence is expected to be an overwhelming and continuous burden to their parents. Back in 1985, when this book was first published, prenatal screening was still far from being either accurate or effective,³ which expectedly resulted in frequent cases of severely impaired infants being given birth; from this perspective, introducing infanticide to the debate was at the time much more arguable than it would seem nowadays that highly sophisticated prenatal testing provides parents the chance to decide whether to deliver or abort the fetus. In this chapter I will discuss the ethics of abortion and infanticide, both taken *only* as a means available to parents to avoid acquiring severely handicapped offspring. By 'severely handicapped offspring' I refer to fetuses and infants that are either diagnosed with a condition that

² Peter Singer and Helga Kuhse, *Should the Baby Live? The Problem of Handicapped Infants* (Oxford: Oxford University Press, 1985).

³ See Howard Cuckle and Ron Maymon, "Development of Prenatal Screening – A Historical Overview," *Seminars in Perinatology* 40, no. 1 (2016): 12-22.

allows extremely low prospects of having a worthwhile life, or whose life expectancy would be dramatically limited, or both, as it is in the case of infantile Tay-Sachs disease, or similar genetic disorders.

Both abortion and infanticide have always been a conundrum for ethics, since the justification of the decision on whether to proceed with any course of action relies heavily upon one's worldviews, religious beliefs and deep philosophical convictions, not to mention moral sentiments and intuitions, and not merely – if not barely – on moral reasoning and critical analysis. This is especially manifest in the case of infanticide: while aborting a fetus that has been diagnosed with infantile Tay-Sachs disease is rarely considered to be morally problematic, since delivering the fetus would only mean condemning it to five years (the maximum life expectancy for infants born with the disease) of meaningless, agonizing life, putting it to death right after birth (in the case prenatal screening has been either not available, or unsuccessful) is usually dismissed out of hand as morally unjustifiable or even abominable, although to some it would seem that the only change in the poor being's condition (emerging from the uterus to outside its mother's body) is morally irrelevant, and therefore one cannot point to a morally significant line of demarcation between a fetus and a newborn. As Peter Singer puts it:

“[...] the life of a fetus (and even more plainly, of an embryo) is of no greater value than the life of a nonhuman animal at a similar level of rationality, self-awareness, capacity to feel and so on, and that because no fetus is a person, no fetus has the same claim to life as a person. Now we

have to face the fact that these arguments apply to the newborn baby as much as to the fetus. A week-old baby is not a rational and self-aware being, and there are many non-human animals whose rationality, self-awareness, capacity to feel and so on, exceed that of a human baby a week or a month old. If, for the reasons I have given, the fetus does not have the same claim to life as a person, it appears that the newborn baby does not either.”⁴

The debate concerning the moral significance of distinguishing between aborting a fetus or embryo and putting to death a newborn infant, undoubtedly has its own charms, merits and appeal, but still it is not the primary focus of this chapter; that said, I need to explain why in what follows I will be dealing with both issues in tandem: although I remain far from convinced that abortion and infanticide are identical in all their morally relevant aspects, I expect that discussing both courses of action in concert will allow me on the one hand to narrow down the discussion to what I consider of paramount moral significance for the debate, the issue of personhood and the moral status accordingly attributed to fetuses, embryos and infants, and on the other to shed a sharp light on as many aspects of the issue as possible. To this purpose I will first set out to provide an outline of the discussion so far, focusing on philosophical views that have become the foundation for the arguments that are currently dominant in the debate.

⁴ Peter Singer, *Practical Ethics* (Cambridge: Cambridge University Press, 1993), 151.

I. The all-or-nothing viewpoint: The Pythagoreans

None of the Pythagoreans' works survived, and the most thorough and trustworthy accounts of their teaching are offered by philosophers who lived six or seven centuries after Pythagoras died, namely Diogenes Laertius, Porphyry and Iamblichus; their testimony, however, combined also with some scarce, brief and often concealed references mostly in Plato's and Aristotle's works, hardly leave any room for doubt as to the way the Pythagoreans conceived of the soul. To them "the soul is immortal and it transmigrates into other kinds of animals."⁵ Though the manner in which it would be possible for a soul to migrate from the body of an animal to that of a human – and vice versa – is left inconclusive, the Pythagoreans followed their master in his reportedly unshakable conviction that the transmigration of the souls involved animals as well,⁶ but also non-animal species.⁷ As to the way *metempsychosis* is possible between sexually reproducing animals, however, Diogenes Laertius provides an impressively detailed account:

⁵ Porphyry, *Vie de Pythagore*, ed. Édouard des Places (Paris: Les Belles Lettres, 2003), 19.

⁶ Diogenes Laertius reports a famous fragment of Xenophanes, a contemporary of Pythagoras, according to which Pythagoras: "[...] as he was passing by a puppy being beaten, he felt compassion and said this: stop, don't beat it, since in the truth it is the soul of a friend which I recognized upon hearing it cry out." Diogenes Laertius, *Lives of Eminent Philosophers*, vol. II, trans. R. D. Hicks (Harvard: Harvard University Press, 1925), fr. 7; VIII, 36.

⁷ Empedocles, largely influenced by the Pythagoreans, is reported to argue – based on his own personal experience – that the human soul could assume the form of non-animal beings, such as fish and flora: "for already I once have been a boy, and a girl, and a bush, and a fish that jumps from the sea as it swims." Diogenes Laertius, VIII, 77, fr. 117 D.

“Living creatures are reproduced from one another by germination; there is no such thing as spontaneous generation from earth. The germ is a clot of brain containing hot vapour within it; and this, when brought to the womb, throws out, from the brain, ichor, fluid and blood, whence are formed flesh, sinews, bones, hairs, and the whole of the body, while soul and sense come from the vapour within.”⁸

This passage sketches what is probably the most unique and prevailing feature of human nature: in lack of empirical data the human intellect is strongly and constantly inclined to make assumptions and form beliefs; in that sense the Pythagorean account of conception is no less metaphysical than their views concerning the soul, since the former no less than the latter is based merely on belief and not at all on evidence – to them both issues were equally obscure and inaccessible to empirically-verified proof. Still, their views initiated an influential philosophical tradition concerning the existence of a sharp borderline between *individual human existence* – or, *personhood* – and non-existence, one that we now often refer to as *non-reductionism*; it is the belief that

“[...] our continuing existence requires something more than the holding of such psychological or physical connections. This something more may be the enduring existence of an extraordinary entity such as an immaterial soul, or it may be just the irreducibility of the fact that certain stages are stages of the person.”⁹

⁸ Diogenes Laertius, VIII, 28-29.

⁹ Earl Conee, “Metaphysics and the Morality of Abortion,” *Mind* 108, no. 432

The Pythagoreans obviously were committed to the view that the best explanation of – as well as the only guarantee for – continuous personal existence might be the hypothesis of an immortal, immaterial soul; to them the soul is this ‘something more,’ the ‘further fact’ required to uphold the notion of personal identity, as Parfit puts it:

“On this view, personal identity over time does not just consist in physical and/or psychological continuity. It involves a further fact. A person is a separately existing entity, distinct from his brain and body, and his experiences. On the best-known version of this view, a person is a purely mental entity: a Cartesian Pure Ego, or spiritual substance.”¹⁰

If personal identity is possible only due to the ‘further fact’¹¹ of possessing an immortal, immaterial soul, and if the soul emerges out from ‘the vapour contained within the germ,’ it follows that personal identity, personhood, is utterly dependent on ensoulment; that is, the moment after which a person has become a person is the moment of conception.¹² Since personhood is not reducible neither to physical nor psychological continuity, but only conditioned by the possession of a soul, it follows that “any person who definitely exists at some time is

(1999): 619-646, 621.

¹⁰ Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984), 210.

¹¹ Keith Thomas Maslin, *An Introduction to the Philosophy of Mind* (Cambridge: Polity, 2007), 276.

¹² Paul Carrick, *Medical Ethics in the Ancient World* (Washington: Georgetown University Press, 2001), 126.

such that at any other time the person either definitely exists or definitely does not exist.”¹³ This unavoidably drives us to the view that fertilized ova, fetuses, embryos and infants are as much of a person as any grownup is, since *tertium non datur*: one may either be a full person, or not a person at all; persons just cannot be classified according to degrees of personhood. This is what Parfit calls the ‘all-or-nothing’ principle:

“We cannot defensibly believe that our identity involves a further fact, unless we also believe that we are separately existing entities, distinct from our brains and bodies. And we cannot defensibly believe that our identity must be determinate, unless we believe that the existence of these separate entities must be all-or-nothing.”¹⁴

It is obvious that according to the Pythagoreans life – human, at least – begins with conception, and it is at exactly the same time that personhood emerges, since what makes a person a person is the further fact of one’s immortal, immaterial soul. In that sense, aborting a fetus or an embryo, as well as killing or letting a newborn die, is putting a person to death. Therefore, either abortion or infanticide has to be as morally acceptable or objectionable as killing any person should be taken to be; and given that to the Pythagoreans the earthly life is either a form of penal servitude imposed upon the soul by the gods, or an opportunity for the soul to be purified, killing a person can be no better than disrespectfully violating the divine will,¹⁵ as well as one’s duty towards the gods. As Socr-

¹³ Conee, 621.

¹⁴ Parfit, 240.

¹⁵ Carrick, 153.

tes claims – expanding on the Pythagorean philosopher Philolaus' views – while discussing the moral acceptability of suicide with Cebes, “the gods are our keepers, and we men are one of their possessions.”¹⁶ Although the – limited, anyway – sources on the Pythagoreans make no reference to either abortion or infanticide, there is no room for doubt that the Pythagoreans would reject even therapeutic abortion, not to speak of infanticide; to many scholars the explicit prohibition of abortion included in the Hippocratic Oath “points to an influence of Pythagorean doctrines.”¹⁷ The Pythagoreans, next to their dualistic view of the universe and their belief to an immaterial, immortal soul, also bequeathed to their successors the conviction that ensoulment occurs at conception, a view that was to become a central tenet for Christianity; the ‘ensoulment-at-conception’ doctrine combined with the all-or-nothing view has become the core of the dominant counter-abortion dogmatic arguments. Since to Christianity the moment of ensoulment also marks out the threshold of personhood, aborting a fetus – even more, putting a newborn to death – equals killing a human person:

“[...] Some people try to justify abortion by claiming that the result of conception, at least up to a certain number of days, cannot yet be considered a personal human life. But in fact, from

¹⁶ Plato, *Phaedo*, 62b, in *The Collected Dialogues of Plato Including the Letters*, ed. Edith Hamilton and Huntington Cairns (Princeton: Princeton University Press, 1961). This view is repeated in Plato's *Laws*, 10.902b: “We affirm that all mortal creatures are possessions of the gods, to whom belongs also the whole heaven.”

¹⁷ Ludwig Edelstein, “The Hippocratic Oath: Text, Translation and Interpretation,” in *Cross-cultural Perspectives in Medical Ethics*, ed. Robert M. Veatch (Boston: Jones and Bartlett, 2000), 8.

the time that the ovum is fertilized, a life is begun which is neither that of the father nor the mother; it is rather the life of a new human being with his own growth. It would never be made human if it were not human already [...] how could a human individual not be a human person?"¹⁸

The Pythagoreans probably weren't the first to conceive of the universe as consisting of two substances, to assume the existence of an immaterial, immortal soul, as well as to endorse the *metempsychosis* hypothesis; concerning all these the Pythagoreans seem to be largely indebted to deeply rooted philosophical worldviews that long preceded them, such as the so-called Orphic tradition,¹⁹ as well as the ones connected with Homer and Hesiod. Nevertheless, if one needs to trace the line of philosophical thought that supports the most dominant anti-abortion (and therefore, of course, also anti-infanticide) argument – the one that makes appeal to conception as the exact moment at which personhood emerges – back to a sharply defined starting point, this would undoubtedly be the Pythagoreans' version of the all-or-nothing viewpoint.

¹⁸ Ioannes Paulus PP. II, *Evangelium Vitae*, 25 March 1995, accessible at http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.pdf.

¹⁹ For an excellent introduction to the Orphic tradition see William K. C. Guthrie, *Orpheus and the Greek Religion* (Princeton, New Jersey: Princeton University Press, 1993); for the transmigration of the souls see especially page 156ff, and for the Orphic influence on the Pythagoreans page 216ff.

II. The societal viewpoint: Plato and Aristotle

It is true that the ensoulment-at-conception doctrine hardly leaves any space for morally accepting abortion and infanticide; it is also true that any clear blanket rejection of abortion often strikes even those who oppose abortion as at least counter-intuitive, especially when ruling out abortion outwardly conflicts with equally strong individual or community related interests or rights, as it is in the case that delivering the child is expected to cause the death of the mother, or when the security, the welfare or even the very existence of the state is being jeopardized due to either excessive reproduction rates, or by acquiring unwanted offspring, whose lives are supposed to be 'burdensome' or 'useless' to the community – the last concern is also dominant in Plato's and Aristotle's thought. A solution to the riddle of abortion – and a much more nuanced approach to the issue – would be to abandon the all-or-nothing viewpoint and relocate the ensoulment threshold to a later stage of intrauterine fetal development, or even at birth; the former view is explicitly endorsed by Aristotle, while the latter seems to be somewhat vaguely supported by Plato.

Although largely influenced by the Pythagoreans and their views concerning the transmigration of the souls, Plato seems reluctant to endorse the ensoulment-at-conception doctrine; on the contrary, it is often implied that the souls exist actively and independently before they enter – and after they leave – the human body, and that they enter the body from outside; this might imply an inward motion of the soul at birth or at an earlier stage of development, as far as at this stage there is *a body* for the soul to enter into. In *Timaeus* it is

explained that the “[...] Soul of the Universe [...]”²⁰ was “[...] divided into souls equal in number to the stars, and each several soul [is] assigned to one star [...]”²¹ until “[...] when, by virtue of Necessity, they should be implanted in bodies [...]”²² in *Phaedo* it is claimed that “[...]our soul existed before our birth [...]”²³ and it “[...] knew and did various things”²⁴ before “[...] its very entrance into the human body,”²⁵ although these things are long forgotten since the souls have “[...] all journeyed to the Plain of Oblivion [...]. They were all required to drink a measure of the water, [...] and each one as he drank forgot all things.”²⁶ It is true that Plato is often cryptic, ambiguous and obscure in his dialogues; this, combined with an often playful mood and his pervasive tendency to leave most discussions inconclusive, leaves no room for absolute certainty concerning his views on ensoulment. Nevertheless, it is nowhere implied that the soul is already present in the germ, as it is with the Pythagoreans; on the contrary, the view that the soul enters the body at a later stage, even at birth, seems to be better supported by certain extant passages. This, of course, allows room for morally justifiable abortion in the Platonic universe or, better, in the Platonic state; surprisingly enough, there is controversy even on whether Plato endorses infanticide in his *euthopia*,²⁷ at least as far as the class of guardians is concerned.

²⁰ Plato, *Timaeus*, 41d, in *Plato in Twelve Volumes*, vol. 9, trans. by W. R. M. Lamb (London: William Heinemann, 1925).

²¹ *Ibid.*

²² *Ibid.*, 42a.

²³ Plato, *Phaedo*, 77c.

²⁴ *Ibid.*, 95c.

²⁵ *Ibid.*, 95d.

²⁶ Plato, *Republic*, 10.621a.

²⁷ Gerrit van Niekerk Viljoen challenges this view in his “Plato and Aristotle on the Exposure of Infants in Athens,” *Acta Classica* 2 (1959): 58-69, 63ff,

In the fifth book of the *Republic* Plato portrays Socrates describing in detail a system of eugenics for the class of guardians; and while things are quite clear with regard to successful breeding, when it comes to unsuccessful breeding a certain degree of ambiguity is allowed in the discussion:

“The offspring of the good, I suppose, they will take to the pen or crèche, to certain nurses who live apart in a quarter of the city, but the offspring of the inferior, and any of those of the other sort who are born defective, they will properly dispose of in secret, so that no one will know what has become of them.’ ‘That is the condition,’ he said, ‘of preserving the purity of the guardians’ breed.”²⁸

Now, while it is always risky to jump into conclusions based upon just a single passage, especially in the case of a huge book like the *Republic* that belongs to an immense corpus, ‘properly disposing the offspring of the inferior’ definitely sounds as an euphemism for exposure, at least according to James Adam:

“From these passages it would seem undeniable that Plato contemplates in Book V the exposure of (A) the offspring of inferior guardians, (B) any deformed offspring produced by guardians of the better sort, (C) the offspring of guardians

while James Adam in his edited version of *The Republic of Plato* (Cambridge: Cambridge University Press, 2010), Appendices to Book V, 358ff. insists that Plato advocates infanticide.

²⁸ Plato, *Republic*, 5.460c.

who have passed the limits of age laid down for those who are to produce offspring for the state. We have no right on linguistic grounds to suggest that τρέφειν and τροφήν are used in the emphatic sense of educating as Guardians and Auxiliaries.”²⁹

A later passage in the *Republic* where Socrates discusses the fate of the offspring of men and women that reproduce although they have passed the age of lawful procreation sheds more light on Plato’s views on infanticide – and also provides ample support to James Adam’s view:

“[...] first admonishing them preferably not even to bring to light anything whatever thus conceived, but if they are unable to prevent a birth to dispose of it on the understanding that we cannot rear such an offspring.”³⁰

In *Timaeus* Plato has Socrates suggesting that such offspring should be given to people who belong to the lower classes to be raised,³¹ which indicates either that Plato had meanwhile changed his views concerning the fate of ‘undeserving’ offspring,³² or that he had finally decided to

²⁹ Adam, 358.

³⁰ Plato, *Republic*, 5.461c.

³¹ Plato, *Timaeus*, 19a: “And do you recollect further how we said that the offspring of the good were to be reared, but those of the bad were to be sent privily to various other parts of the State; and as these grew up the rulers should keep constantly on the watch for the deserving amongst them and bring them back again.”

³² La Rue van Hook, “The Exposure of Infants at Athens,” *Transactions and Proceedings of the American Philological Association* 51 (1920): 134-145, 142.

eradicate all ambiguity and elucidate on the meaning of the vague terminology he uses in the *Republic* – but this only with regard to the exposure of infants; as for ‘not bringing to light anything whatever thus conceived,’ however, there is no mention whatsoever that would refute abortion.

It is true that Plato discusses abortion – and probably also infanticide – only with regard to the class of guardians in his ideal state, and never in real life; it is also true that this ideal state is either a thought experiment, or the best imaginary state of affairs with regard to an anyway failed state of existence, one that Plato has no particular interest in. In any case, the concept is clear: if such a thing as an ideal state is possible, and if the establishment of such a state should be pursued, there has to be stringent control on breeding – at least as far as one class in this state is concerned, the most crucial for the state’s very existence by the way, the guardians; there also need to be effective measures of dealing with possible instances of failure, and such measures would definitely include abortion and, maybe, infanticide. It was not before long that Plato’s most celebrated pupil had a little more to say about abortion and infanticide as a means of state-imposed procreation control.

Aristotle was also largely concerned with breeding and population control in his effort on the one hand to secure the best possible quality of offspring, and on the other to maintain what he considered to be the ‘ideal population’ within the city-state; to this purpose both abortion and infanticide were lawful options to him. The moment of ensoulment, of course, is also to be taken seriously into consideration – but in Aristotle’s view the welfare of the city-state definitely overrides even concerns as such, as it is obvious in his views concerning exposing deformed offspring. The passage that follows recapitulates Aristotle’s views concerning abortion and infanticide:

‘As to exposing or rearing the children born, let there be a law that no deformed child shall be reared; but on the ground of number of children, if the regular customs hinder any of those born being exposed, there must be a limit fixed to the procreation of offspring, and if any people have a child as a result of intercourse in contravention of these regulations, abortion must be practised on it before it has developed sensation and life; for the line between lawful and unlawful abortion will be marked by the fact of having sensation and being alive.’³³

It seems quite puzzling that while Aristotle starkly advocates exposing deformed infants despite the fact that they have by all means already developed ‘sensation and life,’ when it comes to abortion he is cautious to distinguish between ‘lawful and unlawful abortion’ on the basis of whether the fetus is a sensible, living being, the latter meaning ‘able to move on its own’ and therefore ‘ensouled’ in Aristotle’s view:

‘For the soul is the cause of animate bodies as being in itself the origin of motion, as final cause and as substance. Clearly it is so as substance, substance being the cause of all existence. And for living things existence means life, and it is the soul which is the cause and origin of life.’³⁴

³³ Aristotle, *Politics*, 7.1335b.

³⁴ Aristotle, *De anima*, trans. Robert Drew Hicks (Cambridge: Cambridge University Press, 1907), 415b 3-4.

Aristotle is the first to provide a fully detailed, clear, and evidence-based account of the soul and the exact moment of ensoulment. He bluntly rejects the Pythagorean transmigration of the souls doctrine as being absurd,³⁵ and adopts instead the 'embodied soul' viewpoint; the soul is to the body what the eyesight is to the eye.³⁶ Ensoulment – that equates the emergence of life, as it is shown above – takes place in utero, and animation signifies the exact moment of it, since being able to move on its own accord means that the fetus has developed *sense*, which is a part of the soul according to Aristotle; in the case of male fetuses this moment comes at approximately the fortieth day of gestation, while in the case of female ones animation comes at the ninetieth day.³⁷ This is

³⁵ Ibid., 407b 22-23: "We may, however, note here another absurdity which is involved in this as in most other theories concerning the soul. They attach the soul to, and enclose it in, body, without further determining why this happens and what is the condition of the body. And yet some such explanation would seem to be required, as it is owing to their relationship that the one acts, the other is acted upon, that the one is moved, and the other causes it to move; and between two things taken at random no such mutual relations exist. The supporters of such theories merely undertake to explain the nature of the soul. Of the body which is to receive it they have nothing more to say: just as if it were possible for any soul taken at random, according to the Pythagorean stories, to pass into any body. This is absurd, for each body appears to have a distinctive form or shape of its own. It is just like talking of a transmigration of carpentry into flutes: for the craft must employ the right tools and the soul the right body."

³⁶ Ibid., 412b.5; also 413a.1: "For, if the eye were an animal, eyesight would be its soul, this being the substance as notion or form of the eye. The eye is the matter of eyesight, and in default of eyesight it is no longer an eye, except equivocally [...]."

³⁷ Aristotle, *Historia animalium*, trans. D'Archy Wentworth Thompson, ed. J. A. Smith and W. D. Ross (Oxford: Clarendon Press, 1910), 583b: "In the case of male children the first movement usually occurs on the right-hand side of the womb and about the fortieth day, but if the child be a female then on the left-hand side and about the ninetieth day. However, we must by no

the line of demarcation for distinguishing between 'lawful and unlawful abortion' according to Aristotle. Aristotle's views on animation (and its prerequisite, formation) as the threshold of ensoulment have been enduringly influential; "[...] the general distinction between the animate and the inanimate fetus was clearly held by Canon and Roman law alike, and lasted to modern times."³⁸ Later on Aristotle's distinction between animate and inanimate fetuses seems to have also been endorsed by St. Augustine³⁹ and Thomas Aquinas.⁴⁰

It is surprising, indeed, that after having discussed the moment of ensoulment in such detail, and having – based on this discussion – ruled 'unlawful abortion' out, Aristotle is so eager to accept the exposure of deformed newborns. The explanation, I believe, lies in the fact that abortion and infanticide apply to different cases, though the purpose and the cause are the same, the sustainability of the city-state. Abortion to Aristotle is a means of not exceeding an ideal population quota, while infanticide is a means of controlling the quality of

means assume this to be an accurate statement of fact, for there are many exceptions [...]."

³⁸ Alfred Ernest Crawley, *Studies of Savages and Sex* (London: Methuen and Co., 1929), 157.

³⁹ Augustine, *Questiones in Exodus* 80, cited in Crawley, 157, and also in John B. Cobb, *Matters of Life and Death* (Louisville: John Knox Press, 1991), 72: "The body is created before the soul. The embryo before it is endowed with a soul and is *informatus*, as its destruction by human agency is to be punished by a fine. The embryo *formatus* is endowed with a soul; it is an animate being; its destruction is murder and is to be punished by death."

⁴⁰ See Aquinas, *Summa Theologiae*, trans. by the Fathers of the English Dominican Province (London: Washbourn and Oates, 1920), IIa, Q. 64, where Aquinas discusses the accidental killing of a fetus focusing on whether the fetus is 'animated.' See also John Haldane and Patrick Lee, "Aquinas on Human Ensoulment, Abortion and the Value of Life," *Philosophy* 78, no. 304 (2003): 255-278, 256-257.

the offspring. Both practices are intended to serve the same purpose, to wit the best interests of the city-state and, primarily, its sustainability. The relatively small, barely self-sufficient, and of scarce fertile land city-state Aristotle discusses in his writings, could not afford either rearing handicapped children, or sustaining an excessive population. As for maintaining the optimal population, the means Aristotle suggests – that is, abortion – allow for taking into consideration concerns about the lawfulness or the unlawfulness of the action undertaken, concerns that mostly regard the emergence of the soul; giving birth to infants that are either handicapped or deformed, on the contrary, in Aristotle's view constitutes more or less a case of emergency for the state – one that calls for immediate action, and such cases allow no room for concerns other than the sustainability of the city-state. By and large, while Aristotle seems reluctant to entirely dismiss ontological or metaphysical considerations, when discussing abortion and infanticide he is adamant in his view that the best interests of the city-state should prevail. In this perspective Aristotle seems to be in full accord with Plato, both adopting a societal viewpoint concerning abortion and infanticide.

III. The self-awareness viewpoint: The Stoics

With the Stoics the focus of the debate is shifted from being endowed with a soul, to having the faculty of self-consciousness; their ontological views allowed for such a shift, one that largely contributed to the debate and paved the ground for bringing it forward; in a sense it still exerts a strong influence on contemporary thinkers.

To the Stoics the universe is corporeal, consisting of god and matter in conjunction, the fundamental active and pas-

sive principles in their cosmology, a conjunction that “always results in qualified matter.”⁴¹ Therefore the soul is also corporeal, consisting of fire and air, and it is perfectly blended with the body – which consists of earth and water – and remains in constant interaction with it, without ever losing its distinctive qualities, however; this is essential to the Stoics in order to explain why it is possible to the soul on the one hand to interact with the body during life, and on the other to be separated from it at death.⁴² What is interesting here is that the soul becomes engendered after the body:

“Apart from this, however, in his [Chrysippus] account of the generation of soul [...] he says a that the soul comes to be when the foetus has been brought to birth, the vital spirit having changed under chilling as if under tempering, yet as proof that the soul has come to be and is junior to body he uses mainly the argument that the offspring closely resemble their parents both in bent and in character.”⁴³

Although this view is ascribed to Chrysippus by Plutarch, it has never been contested as a Stoic doctrine concerning en-

⁴¹ Anthony Arthur Long, “Soul and Body in Stoicism,” *Phronesis* 27, no. 1 (1982): 34–57, 37.

⁴² “Chrysippus says that death is the separation of soul from body. Now nothing incorporeal is separated from a body. For an incorporeal does not even make a contact with a body. But the soul both makes contact with and is separated from the body. Therefore the soul is a body.” Hans Friedrich August von Arnim, *Stoicorum Veterum Fragmenta* (Stuttgart: Teubner, 1964), 2.790.

⁴³ Plutarch, “On Stoic Self-contradiction,” in Plutarch, *Moralia*, vol. XIII, part 2, trans. Harold Cherniss (Cambridge, MA: Harvard University Press, 1976), 1053, 41a.

soulment; moreover, it seems to be in accord with other extant relevant evidence, especially with the so-called plant analogy:

“He [Chrysippus] believes that the foetus in the womb is nourished by nature like a plant but that at birth the vital spirit, being chilled and tempered by the air, changes and becomes animal and that hence soul has not inappropriately been named after this process.”⁴⁴

Elsewhere the fetus is portrayed as a fruit hanging from the tree in an effort to claim that it is actually no more than a part of the pregnant woman’s body, since being an animal according to Long presupposes awareness “of itself and the external world, and more particularly, [...] of itself reflexively as the object and the subject of impulse [...] to pursue or avoid an external object,”⁴⁵ a capacity any fetus certainly lacks:

“The Stoics say that it is not an animal, but to be accounted part of the mother’s belly; like as we see the fruit of trees is esteemed part of the trees, until it be full ripe; then it falls and ceaseth to belong to the tree; and thus it is with the embryo.”⁴⁶

This view definitely suffices on its own to provide support to abortion from a Stoic perspective, since the mother “technically may do with the fetus as she pleases until such time as it becomes ripe and falls down [...] when personhood in

⁴⁴ *Ibid.*, 1052, 41c.

⁴⁵ Long, 46.

⁴⁶ Pseudo-Plutarch, “Placita philosophorum,” in *Plutarch’s Morals*, ed. William W. Goodwin (Boston: Little, Brown, and Company, 1874), 5.15.

the biological sense [...] was deemed to begin,”⁴⁷ and has also been very influential during the centuries that followed,⁴⁸ as it still is today. But even ‘personhood in the biological sense’ doesn’t seem to be a determinant of decisive moral significance to the Stoics, if not at all irrelevant; this is at least what one may infer from the unexpected readiness and the unrivaled eloquence with which Seneca advocates infanticide in the passage of his *De ira* that follows:

“Mad dogs we knock on the head; the fierce and savage ox we slay; sickly sheep we put to the knife to keep them from infecting the flock; unnatural progeny we destroy; we drown even children who at birth are weakly and abnormal. Yet it is not anger, but reason that separates the harmful from the sound.”⁴⁹

A possible explanation for this could be the Stoics’ “[...] tendency to regard the humanity of a man, his real self, as identical to his *hegemonikon*.⁵⁰ This part of the soul, however, which is dominant over the other seven parts and endows men with rationality and self-awareness, according to the Stoics de-

⁴⁷ Carrick, 136; see also Alfred Ernest Crawley, “Foeticide,” *Encyclopedia of Religion and Ethics*, vol. VI, ed. James Hastings, John A. Shelby and Luis H. Gray (New York: Charles Scribner’s Sons, 1922), 56.

⁴⁸ See Michael J. Gorman, *Abortion and the Early Church: Greek, Jewish and Pagan Attitudes in the Greco-Roman World* (Downers Grove, Illinois: Inter-Varsity Press, 1982), 32: “The Roman jurist Papinian recorded that the Stoic idea that unborn babies were not human beings became a part of Roman law.”

⁴⁹ Seneca, “On Anger,” in Lucius Annaeus Seneca, *Moral Essays*, vol. I, trans. John W. Basore (London: W. Heinemann, 1928-1935), I, 15, 2-3.

⁵⁰ Long, 52.

velops gradually in humans, its development taking up even to puberty to be fully completed.⁵¹ In modern terms, from a Stoic perspective rationality and self-awareness are deemed to be the traits that are the most “central to the concept of personhood, or humanity in the moral sense,”⁵² powers that are made possible only due to the development of the central commanding faculty, the *hegemonikon*; in the absence of such powers, however, both feticide and infanticide mean no injustice or harm to the fetus and the infant respectively.⁵³

The view that the development of self-awareness is a proper – or, *the only* proper – line of demarcation between humanity in the biological and the moral sense has become dominant in present time exerting its influence to many thinkers – famously to Peter Singer, as I already mentioned in the preamble of this chapter; according to their train of thought using interchangeably the terms ‘human beings’ and ‘persons’ is philosophically unhappy, since being a ‘person’ entails immensely significant moral implications that do not necessarily apply in the case of a ‘human being’: while moral rights can be acknowledged to persons, human beings are not necessarily and only by virtue of their ‘humanness’ entitled to the same moral status.

Michael Tooley draws a sharp distinction between a *person* and a *human being*; in his view *personhood* is “a moral con-

⁵¹ See Carrick, 55: “Roughly, many of the Stoics of Seneca’s period believed that the human soul, following birth, continued to expand its powers until around the age of fourteen, when it acquired the full capacity of rationality.”

⁵² In her seminal paper on abortion Warren seems to endorse a perspective concerning personhood quite similar to the Stoic one; see Mary Anne Warren, “On the Moral and Legal Status of Abortion,” *The Monist* 57, no. 1 (1973): 43-61, 55.

⁵³ Carrick, 138.

cept, free of all descriptive content,”⁵⁴ one that bestows upon an individual being the moral right to life in particular: “in my usage the sentence ‘X is a person’ will be synonymous with the sentence ‘X has a (serious) moral right to life.’”⁵⁵ Not every being is entitled to rights, and among those who are, only persons are entitled to the right to life. In a nutshell, Tooley claims that being a person and, therefore, having a moral right to life means that one possesses the faculty of self-awareness:

“An organism possesses a serious right to life only if it possesses the concept of a self as a continuing subject of experiences and other mental states, and believes that it is itself such a continuing entity.”⁵⁶

This definition according to Tooley definitely excludes fetuses and also infants from the right to life (a right that according to him follows from the concept of personhood) so long as fetuses and infants do not “possess the concept of a continuous self any more than a newborn kitten possesses such a concept.”⁵⁷ In Tooley’s view it takes more than just being a member of the species *Homo sapiens* to be entitled to higher levels of moral respect, protection or consideration; fetuses and infants obviously lack this ‘more,’ regardless of whether this ‘more’ is the ‘concept of a self as a continuing subject of experiences,’ or ‘awareness of self as the object and the subject of impulse.’ Ethicists like Peter Singer couldn’t agree more with this view.

⁵⁴ Michael Tooley, “Abortion and Infanticide,” *Philosophy and Public Affairs* 2, no. 1 (1972): 37-65, 40.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, 62.

⁵⁷ *Ibid.*, 63.

To Singer the development of rationality and self-consciousness is the decisive mark of personhood,⁵⁸ coupled with autonomy, the ability to interact with other beings, to be able to conceive of a personal future life, and to have enjoyable experiences.⁵⁹ This, of course, rules out certain forms of human existence: patients in a persistent vegetative state, the mentally deranged and the severely retarded, and of course fetuses and infants.⁶⁰ Against the harsh criticism and the various accusations he receives,⁶¹ Singer argues that instead of “treating all human life as of equal worth,”⁶² we should “recognize that the worth of human life varies,”⁶³ and that “life without consciousness is of no worth at all.”⁶⁴ In a nutshell, we should

“[...] treat human beings in accordance to their ethically relevant characteristics. Some of them are inherent in the nature of the being. They include consciousness, the capacity for physical, social, and mental interaction with other beings, having conscious preferences for continued life, and having enjoyable experiences. Other relevant aspects depend on the relationships of the being to others, having relatives for example who

⁵⁸ Peter Singer, *Practical Ethics* (Cambridge: Cambridge University Press, 1993), 182.

⁵⁹ Peter Singer, *Rethinking Life and Death: The Collapse of our Traditional Ethics* (New York: St. Martin’s Griffin, 1996), 191.

⁶⁰ Peter Singer and Helga Kuhse, *A Companion to Bioethics* (New Jersey: Willey-Blackwell, 2009), 138ff.

⁶¹ See, among others, Oliver Tolmein, *Wann ist der Mensch ein Mensch? Ethik auf Abwege* (Munich – Vienna: Carl Hanser Verlag, 1993), 57-76.

⁶² Singer, *Rethinking Life and Death*, 190.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

will grieve over your death, or being so situated into a group that if you are killed, others will fear for their own lives. All of these things make a difference to the regard and respect we should have for a being.”⁶⁵

Arguably in Singer’s point of view fetuses and newborns do not qualify for moral status any higher than the one we usually acknowledge to “a full-grown horse, or dog,”⁶⁶ in Bentham’s words; their potential to become rational, self-conscious agents in the future, is also morally irrelevant at their present state of being, according to Singer, since abortion or infanticide will be executed on the beings they currently are, and not on what they will probably become in the future. Killing any being at a stage of its development when it is neither rational nor self-conscious cannot be morally objectionable on the grounds that it will probably become one in the future, “not, that is, unless we are also prepared to count the value of rational self-conscious life as a reason against contraception and celibacy.”⁶⁷ The argument is a clear-cut one: [a] Killing is morally wrong if it harms the being that is killed. [b] Only beings that are capable of seeing themselves as distinct entities existing over time may be harmed if killed. [c] Fetuses and newborns do not belong to this category; therefore killing them is not harming or wronging them. [d] It follows that killing fetuses and newborns is not morally wrong.

⁶⁵ Ibid., 191.

⁶⁶ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (New York: Dover Publications, 2007), 311.

⁶⁷ Singer, *Practical Ethics*, 182; see also Singer and Kuhse, *Should the Baby Live?*, 1ff.

V. A postscript

Abortion is indeed among the toughest issues for Bioethics. Infanticide, however, by all means qualifies as an impossible one, as the ultimate challenge to established worldviews, metaphysical tenets, moral principles, and religious commitments – if it weren't such a taboo, it would definitely be the perfect playground for ethicists. Ethics, however, is not about just being smart; it is more about effectively addressing real-life issues with solid, sound solutions. In this chapter I set out to trace back to their origins three alternative viewpoints that are in my view not only still influential, but also dominant in the current debate concerning abortion and infanticide. The reason I decided to give that direction to this chapter lies in that I am strongly committed to the view that every moral argument can be better comprehended, explained and challenged in the context of – and in connection with – the philosophical tradition that sustains it; there is no tree that has no roots, therefore the complete understanding of any tree necessarily involves its rooting system.

To this purpose I first discussed the blanket rejection of both abortion and infanticide, which is based upon the argument that the fetus no less than the newborn are ensouled, complete human beings even from conception, and killing a human being is always morally wrong. While the second premise is a moral principle, the first is an ontological tenet that, as far as I am concerned, has its origins with the Pythagorean teaching concerning the soul. Then I moved on to the view that when the best interests or even the sustainability of the community are being seriously threatened, all other concerns should be considered irrelevant; to the best of

my knowledge the origins of this concept can be traced back to Plato and Aristotle. The last viewpoint I included in this discussion is the one that focuses on self-consciousness and self-awareness, which seems to echo Stoic doctrines concerning the emergence and the development of the soul in human beings. This last one is in my view the most nuanced and challenging among the three, since its strength is dependent upon several subtle determinants on the one hand, while its implications exceed its initial scope on the other – if self-awareness is deemed the only foundation of personhood, and if only persons are entitled to moral concern, then dogs or horses, to quote Bentham again, are entitled to at least the same moral protection as fetuses and newborns are, and are definitely deserving of higher moral concern than that we reserve for humans who will never develop the concept of a self as a continuous subject of experiences, desires, emotions etc., like Down syndrome or anencephalic individuals. The unrivalled hostility this view has been met with is indicative of the extent to which it is on the one hand counter-intuitive, and on the other thought-provoking and seminal.

As I already claimed, moral debates are not just about being smart; they are not about being stubborn, either; facts are even more stubborn than any ethicist may be, and our moral sentiments, so far as they are real and persistent, cannot be excluded from facts. Against the criticism that it is morally unsound and counter-intuitive to argue that chipmunks deserve higher moral status than human newborns, one could claim that it is equally unsound, counter-intuitive, and also callous, to argue that embryos diagnosed in utero with a condition that will unavoidably doom them to a meaningless, unconscious, short and agonizing existence – as it is with embryos diagnosed with infantile Tay-Sachs syndrome – should be

brought to life no matter what, against to what any reasonable agent would wish for himself, and to the detriment of those infants' family and the community. The debate on abortion and infanticide requires better, sounder and even more challenging arguments to move forward. Fortunately enough, no one is better than ethicists in this.

Defending abortion against the right to life

At the end of the previous chapter I insinuated the invigorating effect that debates like the one concerning abortion and infanticide may have on the creativity and the ingenuity of ethicists. Presenting a serious and engaging moral debate as the ‘perfect playground for ethicists’ might probably strike the reader as somewhat exaggerated and undue. This, of course, would apply only to those who aren’t well-versed in the moral discussion concerning abortion; to those who are, however, my mention might even sound as an understatement: over the last fifty years the abortion issue has initiated – and keeps fueling – a moral debate that is probably the most abounding with imaginative and resourceful thought experiments, examples and allegories in the history of ethics.

I. Introduction

Ethicists have indeed spared no pains to support their views with regard to abortion: Mary Anne Warren in her effort to defend the distinction between ‘genetic’ and ‘moral humanity’ – the latter being equivalent to *personhood* in her view – makes appeal to an imaginary encounter between human space-travelers and creatures that belong to an alien species;⁶⁸ Judith Jarvis Thomson creates fascinating stories about kid-

⁶⁸ Mary Anne Warren, “On the Moral and Legal Status of Abortion,” *The Monist* 57, no. 4 (1973): 43-61, 54ff.

napped women plugged into famous violinists,⁶⁹ “people-seeds [that] drift about in the air like pollen, and if you open your windows, one may drift in and take root in your carpets,”⁷⁰ soon leaving you with a newborn; Roger Wertheimer writes of transparent wombs⁷¹ and “robots with a psychology isomorphic with ours and a physical structure comparable to ours”⁷² to explain how misleading moral intuition may be when it comes to abortion; Michael Tooley in his effort to defend his view that it is not “seriously wrong to destroy a member of homo sapiens which lacks such properties, but will naturally come to have them,”⁷³ discusses an awkward prospect: in the future advanced science may make available chemicals that, when injected into kittens’ brains, “would cause the kitten to develop [...] a brain of the sort possessed by humans.”⁷⁴ And these are only a few in a vast series of imaginative thought experiments created by ethicists in their effort to discuss abortion. What is it about abortion, then, that sets loose the imagination of philosophers? This is probably, as Abbott argues, due to that “we cannot confront the human condition

⁶⁹ Judith Jarvis Thomson, “A Defense of Abortion,” *Philosophy and Public Affairs* 1, no. 1 (1971): 47-66, 48ff.

⁷⁰ *Ibid.*, 59.

⁷¹ Roger Wertheimer, “Understanding the Abortion Argument,” in *The Rights and Wrongs of Abortion*, ed. Marshall Cohen, Thomas Nagel, and Thomas R. Scanlon, 23-51 (New Jersey: Princeton University Press, 1974), 47; first published with the same title in *Philosophy and Public Affairs* 1, no. 1 (1971): 67-95.

⁷² Wertheimer, 48.

⁷³ Michael Tooley, “Abortion and Infanticide,” in *The Rights and Wrongs of Abortion*, ed. Marshall Cohen, Thomas Nagel, and Thomas R. Scanlon, 52-84 (New Jersey: Princeton University Press, 1974), 76; first appeared under the same title in *Philosophy and Public Affairs* 2, no. 1 (1972): 37-65.

⁷⁴ Tooley, 75ff.

directly,”⁷⁵ especially when it comes to issues that directly concern life and death; the issue of abortion, as a matter of fact, concerns both, and this probably makes ethicists particularly prone to discuss indirectly its ethics. To this purpose appealing to allegories, parables and examples seems to be the most affordable way of dealing with the issue. After all, the use of allegories already has a long, rich and fruitful tradition in the history of philosophy: it is as early as with Plato that imaginative thought-experiments have been introduced into controversial moral debates. The *ring of Gyges* narrative⁷⁶ is a celebrated example of Plato’s creativity in his effort to examine whether “one is just of his own will, or only from constraint,”⁷⁷ but it is not the only one: it initiated a long line of similarly structured arguments. In this chapter I will discuss an allegory no less controversial than thought-provoking and inspiring created by Judith Jarvis Thomson with the intention to defend abortion as a women’s right against the fetus’s alleged right to life.

II. An argument from analogy

At the heart of the debate on abortion lay two major issues: the one concerns the moral status of the fetus and, more specifically, if it could be considered as a person⁷⁸ in the sense of being counted as a rights-bearer, so as to be possibly also entitled to the right to life; the other is about whether and to

⁷⁵ Philip Abbott, “Philosophers and the Abortion Question,” *Political Theory* 6, no. 3 (1978): 313-335, 318.

⁷⁶ See Plato, *Republic*, 2.359d-360c.

⁷⁷ *Ibid.*, 2.360c.

⁷⁸ Elizabeth Harman, “The Moral Status of Early Fetuses and the Ethics of Abortion,” *Philosophy and Public Affairs* 28, no. 4 (1999): 310-324.

what extent pregnancy affects the moral status of women in general, and their right to self-determination in particular.⁷⁹ As for the first issue, in the previous chapter I have already provided a rough outline of the most dominant viewpoints: a. Fetuses are to be counted as persons already from conception,⁸⁰ b. Personhood is acquired at birth, or soon after it,⁸¹ iii. Conception and birth are morally irrelevant; on the contrary, the property of personhood is utterly dependent upon faculties such as self-awareness,⁸² viability,⁸³ sensibility,⁸⁴ etc. As to the second issue, the major moral standpoints, as expected, are that a. Pregnancy diminishes the woman's autonomy-related rights, since the fetus's right to life should prevail in any case of conflict; this standpoint, of course, presupposes the acceptance of the 'personhood-acquired-in-utero' view, and is often being referred to as 'pro-life.' b. Pregnancy has no effect whatsoever on the pregnant woman's moral status, irrespective of whichever view is to be taken regarding the emergence of personhood; this is the 'pro-choice' viewpoint. Thomson's key contribution to the debate on abortion is a set of arguments from analogy presented in a paper of hers published in 1971 that was soon to become "the most widely reprinted essay in all of contemporary philosophy."⁸⁵ The most emblem-

⁷⁹ Jane English, "Abortion and the Concept of a Person," *Canadian Journal of Philosophy* 5, no. 2 (1975): 233-243, 238ff.

⁸⁰ Patrick Lee, "The Pro-Life Argument from Substantial Identity: A Defence," *Bioethics* 18, no. 3 (2004): 249-263, 250.

⁸¹ Joan C. Callahan, *Reproduction, Ethics, and the Law* (Indiana: Indiana University Press, 1995), 287.

⁸² Tooley, 40ff.

⁸³ See *Roe v. Wade*, 410 U.S. 113 (1973).

⁸⁴ Warren, 57-59.

⁸⁵ William Parent, "Editor's Introduction," in Judith Jarvis Thomson, *Rights, Restitution and Risk*, ed. William Parent, vii-x (Harvard: Harvard University

atic among these analogies is the celebrated ‘violinist analogy’, on which I intend to focus in this chapter. The narrative is as follows:

“You wake up in the morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He has been found to have a fatal kidney ailment, and [...] you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist’s circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own [...] for nine months [...] Is it morally incumbent on you to accede to this situation? No doubt it would be very nice of you if you did, a great kindness. But do you have to accede to it? What if it were not nine months, but nine years? Or longer still? [...] Because remember this. All persons have a right to life, and violinists are persons. Granted you have a right to decide what happens in and to your body, but a person’s right to life outweighs your right to decide what happens in and to your body. So you cannot ever be unplugged from him.”⁸⁶

The principle Thomson seems to put to challenge here is a prevailing one in most major traditions in ethics: human life is endowed with superior moral value or, more precisely, with value of a particular kind that outweighs any other in cases of

Press, 1986), vii.

⁸⁶ Thomson, “A Defense,” 48-49.

conflict, freedom, autonomy and self-determination included. In a nutshell, human life is of unconditional, intrinsic, utter value. This is either due to its alleged divine origin, or just because life is prior to all value and serves as the basis of it; by and large, before anything else one has to be a living human being to be acknowledged the status of a moral agent that allows properties such as free will or autonomy.⁸⁷ If this is so, it follows that the moral right to life should also prevail over any other in cases of conflict, when, for instance, it is considered against the right to self-determination; such a view, nonetheless, would make abortion morally unjustifiable.

A possible line of defense against this could be the following: only persons are entitled to moral rights, and it could be argued that not every human being is a person, as I have explained in the previous chapter; in particular, an embryo or fetus may not *yet* count as a person, although it will probably develop into one, exactly as acorns are not oak trees, although they are likely to develop into oak trees in the future. Thomson, though, seems reluctant to draw such a line; on the contrary, she is “inclined to think also that we shall probably have to agree that the fetus has already become a human person well before birth.”⁸⁸ What she takes up to examine is whether allowing such a premise necessarily leads to the conclusion that abortion is morally impermissible. Granting that the fetus is a person even from the moment of conception, and that persons have the right to life, allows Thomson to focus on whether such a right could be as strong and stringent as to necessarily outweigh the mother’s right to decide what is going to happen with her body. The ‘violinist analogy’ is exactly about this.

⁸⁷ Cf. Shelly Kagan, “Rethinking Intrinsic Value,” *The Journal of Ethics* 2, no. 4 (1998): 277-297.

⁸⁸ Thomson, “A Defense,” 47.

By and large, Thomson's analogy is a clear-cut, typical *modus tolens* type argument: P implies Q; Q is untrue; therefore P is also untrue; the argument is roughly as follows:

- a. If the fetus's alleged right to life outweighs the mother's right to self-determination indeed, then the violinist's right to life should also prevail over the kidnapped woman's right to self-determination, and the woman should be morally obliged to stay connected with the violinist for nine months.
- b. The kidnapped woman is not obliged to stay connected with the violinist for nine months.
- c. Therefore, the fetus's right to life doesn't outweigh the mother's right to self-determination.

The second premise of the argument is open to challenge, of course; one may reject it and assume instead that the kidnapped woman of the narrative *actually is* morally obliged to stay connected to the violinist for nine months so as to support his kidney function and save his life: nine months of 'hospitalization' in exchange of a human life is not exactly the worst moral bargain imaginable, anyway; on the other hand, apart from deserving of our highest moral esteem and admiration, acts of solidarity and altruism are often – and in the light of several moral traditions – assumed to correspond to moral duties, either perfect or imperfect: sacrificing too less (nine months in bed) in order to allow another person enjoy too much (continue living) seems to be the epitome of an easy-rescue.⁸⁹

⁸⁹ For the concept of easy-rescue see chapter 8.

Thomson defends her view by arguing that, if it is morally incumbent on the woman to stay in bed for nine months to save the violinist's life, it would be equally compelling to do the same even if saving the violinist's life would require nine years of the woman's life, or more; this, however, is absurd, or, at least, as not plausible-sounding as the nine-months version of the narrative.⁹⁰ Still, if remaining plugged for nine years cannot be regarded as a moral duty owed to the violinist, the same would apply in the case the woman had to stay connected to the violinist for nine months; quantitative differentiations are hardly of any moral significance when it comes to morally assessing decisions or actions. The upshot is, according to Thomson, that no one may have any plausible moral claim over any other person's body or freedom, even when one's life is at stake; it follows that, even if the fetus is to be regarded as a person and, hence, acknowledged the right to life, it cannot be inferred that abortion is morally unjustifiable as violating the fetus's right to life,⁹¹ since even such a right is not that powerful as to outweigh the pregnant woman's autonomy-related right to self-determination.

By and large, in Thomson's view the right to life does not impose on other moral agents any particular course of *action*; being the epitome of a typical negative right, it may only oblige *inaction*. It follows that the bearers of the right to life, in turn, while they are perfectly justified to raise certain claims not to be acted upon in ways that would pose any threat to their life, are by no means entitled to claim that others should undertake any course of action whatsoever in order to protect, prolong, or save their lives. As far as Thomson is right in her

⁹⁰ Thomson, "A Defense," 49.

⁹¹ Cf. Nancy Davis, "Abortion and Self-Defence," *Philosophy and Public Affairs* 13, no. 3 (1984): 175-207, especially 178ff.

view that terminating one's pregnancy is analogous to unplugging one's self from a violinist, abortion is not killing the fetus, but just ceasing to provide it with the support necessary to continue living. This, according to Thomson, doesn't actually violate any right of the fetus:

"If I am sick unto death, and the only thing that will save my life is the touch of Henry Fonda's cool hand on my fevered brow, then all the same, I have no right to be given the touch of Henry Fonda's cool hand on my fevered brow. It would be frightfully nice of him to fly in from the West Coast to provide it. It would be less nice, though no doubt well meant, if my friends flew out to the West Coast and carried Henry Fonda back with them. But I have no right at all against anybody that he should do this for me."⁹²

The crux of Thomson's argument is that the fetus's right to life does not impose any duty whatsoever on the mother not to terminate her pregnancy; in her view having the right to life does not amount to "a right to be given the use of or a right to be allowed continued use of another person's body – even if one needs it for life itself."⁹³ Thomson claims that "the right to life consists not in the right not to be killed, but rather in the right not to be killed unjustly;"⁹⁴ if this is so, aborting the fetus would indeed be violating his right to life only in the case the mother had conceded in advance to give "the unborn person

⁹² Thomson, "A Defense," 55.

⁹³ Ibid., 56.

⁹⁴ Ibid., 57.

a right to the use of her body for food and shelter,”⁹⁵ that is, if she had voluntarily called the fetus into existence. Voluntarily deciding to have a baby, nonetheless, certainly excludes cases of pregnancy due to rape, faulty contraception, immaturity, miscalculation of ovulation days, and the like; as a matter of fact, it only applies to cases that normally fall out of the scope of this discussion, since women who have voluntarily called their fetus into existence hardly ever consider abortion. In any case, the least Thomson’s train of thought does is to allow room for distinguishing between morally justifiable and unjustifiable cases of voluntary abortion, limiting to the latter the moral relevance of the fetus’s right to life.

Thomson’s contribution has been of enormous importance for – and had a huge impact upon – the moral discussion on abortion; apart from having significantly re-invigorated the debate, Thomson has been successful in shedding light on several key aspects of the discussion that until then had been relatively neglected by ethicists: first and foremost, that pregnancy should not be discussed as if it were always the outcome of voluntary, deliberate, rational decision-making on behalf of the pregnant woman; women are also getting pregnant involuntary either due to rape, or to failed contraception, or just accidentally. If this is true, any endeavor to come up with a blanket moral assessment of abortion will necessarily overlook morally significant aspects of the issue; aborting a fetus in order to maintain one’s silhouette can hardly be examined on a par with requesting abortion in order not to give birth to the child of one’s rapist. And again, the view that the right to life doesn’t amount to an unqualified prohibition against taking human life in general, but rather to a principle that rules out cases of unjust or wrongful killing, allows

⁹⁵ Ibid.

Thomson to shift the focus of the discussion and bypass the – somewhat worn out and barren – pro-life versus pro-choice controversy. In a sense Thomson's views re-established the debate, paving the ground for many more resourceful and deep – though not always that imaginative – contributions; for instance, Thomson's contention that the moral permissibility of abortion is not necessarily in conflict with the fetus's right to life attracted Kantian ethicists⁹⁶ to engage into nuanced moral discussions concerning the moral status of pregnant women,⁹⁷ the extent to which pregnancy may affect moral agency⁹⁸ and, most importantly, concerning what it means to treat *also* pregnant women “never merely as means, but always at the same time as ends in their selves.”⁹⁹

⁹⁶ Cf. Harry J. Gensler, “A Kantian Argument against Abortion,” *Philosophical Studies* 49, no. 1 (1986): 83–98.

⁹⁷ Cf. Susan Feldman, “From Occupied Bodies to Pregnant Persons: How Kantian Ethics Should Treat Pregnancy and Abortion,” in *Autonomy and Community: Readings in Contemporary Kantian Social Philosophy*, ed. Jane Keller and Sidney Axinn, 265–282 (Albany: State University of New York Press, 1998), 270.

⁹⁸ Cf. Lara Denis, “Animality and Agency: A Kantian Approach to Abortion,” *Philosophy and Phenomenological Research* 76, no. 1 (2008): 117–137, 118.

⁹⁹ Kant's second (according to Allen Wood's classification; third according to others) formulation of the moral law: “For rational beings all stand under the law that every one of them ought to treat itself and all others never merely as means, but always at the same time as end in itself.” [4:432]; also “Act so that you use humanity, as much in your own person as in the person of every other, always at the same time as end and never merely as means,” [4:429] and “That the rational being, as an end in accordance with its nature, hence as an end in itself, must serve for every maxim as a limiting condition of all merely relative and arbitrary ends” [4:436]. Immanuel Kant, *Groundwork of the Metaphysics of Morals*, ed. and trans. Allen W. Wood (New Haven and London: Yale University Press, 2002).

III. Objections

Despite its undoubted merits, most notably its ingenuity and liveliness, Thomson's argumentation in defense of abortion has been severely criticized as appealing only to moral intuition or personal inclination, while lacking at the same time any robust theory as a “basis of philosophical logic – the logic of moral concepts,”¹⁰⁰ in Richard Mervyn Hare's words. Hare's criticism might be somewhat undeserved, considering that the role of analogical arguments in normative moral philosophy is mostly to provide insight, but not to prove a case beyond doubt; in other words, analogical reasoning may be a very useful heuristic tool¹⁰¹ and an excellent guide for philosophical investigation, but never anything more than this, since the conclusion does not follow with certainty – an analogical argument affords just “some degree of probability, beyond what would otherwise exist, in favour of the conclusion.”¹⁰² Thomson indeed “simply parades the examples before us and asks what we would say about them,”¹⁰³ and this is probably exactly what she intended to do; ‘what we would say about them’ depends on whether the conclusion Thomson reaches is actually strongly supported by the examples she provides. To determine this, in what follows I will mainly focus on the

¹⁰⁰ See Richard Mervyn Hare's criticism in his “Abortion and the Golden Rule,” *Philosophy and Public Affairs* 4, no. 3 (1975): 201–222, especially 201 and 202.

¹⁰¹ See Alan Hájek, “Creating Heuristics for Philosophical Creativity,” in *Creativity and Philosophy*, ed. Berys Gaut and Matthew Kieran, 292–312 (New York: Routledge, 2018).

¹⁰² John Stuart Mill, *A System of Logic, Ratiocinative and Inductive* (London: Longmans-Green, 1930), 333.

¹⁰³ Hare, 201.

balance between similarities and differences concerning the cases Thomson assumes to be analogous each time, as well as on whether these similarities are indeed of a structural and causal kind, or just superficial and random. In other words, I will examine whether and to what degree the condition of the violinist is indeed analogous to that of the fetus, and at the same time if the condition of the kidnapped woman in the narrative is even in broad terms symmetrical to that of a pregnant woman, or whether, on the contrary, the differences between these two cases are so substantial, as to make the violinist analogy morally irrelevant, like Thomson's critics are never weary to argue.¹⁰⁴

The violinist analogy, no doubt, seems perfectly symmetrical to cases in which a woman conceives not just against her will, but against the will of an *ordinary, rational agent*: no rational agent would will to be kidnapped, since after all such a will would be self-defeating: in case one wills to be kidnapped, there can be no abduction; by definition the same applies to impregnation due to rape and, as far as such cases are concerned, the analogy seems to work fine.¹⁰⁵ The same might also apply in cases of failed contraception, as well. Nevertheless, this is the end of the line, and this is a rather short and thin line indeed: the chances for a woman to become pregnant due to rape are slightly higher than her chances to be abducted and connected to a stranger. This, of course, applies only under normal circumstances; in wartime, for instance, the chances of coerced intercourse are dramatically increased. One would

¹⁰⁴ Eric Wiland, "Unconscious Violinists and the Use of Analogies in Moral Argument," *Journal of Medical Ethics* 26, no. 6 (2000): 466-468; for a quite comprehensive synopsis of the criticism Thomson's analogy has drawn, see page 467.

¹⁰⁵ Warren, 49ff.

object on the basis that the circumstances are not always normal; nonetheless, in my view such an objection would be irrelevant to the discussion: under extreme, abnormal circumstances, like it is in wartime, the right to abortion – in fact, any right – turn into thin air and become wishful thinking.

Pregnancy due to failed contraception, on the other hand, is a much more possible scenario; but is the probability still so high as to prove Thomson's analogy strong enough? According to the evidence we have, it isn't. As a matter of fact, average contraception failure rates are reported to be as low as 5 %.¹⁰⁶ With rates as low, however, cases of failed contraception are still far from being a typical, commonplace scenario of unwanted pregnancy. That said, Thomson's analogy seems to exclude all other, much more common cases of becoming pregnant and deciding to have an abortion, such as conceiving intentionally and changing one's mind right after, being reckless, or careless, or just inexperienced and immature, etc.¹⁰⁷ In any case, the kidnapped woman of the narrative doesn't seem to be analogous to *the average woman* that becomes pregnant, as Thomson assumes, but only to the regrettable though slight minority of cases in which women are impregnated either due to rape or failed contraception.

In addition to these, I feel that even in cases of impregnation due to rape the similarities with Thomson's narrative are only superficial. The violinist analogy comprises by two distinct parts that are both equally undesired *per se*, and also

¹⁰⁶ The rates correspond to male condom failure, probably the most widely used contraception method; implants failure rates go as low as 0,5 %, but their use is relatively scarce. See Chelsea B. Polis, Sarah E. K. Bradley et al., "Typical-use Contraceptive Failure Rates in 43 Countries with Demographic and Health Survey Data: Summary of a Detailed Report," *Contraception* 94, no. 1 (2016): 11-17.

¹⁰⁷ Warren, 60ff.

equally morally objectionable: being kidnapped, or kidnapping another person, is always *per se* morally reprehensible irrespective of either the circumstances this may happen, or the consequences of it; and again, being forced to remain connected to somebody against one's will, or forcing somebody to do so, is also always *per se* morally objectionable, irrespective of both the circumstances and the consequences. In both cases the autonomy of the moral agent is being violated and one's dignity is being severely compromised. To sum up, Thomson's example consists in two distinct moral decisions that, taken separately, are both always morally unjustifiable *per se*. On the contrary, the impregnation-due-to-rape scenario consists in two distinct incidents that, if examined separately, are not both *per se* morally wrong: while being raped – or raping another person – is always morally reprehensible *per se*, being pregnant with a child is not *per se* a morally reprehensible situation. Pregnancy might be an undesired situation to many women and for many reasons, certainly even more so in the case it has been the result of coercive sexual intercourse; this, however, doesn't make pregnancy *per se* a morally regrettable, objectionable or reprehensible condition for a woman. To sum up, if we analyze Thomson's fictional case on the one hand, and the real-life situation it is supposed to be analogous to on the other into the incidents they consist of, we can only conclude that there is no actual moral symmetry between them, since while rape (A) and abduction (B) are morally analogous, confining one to bed for nine months (A₁), and being pregnant (B₁) are not. The bottom line in my view is that there is actually no structural, but only superficial similarity between these two cases.

The moral irrelevance of A₁ (being bedridden for nine months to save the life of a complete stranger) and B₁ (deliv-

ering one's rapist's child) is better shown in the example that follows:

A. Anne and Jane have both been raped; after a while they both discover that they have been impregnated by their rapists. Anne decides to maintain her pregnancy and eventually gives birth to the child. Anne has always been against abortion due to a variety of reasons; she hasn't yet made up her mind concerning whether she will raise the child herself as a single mother, or give the baby up for adoption; she only knows that she doesn't want to abort the fetus. Jane, on the contrary, is much more inclined to terminate her pregnancy; Jane is also against abortion, but she feels that she cannot raise a child that every day would remind her of what she struggles to bury deep in her soul.

B. Suzan and Stacy have both been kidnapped by a Society of Music Lovers; both wake up to find that each one of them, while she was unconscious, had been intravenously connected to a stranger. The Director of the Society enters the room and informs both bewildered women that the two strangers they are connected to are famous violinists who had recently suffered kidney failure, and that according to medical records only Suzan and Stacy are compatible with each one of them respectively; what Suzan and Stacy would have to do, is to stay in bed for nine months with the violinists' circulatory system plugged into theirs,

so that their kidneys can be used to extract poisons from the violinists' blood – otherwise both violinists will die immediately. However, the Director continues, no person's right to life could outweigh another's right to self-determination; therefore, both Suzan and Stacy are free to decide whether they will unplug themselves, or do the violinists a huge favor. Suzan makes up her mind: she is ready to sacrifice nine months of her life in order to save the violinist connected to her; she values her freedom and privacy immensely, but she just couldn't bear with the knowledge that while she could do something to save a life, she didn't. Stacy, on the other hand, although she sympathizes with the person whose life is at stake, decides to unplug herself; such a sacrifice is just beyond her powers.

Caught on the horns of the same dilemma Anne and Jane have come up with quite different decisions. Regardless of whatever one thinks about motherhood and abortion, Anne (who decided to maintain her pregnancy) is no moral hero, nor is her decision a supererogatory one. Undoubtedly she deserves our moral appreciation for having found the strength to overcome the dark emotions associated with the distressing events that resulted in her pregnancy; nonetheless, what makes her decision worthy of appreciation is only that: as far as everything else is concerned, and by this I mean her decision to maintain her pregnancy and deliver the child, Anne does nothing different from what her own mother did, as well as billions of other women in the course of time. No doubt, being raped is an absolutely regrettable experience in every

person's life (men are also getting raped); being impregnated due to rape is equally distressful and grievous; but this is not what my argument is about: Anne has definitely experienced an absolutely lamentable series of events that have led to her pregnancy, but giving birth to a child in general is by no means a supererogatory act; to Anne it may very well be a decision in accordance to what she feels to be her duty (religious, moral, or other). Suzan, on the other hand, who decides to stay connected with the violinist so as to save his life, in my view at least goes beyond what duty commands; I am aware of no moral, religious or other tradition according to which doing what Suzan has decided to do could be taken as a compelling duty. Suzan has to go against her own nature: while it isn't contrary to any woman's nature to bear a child, as Anne does, it is definitely unnatural for any human to stay confined to bed for nine months, unable to move and totally deprived of freedom and privacy, as Suzan has to be. In that sense, Suzan's decision is a supererogatory one, and Suzan, unlike Anne, *is* a moral hero. If this is so, Anne's case is morally irrelevant to Suzan's case in every respect other than that they both had to take difficult decisions in unusual and distressing circumstances; this, however, would leave Thomson's analogy totally defenseless, since it is supposed to apply par excellence to cases of impregnation due to rape: if the decision to maintain rape-inflicted pregnancy is not supererogatory, while the decision to remain connected to a stranger is, the decision to abort the fetus couldn't also be morally equivalent to the decision to disconnect from the stranger, which means that Thomson's analogy is flawed.

Thomson defends the strength of the violinist analogy by employing an argument that would strike many as counter-intuitive: any woman who decides to maintain her

rape-inflicted pregnancy, or in general any undesired pregnancy that would require substantial sacrifices from her, is actually acting in a supererogatory way, far beyond the requirements of duty.¹⁰⁸ In a sense, she is acting in exactly the same way the Good Samaritan in the Biblical parable acted,¹⁰⁹ that is to an extent neither due nor required:

“But if they have taken all reasonable precautions against having a child, they do not simply by virtue of their biological relationship to the child who comes into existence have a special responsibility for it. They may wish to assume responsibility for it, or they may not wish to. And I am suggesting that if assuming responsibility for it would require large sacrifices, then they may refuse. A Good Samaritan would not refuse – or anyway, a Splendid Samaritan, if the sacrifices that had to be made were enormous. But then so

¹⁰⁸ David Boonin, *A Defense of Abortion* (Cambridge: Cambridge University Press, 2003), 133-134.

¹⁰⁹ Luke 10: 30-37: “In reply Jesus said: ‘A man was going down from Jerusalem to Jericho, when he was attacked by robbers. They stripped him of his clothes, beat him and went away, leaving him half dead. A priest happened to be going down the same road, and when he saw the man, he passed by on the other side. So too, a Levite, when he came to the place and saw him, passed by on the other side. But a Samaritan, as he traveled, came where the man was; and when he saw him, he took pity on him. He went to him and bandaged his wounds, pouring on oil and wine. Then he put the man on his own donkey, brought him to an inn and took care of him. The next day he took out two denarii and gave them to the innkeeper. ‘Look after him,’ he said, ‘and when I return, I will reimburse you for any extra expense you may have.’ ‘Which of these three do you think was a neighbor to the man who fell into the hands of robbers?’ The expert in the law replied, ‘The one who had mercy on him.’” *Holy Bible, New International Version* (Colorado Springs: The International Bible Society, 2011).

would a Good Samaritan assume responsibility for that violinist [...].”¹¹⁰

As I argued above, while it definitely takes to be a Good Samaritan to accede to stay connected to anybody for nine months, it isn’t necessary to be one in order to carry a fetus for nine months and then give birth to a child, even in the case of involuntary or coercive pregnancy – nor does deciding to do so make one a Good Samaritan. There seems to be something unbecoming with the Good Samaritan example, and Thomson’s line of reasoning provides a good clue as to what it is. Thomson, in particular, discusses the case of Kitty Genovese, the twenty-eight years old woman who was murdered while reportedly thirty-eight people were watching or listening, but did nothing to save her.¹¹¹ In Thomson’s view, none of these thirty-eight people was bound by duty to come to Kitty’s aid, since none of them had assumed any responsibility towards her in advance. If they had helped the poor woman, they would have acted Samaritan-like: a ‘Minimally Decent Samaritan’ would have just called the police, a ‘Good Samaritan’ would probably have rushed out on the street screaming, and a ‘Splendid Samaritan’ would have tried to save Kitty from her murderer’s hands. If we move back to the violinist analogy, the degrees of ‘Samaritanism’ would probably be somewhat like this: a ‘Minimally Decent Samaritan’ would have stayed connected to the violinist until all other possibilities for keeping him alive were exhausted, and only then she would ask to be disconnected; this in Thomson’s view would be already beyond what duty would require, since the woman of the al-

¹¹⁰ Thomson, “A Defense,” 65.

¹¹¹ *The New York Times*, “Queens Woman Is Stabbed to Death in Front of Home,” March 14, 1964, 26, <https://nyti.ms/2OeH5zV>.

legory hadn't ever assumed any responsibility for the violinist. We could suppose that a 'Good Samaritan,' in turn, would go even further than this: she would accede to stay connected for as long as it would take for the violinist's kidneys to recover. A 'Splendid Samaritan,' now, would decide to stay connected even to the detriment of her own health, or under the risk of imminent death. In the violinist's case there are certain degrees of responding in a supererogatory way, and one may be acknowledged some degree of 'Samaritanism' accordingly. The same doesn't apply, however, in the case that a woman decides to maintain her involuntary pregnancy and deliver the child: she will either abort the fetus, or give it birth; but there can be no degrees of 'Samaritanism' in the latter. Again the cases do not seem to be directly analogous; we are definitely in need of additional argument to reach Thomson's conclusion.¹¹²

Next to the structural deficiencies that Thomson's analogy has been criticized as suffering from, it has also attracted severe criticism for being throughout artificial,¹¹³ counter-intuitive,¹¹⁴ for failing to take into account the moral sentiments that to some extent determine our actions,¹¹⁵ and for failing to take into consideration the role of the father,¹¹⁶ who could also raise justifiable claims over the fetus.¹¹⁷ As far as the arti-

¹¹² Wiland, 466-468.

¹¹³ B. D. Parks, "The Natural-Artificial Distinction and Conjoined Twins: A Response to Judith Thomson's Argument for Abortion Rights," *National Catholic Bioethics Quarterly* 6, no. 4 (2006): 671-680.

¹¹⁴ Stephen D. Schwarz, *The Moral Question of Abortion* (Chicago: Loyola University Press, 1990), 114ff.

¹¹⁵ Jacqueline Scott, "Conflicting Beliefs about Abortion: Legal Approval and Moral Doubts," *Social Psychology Quarterly* 52, no. 4 (1989): 319-326, 320.

¹¹⁶ David B. Hershov, "Abortions and Distortions," *Social Theory and Practice* 27, no. 1 (2001): 129-148.

¹¹⁷ Teo D. H. Wesley, "The Husband's Constitutional Rights," *Ethics* 85, no. 4

ficiality objections are concerned, in my view they are to some extent undeserved, since every analogy is by definition artificial, Thomson's violinist analogy no more than Plato's *allegory of the cave*; being myself no less than others guilty of this crime,¹¹⁸ I seize the opportunity to rectify things at my end. Being artificial doesn't necessarily make any analogy a weak one; sometimes, though, the more eccentric the premises are, the more jumpy the conclusion tends to be, and this definitely doesn't belong to the strengths of an argument. In my view the major weakness of Thomson's analogy is that her case doesn't seem to be properly symmetrical to real-life cases of pregnancy.

IV. A postscript

The debate on abortion is probably the most philosophically demanding, rich, subtle and complex in the field of ethics; by its nature it encompasses issues that seem to be almost impossible to be addressed directly by ethicists, even more so since their roots far exceed the realm of ethics, as I explained in the previous chapter. Given this, the moral discussion concerning abortion has been surprisingly poor and rather uninspiring for centuries; most of the scholars who engaged in it seem to have invested all their efforts and powers in either challenging or defending views that at the core were mainly metaphysical or religious. The moral debate had to wait until the second half of the twentieth century to experience its own renaissance, and this was made possible mostly due to groundbreaking,

(1975): 337-342, 339 ff.

¹¹⁸ See Evangelos D. Protopapadakis, "A Cool Hand on my Forehead: An Even Better Samaritan and the Ethics of Abortion," *Philosophy Study* 2, no. 2 (2012): 115-123, especially 119, where I severely (and equally unjustly) criticize Thomson's analogy for being throughout fictional.

innovative and inspiring approaches, such as Judith Jarvis Thomson's violinist analogy, some aspects of which I set up to discuss in this chapter. Thomson has actually been the harbinger of this new era for the abortion debate; before long a growing choir of ethicists was drawn in, all seeking to contribute new insights and reinvigorate the moral discussion. Suddenly the debate was not just active again, but also in its prime, and maybe the most engaging one as far as ethics and applied ethics are concerned; the huge impact Thomson's views had is probably the most philosophers are allowed to aspire to.

Thomson's train of thought is relatively clear and simple, and in my view also deeply influenced by the Kantian tradition in ethics:

- A. Moral rights are grounded on moral duties that hold agents responsible for acting (or, not acting) in certain ways.
- B. There are cases in which the pregnant woman hasn't assumed in advance any responsibility towards the fetus she carries.
- C. In cases as such the woman has no moral duty to provide support or protection to the fetus.
- D. Therefore the fetus isn't justified to have any claim against its mother and her body.

It follows that, each time any woman who has been involuntarily impregnated decides to maintain her pregnancy and give birth to the fetus, what she does is only supererogatory, a token of altruism or solidarity beyond the requirements of duty; in Kantian terms the woman could be taken as acting in accordance to an imperfect duty of hers. Imperfect duties,

though, are not as morally binding as perfect ones – they allow room for exceptions under specific circumstances, and their binding force varies in degree and latitude,¹¹⁹ leaving space for noncompliance. In Thomson's words:

“[...] the fact that for continued life that violinist needs the continued use of your kidneys does not establish that he has a right to be given the continued use of your kidneys. [...] For nobody has any right to use your kidneys unless you give him such a right; and nobody has the right against you that you shall give him this right – if you do allow him to go on using your kidneys, this is a kindness on your part, and not something he can claim from you as his due.”¹²⁰

Although I remain unconvinced by the view that imperfect duties are less morally binding than perfect ones, I will leave this discussion for a later part of this book.¹²¹ Instead, at this point I will do exactly what Thomson has been accused of: I will appeal to moral intuition in my effort to challenge the relevance of Thomson's view that ‘[...] nobody has any right [...] unless you give him such a right.’ I feel that the notion of moral responsibility is far more complex and delicate than any rights-focused approach would ever assume. People are often inclined to feel morally responsible towards others, although technically those others are not justified to raise any moral claim against them. Such is the case of Kitty Genovese:

¹¹⁹ George Rainbolt, “Perfect and Imperfect Obligations,” *Philosophical Studies* 98, no. 3 (2000): 233–256, 238.

¹²⁰ Thomson, “A Defense,” 55.

¹²¹ See next chapter, as well as chapter seven.

none of her neighbors ever formally assumed any responsibility for her life; ordinary people normally never do, they leave such a responsibility to the police. Nevertheless, I still feel that her neighbours have been responsible for Kitty's death in a way, probably because they failed to be at least 'Minimally Decent Samaritans,' although they could have been even 'Good Samaritans' at no expense of theirs whatsoever. The fact that Kitty didn't have any legitimate claim against them that they come to her aid, doesn't make them look less responsible for Kitty's death, at least in my eyes. My intention here is not to imply that women who have become pregnant – especially if this has happened against their will, are bound by some moral duty towards the fetus they carry, nor that the fetus would be justified to have any moral claim against its mother. My point is just that any rights-based discussion necessarily leaves key aspects of the abortion issue undiscussed, and that probably we are in need of approaches even more nuanced than Thomson's. After all, Thomson's tremendously influential argument just invigorated the moral debate on abortion, it didn't conclude it.

CRISPR/Cas 9: The promises and the perils of genetic engineering

Controlling the qualities of our offspring to the greatest possible extent has always been the Golden Fleece for our species' reproduction-related aspirations. Until recently, however, our powers to do so have been extremely limited: we could only wish for certain qualities to appear by either carefully selecting our breeding partner in advance, or by shaping an after-birth environment that would hopefully promote the development of desired qualities, and at the same time would block the appearance of unwanted ones. Nevertheless, demanding projects as such, even in the rare case they were met with utmost success against the odds, could guarantee only slight control over the features of our offspring. Things were to change dramatically during the last decade; cutting edge targeted gene editing techniques such as *Clustered Regularly Interspaced Short Palindromic Repeats associated protein 9 nuclease* (henceforth mentioned as CRISPR/Cas 9) are now capable of providing literally full control over the genome – to wit, over the phenotype, but also the character traits and behavior – of our offspring, leaving only the environmental factors open to chance or, as before, to our industriousness and resourcefulness.

I. Introduction

CRISPR/Cas 9 is the most advanced germ-line gene editing tool available, and it seems to be extremely effective; it en-

ables scientists to manipulate with unprecedented accuracy the DNA of any genome – including bacteria, plants, animals, and also humans. As a matter of fact, CRISPR/Cas 9 has already been used by geneticists to intervene into the genome of embryos with the purpose of rendering them immune to certain diseases. In particular, He Jiankui from the Southern University of Science and Technology of China in Shenzhen recently announced that he used CRISPR/Cas 9 to genetically edit embryos before implanting them into their mother's uterus.¹²² He claimed that his purpose was to target and “disable the genetic pathway HIV uses to infect cells”¹²³ by manipulating “a gene called CCR5, which encodes a protein that allows HIV to enter a cell.”¹²⁴ At present the purposefulness and the efficacy of He's intervention is a matter of controversy among geneticists; it is still questionable whether organisms that are CCR5-negative will be completely immune to HIV, since the virus is suspected to use alternative pathways, such as the CXCR4 protein, to enter cells.¹²⁵

Despite the tumult caused by He Jiankui's claim and the particularities of this case (absolute lack of transparency, no documentation whatsoever, etc.), it is quite obvious to everybody that CRISPR/Cas 9 has ignited a revolution in genetic engineering, one that is expected to have immense impact on our species' future. It is not only that this tool is accurate, efficient and afford-

¹²² David Cyranoski and Heidy Ledford, “International Outcry Over Genome-edited Baby Claim,” *Nature* 563 (2018): 607-608; also Dennis Normile, “Shock Greets Claim of CRISPR-edited Babies,” *Science* 362, no. 6418 (2018): 978-979.

¹²³ Cyranoski and Ledford, 607.

¹²⁴ Ibid.

¹²⁵ See Cathy X. Wang and Paula M. Cannon, “Clinical Applications of Genome Editing to HIV Cure,” *AIDS Patient Care and STDs* 30, no. 12 (2016): 539-544.

able; more than that it is that CRISPR/Cas 9 is equally applicable to somatic as well as to germ cells, to early stage embryos, like the ones He Jiankui edited, or even to blastocysts. This means that CRISPR/Cas 9 is capable of producing permanent effects to the germ-line of any individual: edits performed on organisms in their early embryonic stages produce hereditary mutations, which means that unwanted genes may be forever eradicated from the species' gene pool, while desired ones introduced to the organism will definitely pass onto its descendants; this, of course, applies to DNA manipulation that targets genetic dispositions of all kinds, including character traits, personality and mental disorders,¹²⁶ since a 40 % of their variance may be attributed to genetic factors.¹²⁷ A future for our species that would be totally free from mental and physical diseases is neither wishful thinking nor a science fiction scenario anymore; now it seems to a perfectly tangible prospect. Try to imagine cancer-, beta thalassemia-, Huntington's- and cystic fibrosis-responsible genes not just neutralized in a single human individual, but once and for all wiped out of our species' gene pool. The riddle of evil for the most part would have been solved, and the most obnoxious manifestation of natural injustice would have been uprooted.

II. Natural injustice

The achievements of science and technology in the field of genetics, genetic engineering and, especially, targeted gene ed-

¹²⁶ Tiffany A. Greenwood, Hagop S. Akiskal, Karen K. Akiskal, and John R. Kelsoe, "Genome-Wide Association Study of Temperament in Bipolar Disorder Reveals Significant Associations with Three Novel Loci," *Biological Psychiatry* 72, no. 4 (2012): 303-310.

¹²⁷ Tena Vukasovic, and Denis Bratko, "Heritability of Personality: A Meta-Analysis of Behavior Genetic Studies," *Psychological Bulletin* 141, no. 4 (2015): 769-785.

iting hold the promise of making up for the most abhorrent, inevitable and invincible manifestations of natural injustice: having been born with genetic mutations responsible for burdensome or even fatal phenotypic expressions is never one's own fault, one can do nothing to escape them, and there is also no way to rectify them – most of the times the unfortunate individual is doomed to a short and excruciating life. Given that on the one hand being a carrier of most genetic mutations is almost always asymptomatic, and on the other that genetic screening is still far from becoming a common practice, nobody is actually secure against the capriciousness of genetic fate; rare as it may be, the prospect of giving birth to severely impaired offspring is always possible, and makes procreation look like some bizarre version of Russian roulette – one imposed onto humans by “genetic fuzziness.”¹²⁸

Apart from the grievous prospect of being born as a severely handicapped individual due to some genetic mutation, or parenting such a child, there are also other – maybe less dramatic, though probably equally worrisome and pressing – implications in *just being identified* as the carrier of any genetic mutation: having this kind of knowledge definitely narrows down one's options when it comes to mating and breeding. In the case of Ashkenazi Jews, for example, the incidences of infantile Tay-Sachs genetic disorder rates are extremely high: approximately 1 in every 3,600 Ashkenazi Jews is estimated to be the carrier of the gene mutations responsible for the disease, while in the general population the frequency is a hundred times lower (1 in every 360,000 individuals).¹²⁹ Infantile

¹²⁸ Glynn Moody, *Digital Code of Life: How Bioinformatics is Revolutionizing Science, Medicine, and Business* (Hoboken, New Jersey: John Wiley and Sons, 2004), 4.

¹²⁹ Gideon Bach, Jerzy Tomczak, Neil Risch, and Josef Ekstein, “Tay-Sachs

Tay-Sachs disease is an autosomal recessive disorder that leads to progressive neurologic degeneration that affects the brain cells as well as the spinal cord nerve cells, and results in an agonizing death most of the times before the age of four;¹³⁰ as it is with most autosomal diseases, there is no cure for Tay-Sachs, therefore the patient – as well as the patient's parents – may only be offered supportive treatment. The severity of the disease coupled with its high frequency rates call for extensive and thorough genetic screening in order to reduce or, hopefully, eliminate the incidence of Tay-Sachs disease carriers within Ashkenazi Jews populations. This, however, definitely has a huge impact upon Ashkenazi Jews' options for choosing their life partners and the co-genitors for their offspring: in their case, emotional attachment, intimacy, love and devotion will not suffice; next to these, detailed genetic information is also required as a minimum guarantee for a normal life.

It is almost self-evident that a female and a male who are both identified as carriers of the Tay-Sachs disorder responsible mutation, would feel at least discouraged by the information they have concerning their genetic makeup in the case they were to consider the possibility of acquiring naturally-born offspring together; in most cases this common genetic particularity of theirs could also hinder them from even starting or maintaining an intimate relationship, regardless of the feelings they might entertain towards each other. These two individuals would be justified to feel that their genetic constitution deprives them of a fundamental

Screening in the Jewish Ashkenazi Population: DNA Testing Is the Preferred Procedure," *American Journal of Medical Genetics* 99 (2001): 70-75, 70.

¹³⁰ See Roy A. Gravel, Barbara L. Triggs-Raine, and Don J. Mahurian, "Biochemistry and Genetics of Tay-Sachs Disease," *The Canadian Journal of Neurological Sciences* 18, no. s3 (1991): 419-423.

freedom that most people enjoy – the one that is often referred to as *the right to reproductive freedom*, or *reproductive-procreative autonomy*.¹³¹ They, unlike the majority of people, are not allowed to choose their life-partner or the co-genitor of their children. And they wouldn't be the only ones in this plight: the same applies to those who are identified as carriers of gene mutations responsible for sickle cell anemia, cystic fibrosis, Marfan disease, and other genetic diseases of a recessive nature. These individuals may also justifiably entertain the feeling that they belong to a particular moral community, one that bestows lesser rights upon its members.

One might argue that no right is being violated in the case of those who are carriers of hereditary genetic mutations, since reproduction-related rights are only negative, to wit they oblige inaction on behalf of moral agents, legal or juridical persons or entities; but it makes no sense for one to claim one's negative rights against one's own nature. Being born with a faulty gene set is just bad luck, exactly as it would have been to be born with less limbs, or with any other handicap of any kind; in these cases only nature is to be blamed, and this just for being cruel, but not for violating any right of the individual affected by its cruelty: natural selection is a lottery blind to purposes, and subject only to randomness. However, it is not natural selection that is being discussed here, but only human decisions; since advanced science has already endowed us with the ability to rectify mutant genes, one may claim one's access to it as one's right, even as a positive one. In John Robertson's view, the concept of reproduc-

¹³¹ For an excellent discussion see Josephine Johnson and Rachel L. ZACHARIA, "The Future of Reproductive Autonomy," *Hastings Center Report* 47, no. 6 (2017): S6-S11.

tive freedom is much more nuanced and rich, and not just a set of obligations calling for inaction; its negative aspect

“[...] is not the only aspect of reproduction that needs legal protection. Another essential element of procreative freedom is the right to become pregnant and to parent [...] the freedom to reproduce when, with whom, and by what means one chooses.”¹³²

The upshot is that, insofar as for some moral agents it would enable options otherwise inaccessible to them, targeted gene editing is an effective means of enhancing those agents’ reproductive freedom and, hence, their autonomy. Apart from one’s gene set, CRISPR/Cas 9 seems also to be a highly efficient tool when it comes to rectifying natural injustice, since it expands the circle of autonomy-related rights; these rights, being as Joel Feinberg puts it, “protected liberties of choice,”¹³³ taken together constitute the notion of “personal sovereignty.”¹³⁴ That kind

¹³² John A. Robertson, “Procreative Liberty and the Control of Conception, Pregnancy, and Childbirth,” *Virginia Law Review* 69, no. 3 (1983): 405-464, 406.

¹³³ Joel Feinberg, *Freedom and Fulfillment* (Princeton, New Jersey: Princeton University Press, 1994), 76.

¹³⁴ According to Feinberg, “When applied to individuals the word ‘autonomy’ has four closely related meanings. It can refer either to the *capacity* to govern oneself, which of course is a matter of degree; or to the *actual condition* of self-government and its associated virtues; or to an *ideal of character* derived from that conception; or (on the analogy to a political state) to the *sovereign authority* to govern oneself, which is absolute within one’s own moral boundaries (one’s ‘territory,’ ‘realm,’ ‘sphere,’ or ‘domain’).” Joel Feinberg, *Harm to Self: Moral Limits of the Criminal Law* (New York: Oxford

of autonomy or “sovereignty” necessarily entails bodily autonomy, and

“[...] in respect to it, more is involved than simple immunity to uninvited contacts and invasions. Not only is my bodily autonomy violated by a surgical operation ('invasion') imposed on me against my will; it is also violated in some circumstances by the withholding of the physical treatment I request (when due allowance has been made for the personal autonomy of the parties of whom the request is made).”¹³⁵

In general, autonomy-related rights may be conceived either as civil rights, to wit as bestowed onto individuals (in the case of civil rights, onto *citizens*) in the context of a specific legal system, or as natural rights, to wit as inalienable universal freedoms humans are entitled to only due to their human nature, irrespective of their qualities, achievements, and merits; in both cases, autonomy rights are considered to be exclusively negative rights,¹³⁶ that is, rights that prohibit other persons or entities to act against or towards the right-holder in such a way as to infringe the right-holder’s freedom or liberty to what is being protected by the right invoked. In a word, negative rights, unlike positive ones, oblige inaction rather than action. Negative rights produce negative duties;¹³⁷ if N is acknowl-

University Press, 1986), 28; also 52ff.

¹³⁵ Ibid., 53.

¹³⁶ See, among others, Murray N. Rothbard, *The Ethics of Liberty* (New York-London: New York University Press, 1998), 100ff.

¹³⁷ For a good account of negative duties see, among others, Raymond A. Belliotti, “Negative and Positive Duties,” *Theoria* 47, no. 2 (1981): 82-92; also Marcus Singer, “Positive and Negative Duties,” *The Philosophical Quarterly*

edged a negative right to X, then everybody else is obliged to refrain from any action that would hinder N from doing (or being enacted upon) X. Nevertheless, negative duties do not require that other moral agents should render assistance to the right-holder in order to enjoy what is protected by the negative right(s) concerned. The right to freedom of opinion and expression,¹³⁸ for example, being a negative right, bestows upon others the negative duty to refrain from any action that would hinder one from freely expressing one's views; it doesn't require, though, that one should be aided or encouraged to express one's views. Providing such an aid is usually considered as a supererogatory act on behalf of others, as doing more than duty requires. To sum up, autonomy rights, being negative rights, oblige inaction rather than action; in that sense, one's autonomy-related right to reproductive freedom requires from others to refrain from any action that would hinder one from enjoying this kind of freedom, but it doesn't oblige others to assist one in his endeavor to exercise this right, in the case one is not capable of doing so on one's own. From the above it follows that carriers of genetic autosomal recessive mutations, such as Tay-Sachs syndrome responsible ones, are not justified to aspire to the development of CRISPR/Cas 9 related services as a means of enhancing their autonomy-related rights, since – and from the point of view I outlined above – autonomy in general, and autonomy-related rights in particular, vulnerable as they may be to infringement, are insusceptible to enhancement. In short, the right to acquire offspring may be compromised only in the case of those who are physically capable of acquiring offspring, exactly as the right to freedom of opinion

15, no. 59 (1965), 97-103.

¹³⁸ United Nations General Assembly, *The Universal Declaration of Human Rights* (Paris: United Nations, 1948), article 19.

and expression may be infringed only in the case of those who are physically capable to express their thoughts, but not, for instance, in the case of brain-damaged individuals. Since it is only their genetic makeup that disallows carriers of genetic mutations to acquire offspring, no autonomy-related right of theirs is at stake, since nobody can do anything that nature hasn't already done in order to make reproduction unavailable to them.

Against this line of reasoning two objections could be raised, one concerning the applicability of this view in the case of CRISPR/Cas 9, and the other in regard to the hypothesis that autonomy-related rights and duties are of an exclusively negative nature. As for the first objection, one might argue that the view I discussed above is missing the point: CRISPR/Cas 9 is not a remote prospect anymore, but a tangible reality instead. This means that one would be perfectly justified to claim access to targeted gene editing services as one's right to reproductive/procreative autonomy. If to be autonomous means to have unrestricted access to every option regarding one's self that is available to one, and if acquiring offspring has become an option for the carriers of mutant genes through advanced gene editing techniques, one would rightfully claim as one's negative right to reproductive autonomy to be given (even better, *not to be denied*) access to such techniques; this, in turn, means that everybody else would be under a negative duty to refrain from any intervention that would hinder the carrier from having access to targeted gene editing services.

As to the second objection, it is often argued that autonomy related rights might sometimes oblige action rather than inaction – especially rights that concern bodily autonomy, as Feinberg implies.¹³⁹ This is the reason why, for example, we

¹³⁹ See *supra* note 134.

consider that the authorities are obliged to provide assistance to visually impaired pedestrians by incorporating tactile walking surface indicators to sidewalks, platforms and pathways; or, again, it is exactly for the same reason that we assume that the state is under a duty to install sidewalk, curb and entry ramps to aid people on wheelchairs. Taking measures as such is neither charity nor solidarity towards disabled fellow humans; it is rather meeting a fundamental moral duty owed to persons with disabilities, the duty to aid them in their effort to maintain as much bodily autonomy as their condition would allow. If this was all about charity or solidarity, disabled persons wouldn't be justified to claim that certain measures should be taken to facilitate their bodily autonomy: roughly speaking, the prevailing view on charity is that it is above the call of duty, to wit that it consists in performing supererogatory acts, while solidarity is mostly considered to be an imperfect duty towards others; in both cases, one is not justified to raise any claim to either against any other. To the majority of people, however, disabled persons seem perfectly justified to claim as their right the implementation of measures that would enhance their bodily autonomy. The bottom line is that the concept of autonomy-related rights and duties appears to be much more nuanced than it is usually supposed to be; next to the dominant negative function of these rights – at least at times – there seems to be an equally significant positive aspect of theirs also. In general, the boundaries between negative and positive rights or duties are usually not so clear or well-defined; sometimes they tend to become blurry and vague.¹⁴⁰ Especially as far as bodily autonomy is concerned, protecting it

¹⁴⁰ For a good discussion see Chris Matthew Sciabarra, *Ayn Rand: The Russian Radical* (Pennsylvania: The Pennsylvania State University Press, 1995), 275ff.

may sometimes require that moral agents take action instead of refraining from acting. In that sense, rectifying one's faulty genetic makeup by means of advanced gene editing tools such as CRISPR/Cas 9 could indeed be taken as addressing an autonomy-related positive right to procreative or reproductive freedom, one that would make it justifiable for the carriers of genetic mutations to claim the implementation of this tool.

Debating targeted gene editing tools as a means of actively enhancing (or, preserving) the autonomy of certain groups of moral agents necessarily drives the discussion towards Kantian ethics, an ethics that has established its dominant role in today's Bioethics mainly through its key concept, the principle of autonomy of the moral agent. Autonomy, though in theory is just one among the four principles of Bioethics introduced by Tom L. Beauchamp and John Childress,¹⁴¹ is probably the cardinal moral determinant in Bioethics, the "first among equals."¹⁴² According to Daniel Callahan there are good reasons for the supremacy of autonomy over beneficence, non-maleficence and justice:

"Autonomy is, then, *de facto* given a place of honour because the thrust of individualism, whether from the egalitarian left or the market oriented right, is to give people maximum liberty in devising their own lives and values."¹⁴³

¹⁴¹ See Tom L. Beauchamp and James Childress, *Principles of Biomedical Ethics* (New York: Oxford University Press, 2009); also Tom L. Beauchamp, "Methods and Principles in Biomedical Ethics," *Journal of Medical Ethics* 29, no. 5 (2003): 269-274.

¹⁴² Raanan Gillon, "Ethics Needs Principles – Four Can Encompass the Rest – and Respect for Autonomy Should Be 'First Among Equals,'" *Journal of Medical Ethics* 29, no. 5 (2003): 307-312.

¹⁴³ Daniel Callahan, "Principlism and Communitarianism," *Journal of Medical Ethics* 29, no. 5 (2003): 287-91.

It is true that probably a little bit more than half the questions that one might come up with concerning any bioethical issue could receive as an answer an autonomy-based explanation. In my view, more than the “thrust of individualism” Callahan points out, Kantian ethics – probably the most influential tradition in normative ethics – is to a greater extent responsible for the predominance of the notion of autonomy in Bioethics. According to Immanuel Kant, autonomy is “the ground of the dignity of the human and of every rational nature,”¹⁴⁴ as well as the “the sole principle of morals.”¹⁴⁵ To Kant, causality in the case of rational living beings takes the form of the will, and freedom “would be that quality of this causality by which it can be effective independently of alien causes determining it,”¹⁴⁶ while “*natural necessity* is the quality of the causality of all beings lacking reason, of being determined to activity through the influence of alien causes.”¹⁴⁷ This, Kant suggests, is only a negative definition of freedom;¹⁴⁸ yet, “from it flows a positive concept of freedom,”¹⁴⁹ according to which

¹⁴⁴ Immanuel Kant, *Groundwork of the Metaphysics of Morals*, ed. and trans. Allen W. Wood (New Haven and London: Yale University Press, 2002), 4:436: “The legislation itself, however, which determines all worth, must precisely for this reason have a dignity, i.e., an unconditioned, incomparable worth; the word respect alone yields a becoming expression for the estimation that a rational being must assign to it. Autonomy is thus the ground of the dignity of the human and of every rational nature.”

¹⁴⁵ Ibid., 4:440: “Yet that the specified principle of autonomy is the sole principle of morals may well be established through the mere analysis of the concepts of morality.”

¹⁴⁶ Ibid., 4:446.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.: “The proposed definition of freedom is negative, and hence unfruitful in affording insight into its essence.”

¹⁴⁹ Ibid.

freedom is equivalent or identical to autonomy, the latter being defined as “the quality of the will to being a law to itself.”¹⁵⁰ This is why Kant claims that autonomy is the ground of human dignity and the sole principle of morality: it gives rational living beings the opportunity to escape the realm of natural necessity and become lawgivers “in a realm of ends possible through freedom of the will;”¹⁵¹ in such a realm, however,

“[...] everything has either a price or a dignity. What has a price is such that something else can also be put in its place as its equivalent; by contrast, that which is elevated above all price, and admits of no equivalent, has a dignity. [...] that which constitutes the condition under which alone something can be an end in itself does not have merely a relative worth, i.e., a price, but rather an inner worth, i.e., dignity. Now morality is the condition under which alone a rational being can be an end in itself, because only through morality is it possible to be a legislative member in the realm of ends. Thus morality and humanity, insofar as it is capable of morality, is that alone which has dignity.”¹⁵²

It is clear that autonomy, and hence morality and dignity, are only possible insofar as human beings are capable of escaping *natural necessity*, so as they cease to be subject to alien causes determining *all* their actions, to some extent, at least.

¹⁵⁰ Ibid. 4:447: “[...] what else, then, could the freedom of the will be, except autonomy, i.e., the quality of the will of being a law to itself?”

¹⁵¹ Ibid., 4:434.

¹⁵² Ibid., 4:434-435.

From this point of view, everything that would reduce the firm grasp of natural heteronomy upon us would be more than welcome as broadening the spectrum of freedom and enhancing thus the potential of our will to be a law to itself. It is exactly in this regard that the claim made by hereditary carriers that CRISPR/Cas 9 would enhance their autonomy seems to make sense, at least to bioethicists who are under the influence of Kantian ethics. But still this wouldn't suffice to establish targeted gene editing as a duty owed to carriers.

The fact that targeted gene editing is capable of relieving existing humans – but also, future generations – from several genetic restrictions and burdens makes genetic engineering a means of expressing solidarity; this, apart from not being at all counter-intuitive, has a powerful appeal especially to Kantian bioethicists: in Kant's view, solidarity is an imperfect duty towards others.¹⁵³ Kant classifies duties as perfect and imperfect, or, respectively, as *ethical duties* that are of *wide obligation*, and *duties of right* that are of *narrow obligation*.¹⁵⁴ Kant draws the distinction between perfect and imperfect duties on the basis of the reasons due to which the maxims opposed to either group would fail to pass the universalizability test: maxims opposed to perfect duties would be inherently contradictory if universalized, while maxims opposed to imperfect duties – though not contradictory *per se* – are in opposition with what a rational agent would be justified to will:

“Some actions are so constituted that their maxim cannot even be thought without contradiction as a universal law of nature, much less could

¹⁵³ Ibid., 4:423.

¹⁵⁴ Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1991), 6:390.

one will that it ought to become one. With others, that internal impossibility is not to be encountered, but it is impossible to will that their maxims should be elevated to the universality of a natural law, because such a will would contradict itself. One easily sees that the first conflict with strict or narrow (unremitting) duty, the second only with wide (meritorious) duty [...]"¹⁵⁵

Elsewhere Kant provides a much more lucid explanation:

"All perfect and imperfect duties are both inner and outer in regard to ourselves. With perfect duties, I ask whether their maxims can hold good as a universal law. But with imperfect ones, I ask whether I could also will that such a maxim should become a universal law. Perfect duties are strict duties."¹⁵⁶

What is intriguing as well as confusing with imperfect duties is that normally they are not taken to be as morally binding as perfect duties are; instead, they allow space for not always complying with them:

"[...] for if the law can prescribe only the maxim of actions, not actions themselves, this is a sign that it leaves a latitude (*latitudo*) for free choice

¹⁵⁵ Kant, *Groundwork*, 4:424.

¹⁵⁶ Immanuel Kant, *Lectures on Ethics*, eds. Peter Heath and J. B. Schneewind, trans. Peter Heath (Cambridge: Cambridge University Press, 1997), 29:609.

in following (complying with) the law, that is, that the law cannot specify precisely in what way one is to act and how much one is to do by the action for an end that is also a duty.”¹⁵⁷

This – not perfectly sharp, indeed – distinction between perfect and imperfect duties has been challenged with regard to its prescriptive force; even Kantian ethicists suggest that imperfect duties – either to ourselves or to others – should be taken as equally morally binding to perfect ones,¹⁵⁸ insofar as no moral agent could rationally will that the maxims opposed to the ones that determine imperfect duties would become universal laws of nature. In that sense, imperfect duties differ from perfect ones only in that they allow for exceptions, differences in degree and latitude,¹⁵⁹ leaving space for noncompliance under specific circumstances, but by no means in that they allow for altogether rejecting or disregarding the underlying moral maxim. As Thomas Hill puts it:

“We are free to choose to do *x* or not on a given occasion, as one pleases, even though one knows that *x* is the sort of act that falls under the principle, provided that one is ready to perform acts of that sort on some other occasions.”¹⁶⁰

¹⁵⁷ Kant, *Metaphysics*, 6:390.

¹⁵⁸ Ibid.: “But a wide duty is not to be taken as permission to make exceptions to the maxim of actions, but only as permission to limit one maxim of duty by another (e.g., love of one’s neighbor in general by love of one’s parents), by which in fact the field for the practice of virtue is widened. The wider the duty, therefore, the more imperfect is a man’s obligation.”

¹⁵⁹ George Rainbolt, “Perfect and Imperfect Obligations,” *Philosophical Studies* 98, no. 3 (2000): 233–256, 238.

¹⁶⁰ Thomas Hill, “Kant on Imperfect Duty and Supererogation,” *Kant-Studi-*

There are certain passages in Kant's works that support the view that maxims opposed both to perfect and imperfect duties fail to pass the universalizability test, and therefore are equally unavailable to rational moral agents:

“[...] a will that resolved on this would conflict with itself, since the case could sometimes arise in which he needs the love and sympathetic participation of others, and where, through such a natural law arising from his own will, he would rob himself of all the hope of assistance that he wishes for himself.”¹⁶¹

And elsewhere:

“To be beneficent, that is, to promote according to one's means the happiness of others in need, without hoping for something in return, is everyone's duty. For everyone who finds himself in need wishes to be helped by others. But if he lets his maxim of being unwilling to assist others in turn when they are in need become public, that is, makes this a universal permissive law, then everyone would likewise deny him assistance when he himself is in need, or at least authorized to deny it.”¹⁶²

So it seems that being unable to coherently conceive of a world in which a maxim contrary to a perfect duty has ac-

^{en} 62, no. 1 (1971): 55-76, 61.

¹⁶¹ Kant, *Groundwork*, 4:423.

¹⁶² Kant, *Metaphysics*, 6:453.

quired the status of a universal law is no more contradictory than acting on maxims that one couldn't rationally desire that they would become universal laws. Under the light of the above, assuming that it would definitely be counter-intuitive to reject the view that targeted gene editing would be a means of expressing solidarity,¹⁶³ allowing targeted gene editing seems to be a moral duty owed to existing human beings and future generations, and its maxim is equally binding as that of any other duty.

To sum up, either from an autonomy-focused point of view, or from a solidarity-based perspective, targeted gene editing appears to be a fairly good candidate to acquire the moral status of a proper duty towards others, either as an unremitting duty, or as a meritorious one in Kantian terms. In both cases hereditary carriers seem – *prima facie*, at least – justified to claim as their right to acquire access to targeted gene editing tools and techniques.

III. Gene pool depletion

The debate on targeted gene editing, however, isn't only about duties and rights. It is also about the common good and the overall utility for the species; the promise of a future free from genetic burdens, promising as it may be, goes hand in hand with hazards one cannot afford to turn a blind eye to. The most debated among the perils of genetic engineering concerns the depletion of the human species' gene pool. The significance of preserving the diversity and richness of the human genome is strongly emphasized in the first article of the *UNESCO Universal Declaration on the Human Genome and Human Rights*:

¹⁶³ John Harris, *Enhancing Evolution* (Princeton: Princeton University Press, 2007), 22ff.

“The human genome forms the basis of the fundamental unity of all members of the human family, as well as recognition of their inherent dignity and diversity. In a symbolic sense, it is the heritage of humanity.”¹⁶⁴

In full accordance with this view the Oviedo Convention in article 13 clearly stipulates that:

“[...] any intervention aimed at modifying the human genome is permissible only for preventive, diagnostic or therapeutic purposes, and only if it is not intended to introduce any modification in the genome of any offspring.”¹⁶⁵

This shared heritage of humanity, the human genome in its richness and diversity, is probably being threatened by germline engineering, since any intervention in the germline is irreversible, hereditary and, therefore, permanent. In particular, among the objectives of cutting edge molecular genetics is to locate by means of genetic screening, and replace through targeted genome editing tools such as CRISPR/Cas 9 the mutant genes responsible for genetically transmitted diseases. Any intervention that involves the germline, however, means that the modified genes will pass onto the descendants of the person, whose DNA will be ‘reprogrammed,’ since modifications in germ cells and early embryos are hereditary. Assuming that

¹⁶⁴ UNESCO, *Records of the General Conference – Volume 1: Resolutions* (Paris: UNESCO, 1998), article 1, 41-42.

¹⁶⁵ Council of Europe, *Convention on Human Rights and Biomedicine*, Oviedo, 1997, article 13.

genome editing is expected to first target genetic mutations that are responsible for severe genetic diseases, and given that the incidence of these mutations is usually limited to specific populations (sickle cell anemia in populations living around the Mediterranean, Tay-Sachs syndrome in Ashkenazi Jews populations, etc.), it would be quite feasible for geneticists to identify and 'repair' a huge percentage of the human 'defective' genome, reducing thus the potential of mutant genes to survive in the human species' gene pool. The prospect of complete and irreversible annihilation is also not negligible; while it is highly unlikely that any crusade against mutant genes will be launched in the future, individual carriers will by all means be more than eager to have their genome – or that of their offspring – rectified, and this might result in a large-scale witch-hunt for mutant genes. Nevertheless, mutated genes responsible for autosomal recessive genetic disorders such as, among others, sickle cell anemia and haemochromatosis, have somehow been successful in dodging all the challenges posed by evolution and natural selection, while other genes failed the test and just vanished; the fact that these mutated genes survived probably implies something about their significance for the human genome, even though for the time being one may not be able to tell why natural selection reserved for these genes a murky corner in our species' gene pool.

Gene mutations result from random changes in the human DNA that occur during the process of cell division (mitosis), and most of them are immediately corrected and repaired, especially when those mutations concern germ cells, that "[...] seem to be especially good at preventing or repairing DNA damage."¹⁶⁶ Germline mutations, however, having already managed to dodge the repairing mechanisms of human

¹⁶⁶ Han G. Brunner, "When Chance Strikes: Random Mutational Events as a

DNA, are no longer subject to this procedure; they just pass on intact from the carrier to its natural-born offspring, having thus secured their place in the human gene pool.¹⁶⁷ Germline mutations are distinguished into hotspot and founder respectively; while hotspot mutations appear spontaneously in some part of the DNA that exhibits an unusually high propensity to mutate, founder mutations can be traced back to the distant common ancestor of a distinct population (the founder), whose mutant haplotypes have passed down to the founder's descendants – the carriers of the mutation. Founder mutations are of recessive nature: carriers' DNA has one normal (dominant) and one mutated (recessive) gene, which usually gives low probability of developing the disease. If both parents are carriers, however, their offspring run a 25% risk of inheriting two mutated alleles by each and develop the disease.

The reason why evolution and natural selection instead of eliminating autosomal recessive-diseases-responsible gene mutations – although mutated genes are neither the fittest nor the most beneficial to their carriers¹⁶⁸ – have allowed them some place in the human gene pool, seems to be connected with their role as a safety valve – or, better, as the last resort – in cases of emergency, during which the survival of the entire

Cause of Birth Defects and Cancer," in *The Challenge of Chance: A Multidisciplinary Approach from Science and the Humanities*, eds. Klaas Landsman and Ellen van Wolde, 187-196 (Dordrecht: Springer, 2016), 191.

¹⁶⁷ See, among others, Laura Papi, Anna Laura Putignano, Caterina Congregati, and Innes Zanna, "Founder Mutations Account for the Majority of BRCA1-attributable Hereditary Breast/ovarian Cancer Cases in a Population from Tuscany, Central Italy," *Breast Cancer Research and Treatment* 117, no. 3:497-504; also Jane A. Evans, "Old Meets New: Identifying Founder Mutations in Genetic Disease," *Canadian Medical Association Journal* 187, no. 2 (2015): 93-94.

¹⁶⁸ Adi Livnat, "Interaction-based Evolution: How Natural Selection and Nonrandom Mutation Work Together," *Biology Direct* 8, no. 1 (2013): 24.

species would be at stake; while the homozygous type (both alleles of the gene are mutated) of any autosomal recessive mutation is harmful and often fatal for the individual, the heterozygous type (only one allele is mutated) usually confers a decisive selective survival advantage on carriers, usually mentioned as the *heterozygous advantage*. The mutated gene responsible for sickle cell anemia, for example, if heterozygous, conveys to the carrier immunity to malaria.¹⁶⁹ Thus, while the homozygous type of sickle cell anemia is likely to be fatal to the carrier, the heterozygous type confers not only on the individual, but also on the species a selective advantage of paramount significance: in case an outbreak of malaria becomes pandemic – probably due to the fact that malaria plasmodia will have become drug-resistant, sickle cell anemia carriers will be immune against the disease, while non-carriers will perish. Biologists currently argue for a kind of inherent cellular memory¹⁷⁰ recorded in the genome of the species during its evolutionary development, that disallows the complete annihilation of specific autosomal recessive mutations: the sickle cell mutation has probably during the past served as an excellent defensive mechanism for the survival of the species. Hereditary haemochromatosis, on the other hand, also a genetic recessive disorder, in its homozygous form facilitates excessive iron absorption from one's diet, which results in iron overload that leads to organ failure and eventually to death if not properly treated.¹⁷¹ In its heterozygous form, however, “the protein encoding the mutant HFE gene – which is located

¹⁶⁹ Thomas N. Williams, “How Do Hemoglobins S and C Result in Malaria Protection?” *The Journal of Infectious Diseases* 204, no. 11 (2011): 1651–1653.

¹⁷⁰ Shane Crotty and Rafi Ahmed, “Immunological Memory in Humans,” *Seminars in Immunology* 16, no. 3 (2004): 197–203.

¹⁷¹ Brandon Barton, Sarah. Zuber, and Christopher G. Goetz, “Movement

on chromosome 6 and is responsible for the disease – protects the organism from iron anemia, helping to absorb iron more effectively.”¹⁷²

In the future, biologists and geneticists are likely to identify selective survival advantages conveyed to carriers and the entire human species by other genetic mutations as such. This prospect, coupled with the knowledge we already have on the function of certain heterozygous mutations as shielding mechanisms against environmental threats, poses a serious challenge to targeted gene editing and germline engineering: the astonishing effectiveness and the affordability of cutting-edge gene editing tools such as CRISPR/Cas 9 foreshadow a future free from genetic mutations; the ‘guilty’ genes, however, will be forever cast out of – or drastically reduced in – the human species’ gene pool. Along with genetic burdens, this would also irreversibly uproot adaptive mechanisms established during the evolutionary development of our species by means of natural selection, reducing thus drastically the diversity and richness of the human genome,¹⁷³ qualities that, apart from being “in a symbolic sense the heritage of humanity,”¹⁷⁴ have also been the key reasons for our species’ outstanding adaptive fitness.

Considerations as such cannot just be ignored; this is why bioethical debates on genetic engineering abound with deci-

Disorders Caused by Medical Disease,” *Seminars in Neurology* 29, no. 2 (2009): 97-110.

¹⁷² Thomas N. Williams and Stephen K. Obaro, “Sickle Cell Disease and Malaria Morbidity: A Tale with Two Tails,” *Trends in Parasitology* 27, no. 7 (2011): 315-320, 316.

¹⁷³ Tony McGleenan, “Human Gene Therapy and Slippery Slope Arguments,” *Journal of Medical Ethics* 21, no. 6 (1995): 350-355, 351.

¹⁷⁴ See *supra* note 164.

sional slippery slope arguments.¹⁷⁵ Although slippery slope arguments are classified into different types,¹⁷⁶ their basic structure is as follows:

- A. Permitting X would result to A, which is morally neutral or justifiable.
- B. A would unavoidably lead to B, C, D, etc.
- C. B, C, D, etc. would be morally unacceptable.
- D. Therefore, X should not be permitted.

The core of decisional slippery slopes is that a morally sound decision concerning the issue under discussion would unavoidably lead to loss of control and, hence, possibly (or, undoubtedly) to a series of events, some of which would be morally objectionable.¹⁷⁷ In the words of Alfred Sidgwick, who has probably been the first to systematically examine slippery slope arguments in his *Application of Logic*:

“We must not do this or that, it is often said, because if we did we should be logically bound to do something else which is plainly absurd or wrong. If we once begin to take a certain course there is no knowing where we shall be able to

¹⁷⁵ Among others see Lewis Wolpert, *The Unnatural Nature of Science* (New York: Harvard University Press, 1994), 151ff.; also Veikko Launis, “Human Gene Therapy and the Slippery Slope Argument,” *Medicine, Health Care and Philosophy* 5, no. 2 (2002): 169-179, 170.

¹⁷⁶ For an excellent analysis see Douglas Walton, “The Basic Slippery Slope Argument,” *Informal Logic* 35, no. 3 (2015): 273-311.

¹⁷⁷ Frederick Schauer, “Slippery Slopes,” *Harvard Law Review* 99, no. 2 (1985): 361-383, 369. For an excellent account of slippery-slope-type arguments see Douglas Walton, *Slippery Slope Arguments* (New York: Clarendon Press, 1992).

stop within any show of consistency; there would be no reason for stopping anywhere in particular, and we should be led on, step by step into action or opinions that we all agree to call undesirable or untrue.”¹⁷⁸

In the case of targeted gene editing, rectifying the faulty genes responsible for autosomal recessive disorders in certain carriers or patients would definitely benefit the individuals concerned as well as their offspring, which makes permitting targeted gene editing a morally justifiable decision.¹⁷⁹ This, however, would possibly lead to large-scale crusades against mutated genes, since all genetic patients as well as carriers would be expected to exhibit a strong interest in relieving their genetic makeup from unwanted mutations. Such a crusade would result in the eradication of the mutated genes from the gene pool, which would leave the entire species unprotected in the case heterozygous mutations were needed as a shield against environmental or other perils.¹⁸⁰ In a word, permitting targeted gene editing is highly likely – or, almost certain – to result in excessive gene pool depletion in the long run, which would be unjust to future generations and would make the entire human species less adaptive and therefore much more vulnerable to environmental threats.¹⁸¹ In this regard targeted

¹⁷⁸ Alfred Sidgwick, *The Application of Logic* (London: MacMillan, 1910).

¹⁷⁹ Sherman Elias and George J. Annas, “Somatic and Germ-Line Gene Therapy,” in *Gene Mapping: Using Law and Ethics as Guides*, ed. George J. Annas and Sherman Elias, 142-154 (New York and Oxford: Oxford University Press, 1992), 144-145.

¹⁸⁰ Robert O. Mason, “Genetic Research,” in *The Concise Encyclopedia of the Ethics of New Technologies*, ed. Ruth Chadwick, 167-192 (San Diego: Academic Press, 2001), 181.

¹⁸¹ Ruth Chadwick, “The Perfect Baby,” in *Ethics, Reproduction and Genetic Control*, ed. Ruth Chadwick, 93-135 (London and New York: Routledge,

gene editing tools such as CRISPR/Cas 9 should not be permitted in the first place.

IV. On slippery slope arguments

All decisional slippery slope arguments regardless of their form adopt a consequential viewpoint;¹⁸² arguments of this type focus on the possible undesired long-term consequences of the decision under discussion, leaving out of their scope considerations related to moral principles, maxims, etc. From this perspective, for instance, permitting euthanasia – no matter how morally justifiable such a decision might be in the case of terminally ill and agonizingly dying individuals, has also the potential to initiate a series of morally undesirable events: it might become *the thin edge of the wedge* that would put to challenge the unconditional value of human life and underpin the view that there are several circumstances in which life is indeed not worth-living. Given that the notion of a *lebensumwerten Leben* has already served as a moral justification for atrocities during the not so remote past,¹⁸³ legalizing euthanasia should by all means be morally opposed on grounds of the potentially calamitous long-term consequences that such a decision might produce.

Although commonly thought to be fallacious,¹⁸⁴ arguments of this kind are of particular importance for bioethi-

2001), 116, 158.

¹⁸² Frank Saliger, “The Dam Burst and Slippery Slope Argument in Medical Law and Medical Ethics,” *Zeitschrift fur Internationale Strafrechtsdogmatik* 9 (2007): 341-352, 342.

¹⁸³ See Karl Binding and Alfred Hoche, *Die Freigabe der Vernichtung lebensunwerten Lebens: Ihr Maß und ihre Form* (Leipzig: Felix Meiner, 1922).

¹⁸⁴ See among others Trudy Govier, “What’s Wrong with Slippery Slope Arguments,” *Canadian Journal of Philosophy* 22, no. 2 (1982): 303-316.

cal debates,¹⁸⁵ since when it comes to Bioethics any decision reached will have significant long-term consequences: the task of Bioethics, rather than providing short-term solutions, is to map a future for mankind in which *life would be worth-living*. In this respect the long-term consequences that targeted gene editing would have on the adaptive capabilities of our species should be a key determinant for making a well-informed and viable decision about it, and should by no means be overlooked. But this doesn't mean that potential hazards should be the only or the primary concern with regard to any bioethical issue, the one concerning targeted gene editing included; the applicability and the scope of any slippery slope argument is limited, and if exceeded, this might lead to inaction – since the best way to secure that nothing bad happens in the future due to decisions taken in the present is to take no decisions at all.

This becomes even more apparent when it comes to issues that belong to the agenda of Bioethics, especially those at the top of it: with bioethical dilemmas it is often the case that any decision reached and any resolution made would involve high potential hazard. In-vitro fertilization, for example, had it been evaluated on the basis of potential risk alone, would never have stood any chance to be established as a means of medically assisted reproduction: back in the 70s its benefits seemed to be limited, while the risks were foreshadowed as disproportionately high: IVF was at the time portrayed as the

¹⁸⁵ Concerning slippery slope arguments as a prominent form of reasoning in debates concerning genetic engineering see Veikko Launis, "Human Gene Therapy and the Slippery Slope Argument," *Medicine, Health Care and Philosophy* 5, no. 2 (2002): 169-179; also Douglas Walton, "The Slippery Slope Argument in the Ethical Debate on Genetic Engineering of Humans," *Science and Engineering Ethics* 23, no. 6 (2016): 1507-1528, and Nils Holtug, "Human Gene Therapy: Down the Slippery Slope," *Bioethics* 7, no. 5 (1993): 402-419.

thin edge of the wedge for introducing eugenics in human reproduction, for bringing back to life Dr. Frankenstein's project, etc. In fact every scientific achievement, any technological innovation goes hand in hand with potential hazard – the more advanced they are, the higher the risk. This, of course, is not a reason for altogether rejecting progress and craving the comforts and the restfulness of inertia instead.

The weakness of slippery slope reasoning is on the one hand in that it usually tends to consider certain immediate desirable consequences on a level with possible remote undesirable ones, and on the other that it is inclined to exaggerate potential remote dangers. In the case of targeted gene editing, the desirable consequences for carriers and patients will be *immediate* as well as *certain*: the carriers will see their autonomy-related rights being enhanced, the patients their condition being cured, and the human species natural heteronomy slightly fading away. On the other hand, the perils that might emerge from targeted gene editing are only *possible* and *remote*: indeed, to some extent it is possible that targeted gene editing would result in the complete and irreversible elimination of mutated genes (such as the ones responsible for sickle cell anemia or hemochromatosis) from the gene pool, that our species will experience in the future the outburst of a malaria pandemic or excessive shortage of iron-rich dietary sources, and that it would at the time be unable to respond to both these challenges through the advanced scientific achievements that are even now available; in that case our species would indeed face the grim prospect of imminent extinction. Nevertheless, it doesn't seem very likely that all these may ever occur together so as to bring about the danger invoked by the slippery slope argument: while the former seems quite possible, the latter does not. In the case of targeted gene editing, slippery

slope arguments seem unable to distinguish between the degrees of probability, and this affects their overall strength and validity.

Next to these, slippery slope arguments are often inclined to portray as inescapable a series of future undesired events that is *only one among the possible* that would result from a decision taken in the present. This particular kind of moral pessimism, however, many times in the past has been shown to be unsubstantiated and has been disproved by later events. Consider, for instance, the arguments against abortion which claimed that legalizing abortion would eventually – and inevitably – lead to the legalization of infanticide as well; or, respectively, arguments against in-vitro fertilization that evoked the danger of opening the door to eugenics. Although abortion has now been legalized almost world-wide, and IVF has long been established as a standard assisted reproduction tool, neither infanticide nor eugenics have been accepted as legitimate practices, despite the fact that several bioethicists have come up with quite strong arguments in favor of both.¹⁸⁶

Apart from equating possible series of events with certain outcomes, the argument against targeted gene editing seem to feature also the second weakness that is common to the slippery slope type of reasoning, that of exaggerating possible future risks. In particular, the argument stresses two risks: that gene editing would lead to the complete elimination of (potentially useful) heterozygous mutations on the one hand, and on the other that our species might

¹⁸⁶ Concerning infanticide see among others Peter Singer, *Practical Ethics* (New York: Cambridge University Press, 1999), 169ff. With regard to eugenics, see Julian Savulescu, "Procreative Beneficence: Why We Should Select The Best Children," *Bioethics* 15, no. 5 (2001): 413-426; also John Harris, *Enhancing Evolution: The Ethical Case for Making Better People* (Princeton: Princeton University Press, 2011).

experience a pandemic of malaria sometime in the future. The first possibility, of course, constitutes a potential risk only in the face of the second, the outburst of a malaria pandemic that couldn't be otherwise addressed, and the only way to deal with it would be the long extinct mutated sickle cell anemia responsible genes; assuming that this is the only benefit to the human gene pool conferred by these genes, in case a malaria pandemic never occurs in the future, or if it may be easily contained otherwise, these mutated genes will not be missed at all. But would gene editing unavoidably lead to the complete annihilation of mutated genes? And even if it did, would this leave the human species prey to the capriciousness of nature? As for the first concern, one would be justified to assume that in fact there would not be such a risk, since highly sophisticated science capable of facilitating complex and subtle interventions in the human genome would at least be able also to preserve and re-introduce these mutated genes if the situation called for it. As for the second consideration, it seems highly unlikely that the malaria plasmodium would be that sneaky, as to take mankind by surprise; it seems even more unlikely that science would be unable to find any other way to respond to the challenges posed by a malaria pandemic, leaving as the only hope for the survival of our species the heterozygous sickle cell mutation.

V. A postscript

Genetic mutations are burdensome, detrimental and fatal to carriers and patients, but also affect the community. It is true that a future free from genetic mutations for humans would be preferable to one that would still be burdened by them. It is

also true that a genetically burdened future would be preferable to no future at all. The task of Bioethics is to find the proper balance, so as the outstanding scientific advances in the field of genetics will have the maximum possible positive effect on the wellbeing of individuals and the species, while at the same time the risks would either be eliminated, or reduced to an acceptable minimum amount. The first part of this task calls for enthusiasm and fearlessness, while the second requires consideration and cautiousness. Many times during the past mankind proceeded incautiously in the implementation of advanced scientific achievements, and this has always brought about disasters; however, there is not even a single time that a scientific achievement has been put aside due to the potential perils it came hand in hand. In other words, targeted gene editing is here to stay: our species has enthusiastically given in to less alluring promises during its long history. This time there are quite good reasons to be much more optimistic concerning the way sophisticated scientific advances will affect the wellbeing and the prospects of our species: slowly indeed, but steadily though, mankind seems to be learning from past mistakes; slowly indeed, mankind seems to be reaching a state of moral maturity. What else could the establishment and the predominance of Bioethics be taken as, if not as a token that the morality of mankind has after all significantly evolved?

Human reproductive cloning and the right to a unique identity

According to Arthur Clarke's famous adage, "any sufficiently advanced technology is indistinguishable from magic."¹⁸⁷ The cloning of sheep no. 6LL3 under the cute name 'Dolly' back in 1996¹⁸⁸ has probably been for Clarke the ultimate vindication; due to advanced technology man was finally endowed with godlike powers: to create – better, duplicate – life from scratch – and all the more so, human life. Godlike powers, however, always come hand in hand with enormous concerns, or at least they should. As I argued in the postscript of the previous chapter, our species seems to have finally advanced to a farther stage of moral evolution: we now know that we need to be extremely cautious with the gifts of technology – this is a lesson well learnt from grievous experience acquired in Hiroshima and elsewhere.

I. Introduction

Dolly was the first successful attempt to clone a mammal by means of somatic cell nuclear transfer: the nucleus of a somatic cell was extracted from a mammary gland cell of an adult female sheep, and was introduced into an oocyte taken from

¹⁸⁷ Arthur Charles Clarke, *Profiles of the Future: An Inquiry into the Limits of the Possible* (New York: Harper and Row, 1973), 21.

¹⁸⁸ See Ian Wilmut, Angelika E. Schnieke, Jim McWhir, A. J. Kind, and Keith Henry Campbell, "Viable Offspring Derived from Fetal and Adult Mammalian Cells," *Nature* 385 (1997): 810-813.

another sheep after the oocyte's nucleus had been removed; following that, the new cell was subjected to electric stimulation in order to start dividing and developing into a blastocyst – when it did, the blastocyst was implanted into a foster mother who gave birth to a sheep identical to the one that contributed the initial somatic cell. This is the miraculous story of cloning for the first time not just a sheep, but a mammal; since humans are also mammals, the creation of human clones by means of somatic nuclear transfer seems to be only a step away. The prospect is as challenging as it is alarming; now it rests with bioethicists to evaluate the risks of extending reproductive cloning to humans against potential benefits – and bioethicists have definitely taken the challenge:¹⁸⁹ ever since Dolly the sheep, the debate on human cloning has probably been the most engaging and heated in the field of Bioethics.

As is often the case with such issues, next to exaggerations, preposterous overstatements and hilarious, far-fetched predictions about Adolf Hitler's replicas swarming the planet, or vast armies of clones ready to become the iron hand of war-hungry dictators (Hitler's clones would probably also be involved in this scenario), there are well articulated arguments and substantiated objections put forward by bioethicists that focus on the effects human reproductive cloning might have either on clones, or on their 'prototypes.' The clones, in particular, would run the risk of living in the shadow of the individuals they will be the replicas of; their achievements would constantly be compared to those of their prototypes, or the book of their life would always be in direct juxtaposition to that of the people that contributed the genetic material for

¹⁸⁹ National Bioethics Advisory Commission, *Cloning Human Beings: Report and Recommendations of the National Bioethics Advisory Commission* (Rockville, Maryland June 1997), 13.

their creation.¹⁹⁰ It is often also argued that due to the way they would have been brought to life, clones would unavoidably be aware of certain details concerning their present and future life, details that are normally unavailable to other humans and one might just prefer to ignore, ranging from simply losing one's hair sometime in the future to developing certain diseases or conditions during one's lifetime, or even dying at a certain age.¹⁹¹ Human reproductive cloning is also objected to on the grounds that it may deprive the clones of the *openness* of their future, to wit of one's "[...] future ability to make her own choices about which of the many diverse visions of life she wishes to embrace;"¹⁹² if there is a right to an open future, cloning would unavoidably violate it as far as clones are concerned,¹⁹³ since the clones would be deprived of any future with a reasonable range of opportunities.¹⁹⁴ According to Dan Brock, a clone would be something like a 'later twin' to the prototype, and this is expected to make the clone, unlike all

¹⁹⁰ See Sören Holm, "A Life in the Shadow: One Reason Why We Should Not Clone Humans," *Cambridge Quarterly of Healthcare Ethics* 7, no. 2 (1998): 160-162. Also Hans Jonas, "Lasst uns einen Menschen klonieren: Von der Eugenik zu der Gentechnologie," in *Technik, Medizin und Ethik – Praxis des Prinzips der Verantwortung*, ed. Hans Jonas (Frankfurt am Main: Suhrkamp, 1987), 190.

¹⁹¹ See, among others, Tuija Takala, "The Right to Genetic Ignorance Confirmed," *Bioethics* 13, nos. 3-4 (1999): 288-293, 289, as well as Juha Raikkä, "Freedom and the Right (not) to Know," *Bioethics* 12, no. 1 (1998): 49-63, 50-51.

¹⁹² Dena Davis, "Genetic Dilemmas and the Childs Right to an Open Future," *Hastings Center Report* 27, no. 2 (1997): 7-15, 11.

¹⁹³ The right to an open future was first introduced by Joel Feinberg. See Joel Feinberg, *Freedom and Fulfillment: Philosophical Essays* (Princeton, New Jersey: Princeton University Press, 1994), 76ff.

¹⁹⁴ See Helga Kuhse, "Should Cloning Be Banned for the Sake of the Child?" *Poiesis and Praxis* 1, no. 1 (2001): 17-33, 20.

other people, feel that he is not the only author of the book of his own life, that he is not allowed to create and pursue a future of his own:

“For there is already in the world another person, one’s earlier twin, who from the same genetic starting point has made the life choices that are still in the later twin’s future. It will seem that one’s life has already been lived and played out by another, that one’s fate is already determined, and so the later twin will lose the spontaneity of authentically creating and becoming his or her own self. One will lose the sense of human possibility in freely creating one’s own future. [...] A later twin might grant that he is not determined to follow in his earlier twin’s footsteps, but that nevertheless the earlier twin’s life would always haunt him, standing as an undue influence on his life, and shaping it in ways to which others’ lives are not vulnerable.”¹⁹⁵

In my view, most of the moral objections that are raised against human cloning could be reduced to the issue of *individuality* or *unique identity*, to wit if and to what extent the clones that will be created in the case human reproductive cloning is permitted will exist as unique human individuals exactly like all other people, or if their uniqueness will be denied due to the manner in which they would have come into existence. Moreover, it is being argued that in-

¹⁹⁵ Dan Brock, “Cloning Human Beings: An Assessment of the Ethical Issues Pro and Con,” in *Cloning and the Future of the Human Embryo Research*, ed. Paul Lauritzen, 93-113 (New York: Oxford University Press, 2001), 104-105.

dividuals should be granted the right to their uniqueness, their unique identity or individuality, and that since cloning would unavoidably violate this right as far as clones – but also their prototypes – are concerned, human cloning should be prohibited.¹⁹⁶

In this chapter I will focus for the most part on physical – that is, *genetic* and *phenotypical* – uniqueness that will allegedly be compromised for the clones no less than for their prototypes in case reproductive cloning will be permitted for humans; I will discuss only en passant the allegation that cloning may produce individuals that would be identical also with regard to their character and personality, since in my view concerns as such are indicative of the most stringent kind of genetic determinism. The reason I reject genetic determinism is because so far it isn't backed up by significant evidence, and most importantly, by assuming that genetic determinism is correct, any moral debate would necessarily become pointless and redundant, since all human decisions would eventually be predetermined either by one's genetic makeup, or by the collective genetic constitution of our species. In a sense, endorsing any kind of determinism in moral debates stands as the epitome of a *contradictio in terminis*. That said, I will proceed by first examining whether the newly-coined and recently introduced right to a unique genetic identity could be accepted as a valid one and thus included within standard accounts of moral rights. Then I will discuss whether and in what degree

¹⁹⁶ The European Parliament, “Resolution on Cloning,” *Official Journal C* 034 02/02/1998, p. 0164: “The European Parliament, [...] 1. Stresses that each individual has a right to his or her own genetic identity and that human cloning is, and must continue to be, prohibited; 2. Calls for an explicit worldwide ban on the cloning of human beings; 3. Urges the Member States to ban the cloning of human beings at all stages of formation and development, regardless of the method used [...]”

these concerns are morally justifiable and substantiated. Can human reproductive cloning, if permitted, possibly – or, necessarily – compromise human uniqueness, and hence violate the putative right to a unique identity as far as clones and their prototypes are concerned?

II. The right to a unique identity

The right to a unique identity is not to be found among any of the standard accounts of moral or human rights; it has been recently coined only as a part of the debate concerning human reproductive cloning. The argument against human cloning that appeals to the right to a unique identity is as follows:

- A. Each human individual is distinguishable from any other due to its unique genetic identity.
- B. Having a unique genetic identity is a moral or human right.
- C. Human reproductive cloning would produce repeated genomes; thus it would violate the right to a unique genetic identity for the clones and the prototypes.
- D. Therefore, human reproductive cloning should be prohibited as violating the right to a unique identity.

This line of reasoning has drawn severe criticism as being overwhelmingly weak. It has often been argued that the major premise (A) of the argument is not true, since “genetically indiscernible organisms exist already in nature as so-called ‘identical’ twins;”¹⁹⁷ it has also been suggested that premise

¹⁹⁷ Kathinka Evers, “The Identity of Clones,” *Journal of Medicine and Philosophy*

(A) is faulty due to an *illicit generalization*: humans may indeed be discernible due to their unique, unrepeated genomes, but *not only* due to them; there are also differences in their character traits, personality, etc., that play at least an equally significant role in making them distinguishable from others. To bypass this objection one should have to argue that all differences in character, personality etc., can be reduced to genetic differences; such a view, however, would be vulnerable to accusations that it falls prey to the most extreme kind of genetic determinism. In light of the above, premise (A) could be defended only if it was restated as: 'Each human individual that has indeed a unique genetic identity, is distinguishable from any other human individual due to its unique genome, but also due to every other aspect of its overall constitution.' This, of course, would be just a tautology, since it amounts to the premise that 'each human individual is distinguishable from any other due to anything that might distinguish it from others,' and I am not aware of any significant moral argument that starts with a tautology as its major premise.

The second premise definitely requires further justification; as it is, it seems to be begging the question: it asserts that humans should be granted the right to a unique genetic identity without providing any good reason whatsoever on why this view should be accepted; the fact that something indeed *is*, doesn't provide substantial moral justification for the claim that it *ought to* be as well, so as to serve as the foundation of any legitimate moral or human right. Rights, on the other hand, especially human rights, are not necessarily in need of exhaustive, robust moral justification; suggesting a right to something may also imply that we presume that people would be better off in the case where this right was accepted as a le-

gitimate one, although we cannot provide robust justification in support of this. In that sense, it could be claimed that the right to a unique genetic identity should be included as moral or human right, just because the world would be a better place if such a right was accepted as a valid one.

As far as I am concerned, premise (C) is the weakest of all three, and the main reason why the argument is flawed, at least in my view; in particular, all available scientific evidence shows that this premise is absolutely untrue, but I will not discuss this issue now, as I intend to provide a detailed account on this later on in this chapter. Nevertheless, if premise (C) is untrue, that is, if it isn't possible to create genetically identical human individuals by means of cloning, and since cloning is so far the only prospective threat for human genetic uniqueness, it seems to be totally pointless even to think about introducing a right to a unique genetic identity for humans. Regardless of the various ways in which moral or human rights are being perceived, either as natural, or as deriving from duties that are founded upon reason, or elsewhere, rights are in the core fundamental moral principles purposed to provide protection to conditions, properties or entitlements we regard as significantly valuable, but at the same time are also vulnerable, fragile and uncertain. In a word, establishing a right is meaningful only when there is a need to create an invisible protective shield around something we value so highly, as to secure it against any possible threat. If, however, there are neither existing, nor possible threats for something we value, creating a right on purpose of securing it would be as useless and pointless as watering the seas lest they dry up. And this is exactly my argument against introducing a right to a unique identity: if the view that human genetic uniqueness is in no peril whatsoever is correct, and if it doesn't seem likely that

it would ever be, at least not by means of human reproductive cloning, introducing a right to a unique identity would be devoid of any actual meaning; such a right would just be a *flatus vocis*. Whether this is indeed the case with the right to a unique identity or not, remains to be examined in what follows.

III. Identical genomes: Not logically possible

Those who object to human reproductive cloning on the grounds that if it is permitted, the right to a unique genetic identity will unavoidably be violated, assume that cloning is capable of producing Xerox copies of already existing people: the 'prototypes' will be genetically identical and indiscernible from their 'copies,' and vice versa. This hypothesis, however, is *logically* flawed. By definition, two objects that are *identical* to each other – and not just *similar*, even *extraordinarily similar*, should both have exactly the same properties, and each one of these properties in exactly the same degree. As far as human cloning is concerned, given that next to everything else each one of us is also genetically unique, any Xerox copy of ours next to anything else should also be genetically unique, otherwise it would be just *extraordinarily similar* to its prototype, but not identical to it, since it would lack one of the prototype's properties; but again, in order to be genetically unique, any clone should differ from its prototype with regard either to the number or the degree of its properties. This leads to an impossible conundrum: human clones cannot be identical to their prototypes unless they are genetically unique; but in such a case they cannot be clones. The only possible solution to the riddle would be to deny either that humans are genetically unique, or that reproductive cloning has the power to produce

individuals genetically identical to others; and since scientific evidence proves beyond doubt that humans are *indeed* genetically unique – as I will explain later on, this applies also to monozygotic twins, the only way out of this conundrum is to deny that cloning is capable of producing individuals identical to others, and assume that the most cloning could be expected to produce in the case it is extended to humans is individuals *extraordinarily similar* to existing ones, but in no case *exact* copies. The majority of biologists and geneticists actually endorse this view, as I will argue next; at this point, however, I am more interested in Leibniz's endorsement.

According to Leibniz, two separate objects (that is, objects that are numerically distinct to each other) cannot have all their properties in common; “[...] it is not true that two substances can resemble each other completely and differ only in number,”¹⁹⁸ or, as he explains elsewhere:

“[...] in nature, there cannot be two individual things that differ in number alone. For it certainly must be possible to explain why they are different, and that explanation must derive from some difference they contain [...] for never do we find two eggs or two leaves or two blades of grass in a garden that are perfectly similar. And thus, perfect similarity is found only in incomplete and abstract notions, where things are considered only in a certain respect.”¹⁹⁹

¹⁹⁸ Gottfried W. F. von Leibniz, “Discourse on Metaphysics,” *Philosophical Essays*, trans. Roger Ariew, and Daniel Garber (Indianapolis: Hackett, 1989), 41-42.

¹⁹⁹ Ibid., “Primary Truths,” 32.

Leibniz formulated his *Law for the Identity of the Indiscernibles* as a principle of analytic ontology that asserts that two beings that have every quality of theirs in common (by this Leibniz means also ‘in the same degree’), *are not actually two*, but *one*. From this it follows by inference that two separate objects should differ with regard to at least one property of theirs either in number, or in degree. According to John McTaggart Ellis McTaggart, who reversed Leibniz’s principle to formulate his *Law of the Dissimilarity of the Diverse*, if two objects are diverse, to wit numerically distinct, it follows that they are definitely dissimilar and that there is at least one quality in one of them, that the other hasn’t.²⁰⁰ In short, numerical diversity is a token of dissimilarity. If this is true, and given that the clones and the prototypes would definitely be separate beings, they cannot be genetically identical to each other;²⁰¹ from this it follows that extending reproductive cloning to humans would pose no threat to their genetic uniqueness.

IV. Identical genomes: Not technically feasible

Principles of analytic ontology, no matter how challenging and thought-provoking they may be, have limited power – if any – on real-life concerns, as well as on resolutions reached by international bodies: Leibniz’s and McTaggart’s contrasting views had definitely no effect whatsoever on the members of the European Parliament,²⁰² the UN General Assembly,²⁰³ and

²⁰⁰ John McTaggart Ellis McTaggart, *The Nature of Existence*, vol. 1 (Cambridge: Cambridge University Press, 1988), § 94.

²⁰¹ Evers, 69.

²⁰² See *supra* note 196.

²⁰³ UN General Assembly, *United Nations Declaration on Human Cloning*,

various other bodies that declared that human reproductive cloning is inconsistent with human dignity, and called upon its prohibition. Many bioethicists remain also unconvinced; to them human reproductive cloning is expected to severely compromise individuality and uniqueness. Arthur Caplan describes it thus:

“[...] one of the things we treasure about ourselves is our individuality [...] You begin to worry that when you deliberately set out to make copies of something, you lessen its worth.”²⁰⁴

Caplan’s view certainly sounds plausible and has a strong appeal to intuition; as far as I am concerned, though, the claim that duplicating – or multiplying – something lessens its worth is open to dispute and, in any case, is by no means self-evident – this view is definitely in need of further argumentation. Even more doubtful is to assume that human beings may indeed be duplicated.

Humans may be different, similar or – allegedly – identical to each other with respect to either their genetic make-up and phenotype, or their character and personality. Our uniqueness lies in the fact that at least as far as one of these aspects is concerned we differ to some degree from every other human being; as I argued above, two human beings that are *indiscernible* from each other should be identical in each one of these aspects: they should share *exactly* the same gene set, be *totally indistinguishable* with regard to their external

A/C.6/59/L.27/Add.1, 16 February 2005.

²⁰⁴ Quoted in Ruth Macklin, “Splitting Embryos on the Slippery Slope: Ethics and Public Policy,” *Kennedy Institute of Ethics Journal* 4, no. 3 (1994): 209-225, 215.

appearance, but also have *exactly* the same personality and character traits. If human reproductive cloning has the power indeed to create *at least* two individuals that would be identical to each other in all these respects at the same time, human uniqueness is undoubtedly at stake. Nevertheless, this is far from being the case at least at present, and it doesn't seem likely to be in the future.

As I already mentioned in the introduction of this chapter, the most advanced cloning method currently, somatic nuclear transfer, consists in extracting the nucleus of a somatic cell that belongs to the individual who will be cloned, and then introducing the nucleus to an enucleated ovum; the new cell is stimulated so as to start dividing and then it is implanted into the carrier's uterus. This is supposed to result in a perfect copy of the individual who contributed the initial somatic cell nucleus.²⁰⁵ But this isn't exactly how it goes, though, since it is not only the nucleus that contains genetic information and conveys it to the new organism; the enucleated egg shell to which the somatic cell nucleus will be inserted still carries a tiny part of unique genetic information that will unavoidably be conveyed to the new organism, the clone. This information, the mitochondrial DNA,²⁰⁶ is encoded in the cytoplasm, the gel-like substance that surrounds the nucleus and is contained within the cell membrane; the mitochondrial DNA is responsible for 0,5% of the overall genetic information that will be passed onto the new organism.²⁰⁷ An even smaller part of genetic information is also probably encoded in the cell mem-

²⁰⁵ National Bioethics Advisory Commission, *Cloning Human Beings: Report and Recommendations* (Rockville, Maryland, 1997), 14.

²⁰⁶ Kuhse, 21.

²⁰⁷ Françoise Baylis, "Human Cloning: Three Mistakes and an Alternative," *Journal of Medicine and Philosophy* 27, no. 3 (2002): 319-337, 324-325.

brane. It follows that the clone would be at least 0,5% different from the prototype. Slight as it is, such a difference becomes immensely decisive when it comes to genetics, especially if we take into account that “the human-chimpanzee genetic divergence is estimated at 1,1 to 1,4%.”²⁰⁸ In this respect, a clone would be more different relative to its prototype than identical twins are genetically different from each other; they at least share the same maternal mitochondrial DNA.²⁰⁹ In any case, the most human reproductive cloning seems capable of, is producing *amazingly similar individuals*, but not *perfect copies*; in that sense, even the very use of the terms ‘prototype’ and ‘clone’ seems to be exaggerated and misleading: somatic nuclear transfer is not capable of producing perfect copies, clones.

This precious missing 0,5% that is being conveyed through the mitochondrial DNA would require either an egg cell identical to that of the prototype, or the complete absence of any egg; neither is possible, though. In case we wished to create an exact copy of Frédéric Chopin, for instance, it would not suffice to acquire a somatic cell from his heart that is still kept in Holy Cross Church in Warsaw; we would still need an ovum whose mitochondrial DNA would be a perfect match to the one that was fertilized to produce Chopin. Ova, however, are unique as well: none among the egg cells produced by a woman during her fertility years is a perfect genetic match to any other. This means that, even if we were prepared to go as far as to clone Chopin’s mother in the hope that we might one

²⁰⁸ Jeffrey Rogers and Richard A. Gibbs, “Comparative Primate Genomics: Emerging Patterns of Genome Content and Dynamics,” *Nature Review Genetics* 15, no. 5 (2014): 347-359, 348.

²⁰⁹ Martin LaBar, “The Pros and Cons of Human Cloning,” *Thought* 59, no. 3 (1984): 319-333, 325.

day harvest a compatible egg – assuming that in her case, unlike any other, creating a perfect copy would be possible – all our efforts would be in vain.

Even creating a perfectly compatible egg in the lab wouldn't do, since "[...] a variety of forces will influence gene expression, including random factors and the prenatal environment. Thus, which genes express, and to what extent, will vary [...]." ²¹⁰ Gene expression, apart from being spontaneous²¹¹ to a large extent,²¹² is also being determined by numerous other subtle and sensitive factors that seem to be totally beyond our control,²¹³ such as intrauterine environment,²¹⁴ stages of placentation, embryo-maternal circulation,²¹⁵ etc. After all, this is the reason why even 'identical' twins are by no means genetically indiscernible, despite the obvious fact that they share the same nucleus and mitochondrial DNA, as well as the same intra-uterine environment: subtle environmental factors affect epigenetic expression. In light of the above, it seems extremely plausible that not only the clone will be different from the prototype, but also in the case of multiple clones "all clones will be different from each other and different from the parent organism."²¹⁶

²¹⁰ Bernard E. Rollin, "Keeping up with the Cloneses: Issues in Human Cloning," *The Journal of Ethics* 3, no. 1 (1999): 51-71, 63.

²¹¹ Leon Eisenberg, "The Outcome as Cause: Predestination and Human Cloning," *The Journal of Medicine and Philosophy* 1, no. 4 (1976): 318-331, 326.

²¹² See Lansing M. Prescott, John P. Harley, and Donald A. Klein, *Microbiology*, 5th edition (New York: McGraw-Hill, 2002), 226ff.

²¹³ Gregory E. Pence, *Who's Afraid of Human Cloning?* (New York: Rowman & Littlefield Publishers, 1998), 14.

²¹⁴ Baylis, 324-325.

²¹⁵ Eisenberg, 324.

²¹⁶ Rollin, 63.

V. Identical *persons*: Neither logically possible, nor technically feasible

Let us assume for the sake of the discussion that human reproductive cloning will be capable of producing perfect genetic copies, and that this would also result in perfect phenotypic copies; would this still support the fear that cloning would have the power to produce *identical human persons*? As I argued above, only the champions of the most stringent kind of genetic determinism might argue in favor of this, but, as a matter of fact, even they do not. There is a *further fact* about human persons that makes them unique: each person has an unrepeated personality and distinct character traits. It is true that recent scientific evidence indicates that our character traits are to some degree influenced by our genetic makeup; there may indeed be certain inclinations, moral dispositions and tendencies that are attributable to our genetic constitution. Nevertheless, personality and character are not reducible to genomic construction. The most our genetic code is supposed to affect is the range within which our personality may develop, and to set limits for the least and the most we could become. The exact final outcome, however, is utterly dependent upon – and determined by – the environment in which one lives, and probably also one's own free will. What eventually makes us the persons we are is the way we interact with an extremely complex, random, and constantly fluctuating environment. In that sense, Eisenberg seems to be right in arguing that:

"To produce another Mozart, we would need not only Wolfgang's genome but mother Mozart's uterus, father Mozart's music lessons,

their friends and his, the state of music in eighteenth-century Austria, Hayden's patronage, and on and on, in ever-widening circles. Without his set of genes, the rest would not suffice; there has been, after all, only one Wolfgang Amadeus Mozart. But we have no right to the converse assumption: that his genome, cultivated in another world at another time, would result in an equally creative musical genius. If a particular strain of wheat yields different harvests under different conditions of climate, soil, and cultivation, how can we assume that so much more complex a genome as that of a human being would yield its desired crop of operas, symphonies, and chamber music under different circumstances of nurture?"²¹⁷

Even twins who normally grow up together within the same family and share almost the same environment – though never exactly the same – develop distinct personalities.²¹⁸ Behavioral genetic studies conducted on monozygotic twins "agree in that about half of the variance explaining individual differences in personality is caused by environmental factors."²¹⁹ It is evident that even the most subtle environmental differences – or, again, the different 'angles' from which the same environment is being perceived by two persons, even if

²¹⁷ Leon Eisenberg, "The Outcome as Cause: Predestination and Human Cloning," *The Journal of Medicine and Philosophy* 1, no. 4 (1976): 318-331, 326.

²¹⁸ Wendy Johnson, Eric Turkheimer, Irving I. Gottesman, and Thomas J. Bouchard, "Beyond Heritability: Twin Studies in Behavioral Research," *Current Directions in Psychological Science* 18, no. 4 (2010): 217-220.

²¹⁹ Anne Mari Torgersen and Harald Janson, "Why do Identical Twins Differ in Personality: Shared Environment Reconsidered," *Twin Research* 5, no. 1

they happen to share the same genetically inherited tendencies and dispositions – result in enormous variances with regard to personality and character. If this is true, and given that the clone, dramatically unlike monozygotic twins, would necessarily be raised within environmental conditions totally different from the ones the prototype had been raised within, human reproductive cloning is very much unlikely to result in *even remotely similar* personalities, therefore neither the clone's nor the prototype's uniqueness would be jeopardized. In the words of John Harris, “artificial clones do not raise any difficulties not raised by the phenomenon of natural twins.”²²⁰ If natural twins, regardless of their often amazing phenotypic similarity, are still considered to be unique individuals due to the fact that their personalities are totally distinct, we have no reason to assume that the same wouldn't apply to human clones and their prototypes also. In a word, human reproductive cloning doesn't seem to have the power to produce identical *persons* and, in the light of the scientific data I discussed above, it is highly unlikely that it would ever have such a power.

VI. A postscript

It has become a habit for bio-sciences to take ethicists by surprise, and pose ever-greater challenges with unprecedented frequency. This often makes traditional moral arguments seem outworn and insufficient to meet the challenges presented by technology; it is probably due to this that ethicists are so inclined to come up with new rights, as exemplified by the right to a unique identity I discussed in this chapter. Sometimes, it is

(2002): 44-52.

²²⁰ John Harris, “Goodbye Dolly? The Ethics of Human Cloning,” *Journal of Medical Ethics* 23, no. 6 (1997): 353-360, 353.

true, in order to respond properly to new challenges, one needs to forge new weapons; and again, there are times that making proper use of the already existing ones can be much more efficient. As I already argued, assuming a right to a unique identity is on the one hand questionable and controversial, and on the other utterly ineffective, at least as far as the issue of human reproductive cloning is concerned. I also believe that it isn't even necessary to go that far; the case of monozygotic naturally-born twins probably provides us with the perfect analogy, by means of which we may probe into the issue of unique identity and individuality as related to human reproductive cloning: identical twins already exist, their genetic makeup is much more similar than any clone's will ever be to its prototype's, and they also share the same environment. In that respect, John Harris seems to be right in arguing that the case of clones is perfectly analogous to that of naturally-born twins. Since identical twins are still definitely unique human individuals despite all they have in common, I don't see why we need to go any further than that.

It might be argued, of course, that this analogy necessarily loses its strength as soon as we take into consideration that while naturally-born twins are random expressions of natural selection, clones will be created due to a deliberate decision which permits human reproductive cloning. In my view, though, this isn't a strong argument. First of all, the creation of identical twins has long ceased to be entirely dependent upon the capriciousness of natural selection; in-vitro fertilization and various other assisted reproduction techniques frequently result in twin pregnancies and, surprisingly enough, sometimes also in giving birth to identical twins.²²¹ Couples or single women who undergo such treatments are perfectly aware of the increased probability of giving birth to either heterozygous or

²²¹ See, among others, J. L. Yovich, J. D. Stanger, A. Grauaug, R. A. Barter,

monozygotic twins. Nevertheless, assisted reproduction is not considered to be morally objectionable, at least not due to the fact that it may indeed result in identical twins.²²²

Next to these, arguing against human reproductive cloning on the basis of a putative right to a unique identity also seems to imply that naturally-born identical twins have to suffer a kind of natural injustice that in the case of clones and their prototypes may – and *ought to* – be prevented; that identical twins in some way have been wronged or harmed by the very fact that they were born as identical twins. Nonetheless, apart from definitely being counter-intuitive, this view cannot be supported by consistent moral arguments. Derek Parfit's discussion of the non-identity problem offers lucid contrasting insights concerning the soundness of this line of reasoning,²²³ and identical twins would definitely have a lot more to say on this at their end.

G. Lunay, R. L. Dawkins, and M. T. Mulcahy, "Monozygotic Twins from in Vitro Fertilization," *Fertility and Sterility* 41, no. 6 (1984): 833-837; also Jessica R. Kanter, Sheree L. Boulet, Jennifer F. Kawwass, Denise J. Jamieson, and Dmitry M. Kissin, "Trends and Correlates of Monozygotic Twinning After Single Embryo Transfer," *Obstetrics & Gynecology* 125, no. 1 (2015): 111-117.

²²² Brock, "Cloning Human Beings," 103.

²²³ If applied to the case of human reproductive cloning, Derek Parfit's *non identity* argument would come to the conclusion that the clone cannot be harmed in any case, because the clone may either be born as a clone, or not be born at all. See Derek Parfit, *Reasons and Persons* (Oxford: Clarendon Press, 1987), 357ff. Also Michael Bayles, "Harm to the Unconceived," *Philosophy & Public Affairs* 5, no. 3 (1976): 292-304; Robert M. Adams, "Existence, Self-Interest, and the Problem of Evil," *Noûs* 13, no. 1 (1979): 53-65; Gregory Kavka, "The Paradox of Future Individuals," *Philosophy & Public Affairs* 11, no. 2 (1982): 93-112 and Melinda A. Roberts, "The Non-identity Fallacy: Harm, Probability and Another Look at Parfit's Depletion Example," *Utilitas* 19, no. 3 (2007): 267-311, 268.

On the fear of death: Epicurus' legacy

I. Introduction

What is most scandalous about human existence is probably that it is embedded in time, of which, time, we actually know nothing – except a few fractions that precede us and are either preserved in historical memory, or are revealed by science; what really matters about time, though, its beginning and its end, persistently remains beyond our reach. This is probably the reason why the very fact of existence is inherently incomprehensible: lacking any plausible origin or destination, life seems utterly devoid of any purpose, cause and justification. The only possible way out of this stalemate is to deny it, either by seeking refuge in religious views that proclaim that *there actually is* a meaning in life and profess to have privileged knowledge about what it truly is, or by subconsciously negating mortality. Nevertheless, the fact that all people, at least at some point in their life, have experienced the existential anxiety or the fear of death, indicates that the power of both religion and denial is not unlimited.

For animals in general, and for primates in particular, emotions are decisive evolutionary advantages: they potentiate action on the one hand, and on the other they are powerful adaptive learning mechanisms; fear, for example, is an adaptive response to threat-related stimuli and “motivates ‘fight or fly’ behavior, ultimately promoting self-protection,”²²⁴ while it

²²⁴ Pavol Prokop, “Universal Human Fears,” in *Encyclopedia of Evolutionary Psychological Science*, ed. Todd K. Shackelford, and Viviana A.

also reflects “evolutionarily prepared learning to fear events and situations that have provided survival threats in our evolutionary past.”²²⁵ In other words, the emotion of fear is a survival mechanism whose purpose is to preserve life either by keeping one away of potential threats for one’s life, or by potentiating action by means of preparing one either to face danger, or escape it.²²⁶ In that sense every fear is at the core *fear for death*; or, at least, the fear of death is the archetype and the source of all fears. In light of the above, while the fear for *imminent death* when one is faced with life-threatening situations makes perfect sense, the fear of *death in general* seems completely unjustifiable, since death is the insuperable, unavoidable finish-line of human existence. Epicurus couldn’t agree more with this view.

II. Epicurus on the pains of the body and the soul

Fear is “the most depressing of all the emotions” according to Charles Darwin.²²⁷ In that respect, fear is the most severe among the mental pains one may experience; in the eyes of any committed hedonist like Epicurus or Aristippus of Cyrene, this makes fear the *ultimate evil* as far as the evils of the soul are concerned. Ethical hedonism, probably the first consistent version of consequential ethics and a precursor to utilitarianism, regards pain as the absolute evil, and pleasure as the ultimate good; while Epicurus wouldn’t fully agree with this, Aristippus would recognize in the following words of Jeremy Bentham a brother soul:

Weekes-Shackelford, 1-5 (Dordrecht: Springer, 2016), 1.

²²⁵ *Ibid.*, 2.

²²⁶ Frans B. M. de Waal, “What is an Animal Emotion?” *Annals of the New York Academy of Sciences* 1224, no. 1 (2011): 191-206, 193ff.

²²⁷ Charles Darwin, *The Expression of the Emotions in Man and Animals* (London: Fontana Press, 1872), 36.

“[...] pleasure is in itself a good; nay, even setting aside immunity from pain, the only good; pain is in itself an evil, and indeed, without exception, the only evil. [...] And this is alike true of every sort of pain, and of every sort of pleasure.”²²⁸

Since the standard of moral value for both ‘methods’ is pleasure, to Henry Sidgwick utilitarianism is also hedonism, only with a much broader scope: while for classical hedonism – to Sidgwick, *egoistic hedonism* – pleasure and pain related concerns mostly regard individual existence, utilitarianism – in Sidgwick’s words: *universalistic hedonism*²²⁹ – adopts the broadest possible viewpoint:

“No doubt it was, from the point of view of the universe, reasonable to prefer the greater good to the lesser, even though the lesser good was the private happiness of the agent.”²³⁰

And,

“[...] by considering the relation of the integrant parts to the whole and to each other, I obtain the

²²⁸ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Kitchener: Batoche Books. 2000), 83.

²²⁹ Henry Sidgwick, *The Methods of Ethics* (London and New York: MacMillan, 1907), 11: “The two methods which take happiness as an ultimate end it will be convenient to distinguish as Egoistic and Universalistic Hedonism: and as it is the latter of these, as taught by Bentham and his successors, that is more generally understood under the term ‘Utilitarianism,’ I shall always restrict that word to this signification. For Egoistic Hedonism it is somewhat hard to find a single perfectly appropriate term. I shall often call this simply Egoism: but it may sometimes be convenient to call it Epicureanism [...].”

²³⁰ *Ibid.*, xviii.

self-evident principle that the good of any one individual is of no more importance, from the point of view (if I may say so) of the Universe, than the good of any other; unless, that is, there are special grounds for believing that more good is likely to be realised in the one case than in the other.”²³¹

The differences between utilitarianism and hedonism mostly regard the point of view from which they perceive the notion of pleasure that lies at the very heart of both systems; as far as pain is concerned, however, both ‘egoistic’ and ‘universalistic’ hedonism agree that it is the ultimate evil, one that should be prevented and avoided by all means; and when it comes to preventing pain, neither Bentham nor Sidgwick have much to add to Epicurus’ exhaustive account.

Epicurus’ ethical theory seems to have been articulated with the sole intention of providing detailed guidelines on how to prevent and avoid mental no less than physical pain, or successfully cope with pain if it can not be unavoided. To Epicurus pleasure (*hedone*) primarily consists in the absence of bodily (*aponia*), as well as mental pain (*ataraxia*).²³² The pains of the body are much simpler than those of the soul, therefore they are much easier to be prevented. First of all, one has to secure access to food and water, since “every pleasure is based on the pleasures of the belly;”²³³ luxury is of no importance in

²³¹ *Ibid.*, 382.

²³² Seneca, *Epistulae morales ad Lucilium*, ed. and trans. Richard Gummere (London: William Heinemann, 1951), 66.45: “[...] apud um duo bona sunt, ex quibus sumnum illud beatumque componitur, ut corpus sine dolore sit, animus sine perturbatione.”

²³³ Athenaeus, *Deipnosophistae*, ed. G. Kaibel (Leipzig: Teubner, 1890), XII 546f: “[...] the beginning and the root of every good is the pleasure of the

the pursuit of *aponia*: “If I have rye-bread and baked barley and water, I think my table so well furnished, as to dare dispute happiness with Zeus himself.”²³⁴ After all, the pleasures of the palate are *dynamic*, and like all pleasures of this kind are always ‘pain-prone’ in case one indulges in them with no caution or in excess. This brings us to the probably most efficient preventive measure against suffering physical (and also mental) pain: any rational agent ought to distinguish between dynamic and static pleasures, and prefer the latter to the former lest he experiences pain, since static pleasures – unlike their dynamic counterparts – are totally pain-safe.²³⁵ In short, the majority of bodily pains can be avoided by means of a moderate, disciplined, consistent and meaningful lifestyle. But what about random, unanticipated physical pain that may not be prevented or avoided? The human condition is indeed vulnerable to uncalled-for, wanton pains, and Epicurus knew that better than anyone else: suffering from chronic kidney disease, he must have lived in pain for many years, and we know that he died a painful death. Even when faced with situations as such, however, the *wise* (to Epicurus the term seems to mean: *reasonable*) will focus on pleasant thoughts and past memories, and thus find relief from physical suffering:

“Even on the rack the wise man is happy. He alone will feel gratitude towards friends, present and absent alike, and show it by word and deed.

belly. And everything that is wise or useless is due to it.”

²³⁴ Aelianus, *Varia historia*, ed. R. Hercher (Leipzig: Teubner, 1866), IV.13.

²³⁵ Epicurus, *Ratae sententiae*, in *Epicuro: Opere*, ed. G. Arrighetti (Turin: Einaudi, 1973), VIII: “No pleasure is evil as such. However, the sources of some pleasures bring about much more nuisance than pleasure.” See also Bertrand Russell, *A History of Western Philosophy* (New York: Simon & Schuster, 1967), 244.

When on the rack, however, he will give vent to cries and groans.”²³⁶

After all, “continuous pain does not last long in the flesh; on the contrary, pain, if extreme, is present a very short time [...].”²³⁷ Human nature is not immune to pain, but pain isn’t also immune to the powers of the human intellect, and Epicurus reportedly made himself a living proof of this: despite the fact that fate had chosen for him an extremely painful death, Epicurus managed to remain calm and in cheerful disposition “on [that] blissful day, which [was] also the last of [his] life.”²³⁸ It should not go unnoticed that Epicurus’ condition, stone blockage in the urinary tract, although today it is usually treated easily, is still one of the most painful experiences – and in any case, it is totally unsuitable for maintaining a state of ‘blissfulness’.

Discussing the pains of the soul next to – and as distinct from – those of the body is definitely unexpected from a committed materialist like Epicurus, to whom the soul is as material as the body. It lies beyond the scope of this discussion whether to Epicurus mental pain is a totally distinct type of pain, or just another form of bodily pain. What is important here is that Epicurus insisted that mental pains are worse

²³⁶ Diogenes Laertius, *Vitae philosophorum*, X.118.

²³⁷ Ibid., X.140.

²³⁸ Ibid., X.22: “And when near his end he wrote the following letter to Idomeneus: ‘On this blissful day, which is also the last of my life, I write this to you. My continual sufferings from strangury and dysentery are so great that nothing could augment them; but over against them all I set gladness of mind at the remembrance of our past conversations. But I would have you, as becomes your life-long attitude to me and to philosophy, watch over the children of Metrodorus.’”

than the pains of the body,²³⁹ and invested all his energy and efforts to cure them, targeting in particular the most severe among the pains of the soul, the ‘most depressive of emotions,’ fear. When it comes to fear, precaution is again of paramount importance: one should refrain from acquiring any property lest one loses it,²⁴⁰ be wise enough so as to keep away from intimate relationships lest one loses one’s loved ones,²⁴¹ avoid getting involved in politics and the public sphere lest one attracts the envy of others,²⁴² and in general do one’s best to “live unnoticed.”²⁴³ Precautions as such are likely to lessen or even eliminate the possibility of getting involved in situations that are susceptible to becoming the source of fears. Nonetheless, dealing with the ultimate fear, the fear of death, requires much more than a carefully scheduled life-strategy.

III. The fear of death

There is much about death to be feared: fear concerning what will become of one’s offspring or property after one passes away, one’s legacy, leaving one’s life projects unfinished, etc.; death-related fears that are mostly distressful to humans, how-

²³⁹ Ibid., 137: “He further disagrees with the Cyrenaics in that they hold that pains of body are worse than mental pains; at all events evil-doers are made to suffer bodily punishment; whereas Epicurus holds the pains of the mind to be the worse; at any rate the flesh endures the storms of the present alone, the mind those of the past and future as well as the present.”

²⁴⁰ Ibid., X.120a: “[the wise man] will not acquire anything dear to him.”

²⁴¹ Russell, 245.

²⁴² Plutarch, *Adversus Colotem*, in *Plutarchi moralia*, ed. R. Westman (Leipzig: Teubner, 1959), 1125c: “[...] We have to say which way one will maintain the purpose of his nature, and willingly refrain from being elected to office.”

²⁴³ Plutarch, *De latenter vivendo*, in *Plutarchi moralia*, ed. R. Westman (Leipzig: Teubner, 1959), 1128c.

ever, are of the existential kind: fear of being dead, and fear for the process of dying. As to the first, fear mostly concerns the possibility of experiencing dreadful after-life conditions or situations either due to the wrath of the gods and harsh divine punishment, or just because the state of being dead is seen as dreadful *per se* anyway. To the divine punishment related fears Epicurus objects with a view that probably also in his time sounded as radical as it did when Baruch Spinoza came up with it several centuries later: the gods are totally ignorant of – and indifferent to – individual human existence. And while for Spinoza this is due to the fact that individual beings exist only as modifications of the attributes of God who is the only logically possible substance, in Epicurus' view the gods have willfully decided²⁴⁴ to turn their gaze away from anything that is connected with humans: being by definition the most rational of all beings, they are definitely also committed to the avoidance of any mental turmoil, and to the pursuit of a state of impassiveness instead, so as to achieve utter *ataraxia*; since the human affairs would only be a source of distress to them, the gods have certainly decided to avert their gaze from such a source of discomfort, humans.²⁴⁵ The pursuit of blissfulness isn't compatible with anything else. After all,

“Any being that is blissful and indestructible neither faces problems itself, nor does it create problems to others. Therefore it cannot be affected either by rage or goodwill.”²⁴⁶

²⁴⁴ Hippolytus, *Refutatio omnium haeresium*, ed. M. Marcovich (Berlin: De Gruyter, 1986), 1.22.5.

²⁴⁵ Lucian, *Bis accusatus sive tribunalia*, ed. A. M. Harmon, vol. 3 (Cambridge, Massachusetts: Harvard University Press, 1969), 2: 27.

²⁴⁶ Epicurus, *Ratae sententiae*, I.

Since the gods “are totally indifferent for the human affairs,”²⁴⁷ it follows that there can be no divine punishment in the afterlife, as well as no reward whatsoever. To sum up, to the extent one’s post-mortem fate is connected with the disposition of the gods, one is not justified to entertain neither hopes nor fears: saints and villains are expected to share exactly the same posthumous fate.

As to the fears that are related to the intimidating possibility that being dead may be a dreadful experience per se, Epicurus considers them equally – if not more – unjustifiable: to him death is by definition the absence of any possible experience; therefore, as he explains in his *Letter to Menoeceus*, death should be “nothing to us,” and this applies equally to the dead as well as to the living; the only pain death may possibly cause to humans, is the fear they feel in its prospect. This, however, is a foolish fear; the passage that follows recapitulates Epicurus’ surprising – and, also, surprisingly appealing – arguments in support of this view.

“Accustom yourself to believe that death is nothing to us, for good and evil imply awareness, and death is the absence of all awareness. Therefore a right understanding that death is nothing to us makes the mortality of life enjoyable, not by adding to life an unlimited time, but by taking away the yearning after immortality. For there is nothing fearful in living for those who thoroughly grasp that there

²⁴⁷ Aetius, *Placita philosophorum*, ed. W. W. Goodwin, trans. John Dowell (London: Little & Brown, 1874), 1.7.7: “[...] the blissful and indestructible being, since it is full of every good and unaffected by any evil, is totally turned to the sustaining of its bliss and indestructibility and is totally indifferent for the human affairs.”

is nothing fearful in not living. Foolish, therefore, is the person who says that he fears death, not because it will pain when it comes, but because it pains in the prospect. Whatever causes no annoyance when it is present, causes only a groundless pain in the expectation. Death, therefore, the most awful of evils, is nothing to us, seeing that, when we exist death is not present, and when death is present we do not exist. It is nothing, then, either to the living or to the dead, for with the living it is not and the dead exist no longer. People sometimes shun death as the greatest of all evils, but at other times choose it as a respite from the evils in life. But the wise person neither deprecates life nor does he fear its ending. The thought of life is no offense to him, nor is death regarded as an evil. But just as he chooses the pleasantest food, not simply the greater quantity, so too he enjoys the pleasantest time, not the longest.”²⁴⁸

As I mentioned above, Epicurus was a committed materialist and an atomist; having inherited his physical theory mostly from Democritus of Thrace, he believed that everything that exists, even the gods²⁴⁹ and the soul, consists in void and elementary material particles beyond the threshold of perception, the *atoms*. As to the soul, like it is with everything

²⁴⁸ Epicurus, *Epistula ad Menoeceum*, in *Epicuro: Opere*, ed. G. Arrighetti (Turin: Einaudi, 1973), 124-126.

²⁴⁹ The materialistic, corporeal universe of Epicurus probably has no room for gods, anyway. Nonetheless, Epicurus didn’t openly reject the existence of gods, probably because religion and religious worship is deeply rooted in the minds of humans, and is an indispensable part of civilization, as Bertrand Russell assumes. See Russell, 247.

else, its constituents are also atoms; the soul is throughout corporeal.²⁵⁰ Soul atoms are of a particular kind, though; they are of a much finer texture compared to bodily atoms, which allows them to disperse throughout the body.²⁵¹ The reason why emotions, passions and feelings affect the body as well, while at the same time the passions of the body affect also the soul, is exactly that the atoms of the soul are randomly distributed all over the body. This, however, works only as long as the organism is alive; for “when the whole frame is broken up, the soul is scattered and has no longer the same powers as before, nor the same motions; hence it does not possess sentience either.”²⁵² In a word, the faculty of sentience is lost at death; this means that being dead may neither be dreadful, nor pleasant: literally, no one will ever *experience* or even *encounter* death: while the ‘frame’ is intact and the soul remains contained within it, death is not present; at the moment of death, when the ‘frame breaks up and soul scatters’, the faculty of sentience disappears. In a sense, death comes in the preferred Epicurean fashion, completely unnoticed. The realm of life does not intersect, not even momentarily, with that of death.

If sentience is completely annihilated at the moment of death, and if death and man never cross paths, death can-

²⁵⁰ Diogenes Laertius, X.67: “And empty space cannot itself either act or be acted upon, but simply allows body to move through it. Hence those who call soul incorporeal speak foolishly. For if it were so, it could neither act nor be acted upon. But, as it is, both these properties, you see, plainly belong to soul.”

²⁵¹ Ibid., X.63: ““Next, keeping in view our perceptions and feelings (for so shall we have the surest grounds for belief), we must recognize generally that the soul is a corporeal thing, composed of fine particles, dispersed all over the frame, most nearly resembling wind with an admixture of heat, in some respects like wind, in others like heat.”

²⁵² Ibid., X.65.

not be an evil; as a matter of fact, it cannot by *anything at all*: “death is nothing to us.” This leaves us only with the process of dying as a possible source of justifiable death-related fears. But although the last, this is still a part of one’s life, and according to Epicurus the “wise person [never] deprecates life;” one may maintain one’s blissfulness even in one’s last moments and make the best out of them, irrespective of one’s condition and the often dire circumstances that precede death. Epicurus’ last moments are definitely an eloquent example.

IV. A controversial legacy

Epicurus’ arguments in support of the view that ‘death should be nothing to us,’ because at the end of the day we never cross paths with death, and that it is quite foolish to pain in the prospect of something that may cause us no annoyance whatsoever,²⁵³ have gained immense attention for introducing into the debate the ‘existence condition’ that provides support to a set of empirical arguments of the form:

- A. No f can be an evil for x , if x does not exist.
- B. When x dies, x does not exist anymore.
- C. Therefore, when x is dead, no f can be an evil to x .

This line of reasoning, coupled with its reverse,

- A₁. No f can be an evil for x , if x does not coexist with f .

²⁵³ Seneca, *Epistulae morales ad Lucilium*, ed. and trans. Richard Gummere (London: William Heinemann, 1951), 24.23: “who can be so ridiculous as to seek for death, when it is merely the fear of death that makes your life so restless?”

B₁. As long as x lives, x does not coexist with certain fs , death included.

C₁. Therefore, as long as x lives, death cannot be an evil to x .

bolster the Epicurean view that “[...] death cannot intelligibly be claimed to be an evil for the person who dies,”²⁵⁴ since

“in order for something, x , to have any value for a subject, S , x must connect with S ’s feelings in some relevant way [...] x can connect with S ’s feelings only if x coexists with S ,”²⁵⁵

and the dead just cannot coexist with anything at all. The argument has been severely challenged but also fervently defended by many. Among its champions are included – apart, of course, from Epicurus’ distant successor, Lucretius²⁵⁶ – contemporary philosophers and ethicists such as Stephen Rosenbaum,²⁵⁷ Galen Strawson,²⁵⁸ and Martha Nussbaum.²⁵⁹ Among

²⁵⁴ Harry Silverstein, “The Evil of Death,” in *The Metaphysics of Death*, ed. J. M. Fischer, 95–116 (Stanford, CA: Stanford University Press, 1993), 96.

²⁵⁵ Mikel Burley, “Harry Silverstein’s Four-Dimensionalism and the Purported Evil of Death,” *International Journal of Philosophical Studies* 16, no. 4 (2008): 559–568, 559.

²⁵⁶ Lucretius, *On the Nature of Things*, trans. W. E. Leonard (New York: Dover, 2004).

²⁵⁷ See Stephen E. Rosenbaum, “How to Be Dead and Not Care: A Defense of Epicurus,” *American Philosophical Quarterly* 23, no. 2 (1986): 217–225.

²⁵⁸ Galen Strawson, “What is the Relation between an Experience, the Subject of the Experience, and the Content of the Experience?” *Philosophical Issues* 13, no. 1 (2003): 279–315.

²⁵⁹ Martha Nussbaum, “Mortal Immortals: Lucretius on Death and the Voice of Nature,” *Philosophy and Phenomenological Research* 50, no. 2 (1989): 303–

those who challenge it are Harry Silverstein²⁶⁰ and Thomas Nagel.²⁶¹

Undoubtedly Epicurus' arguments sound convincing to materialists, and in general to those who deny the possibility of an afterlife; to those, however, who reject premises (B) and (B₁) as untrue, this argument may have no effect whatsoever. In this respect, the strength of the argument is limited to those who are anyway in no need of arguments as such: if one assumes that there can be no posthumous existence, one should also be immune to the fear of death. But this isn't a philosophically happy way to refute Epicurus' argument; it is just a way to state that one doesn't share Epicurus' ontological commitments. To disprove the argument, one has to show that, even assuming that premises (B) and (B₁) are true, the argument fails due to the fact that premises (A) and (A₁) are still untrue; this means either that death *can be* an evil to one despite the fact that one doesn't exist anymore, or that death may be an evil to one although one is not yet dead. Challenging premise (A) would require to assume that non-existing beings may also have feelings about the state of affairs they are faced with, or have certain interests, etc. This, however, would still be treating Epicurus' argument unjustly, since it makes appeal to metaphysical tenets quite contrary to the ones Epicurus is committed to. Premise (A₁), however, to wit the assumption that death could be an evil only in the condition that one would coexist with death, still remains open to challenge; all the more so, given Epicurus' declared purpose to alleviate

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²⁶⁰ Harry Silverstein, "The Evil of Death," *Journal of Philosophy* 77, no. 7 (1980): 401-424.

²⁶¹ Thomas Nagel, "Death," in *Applied Ethics*, ed. Peter Singer, 9-18 (Oxford: Oxford University Press, 1986).

the human soul from an unjustifiable in his view fear ‘in anticipation’ of something that doesn’t yet exist.

It has been claimed, for instance, that f may be a proper object of fear for x and affect x thus, although f and x do not coexist at present, haven’t ever coexisted in the past, and it is high unlikely that they will ever coexist in the future: humans often entertain fears directed to objects or situations whose existence is *just anticipated*, and this irrespective of the extent to which it would be justifiable to expect that these objects or situations will ever occur. To Stephen Rosenbaum:

“[...] it is clear that events which have never occurred and will never occur can, in some sense, be objects of our psychological attitudes. For example, Britons in the early 1940’s feared an invasion of Britain by the Nazis. Yet that event never occurred. They dreaded being governed by Hitler, yet that state of affairs did not obtain, and never will.”²⁶²

Despite the fact that they actually describe the human condition, in my view objections as such seem to miss the point. The Epicureans didn’t deny that human feelings are bi-dimensional, having also an *affective* next to their *sensory* aspect; they just set out to challenge the justification and the objectivity of the former against the latter. In their view, any f may have an objective value for x only if f connects with x ’s *sensory* feelings, but not with x ’s *affective* feelings, that is, emotions. In light of this, death may indeed be an

²⁶² Stephen Rosenbaum, “How to Be Dead and not Care: A Defense of Epicurus,” in *Language, Metaphysics and Death*, ed. John Donnelly, 117-131 (New York: Fordham University Press, 1994), 127.

evil only in case it is the source of sensory pain to the person who is dead; it is true that death may also be the source of emotional pain-in-anticipation to humans, as it actually is. This, however, lies beyond the scope and the powers of any hedonistic account, especially the one articulated by the Epicureans, since death doesn't inflict sensory pain and, therefore, it cannot be considered an evil. In that sense, the Epicureans are right to insist that death should be nothing to us, and that anything else is just false belief. From this point of view, the conclusion of the Epicurean argument against the fear of death seems irresistible, as Mikel Barley puts it:

“Insofar as someone fears death because she believes that being dead will, at the time of being dead, have a hedonic disvalue for her, her fear is based on a false belief; and hence, by rational standards, she ought not to fear death.”²⁶³

It is true that we do not do everything we do, nor feel everything we feel ‘by rational standards.’ Apart from reason, our actions and feelings are also regulated by the non-rational parts of our nature, our instincts and emotions. Nonetheless, when it comes to philosophical argumentation, these rational standards are the only thing we have.

V. A postscript

Undoubtedly not everybody accepts the Epicurean view that value and disvalue may be connected only with senso-

²⁶³ Burley, 567.

ry feelings of pleasure and pain. More than that, not anybody accepts the Epicurean view of a materialistic universe. Too bad for Epicurus' overwhelming efforts; it seems that it takes to be a committed hedonist and a materialist at the same time to be convinced by this line of reasoning. In any case, next to feelings of pleasure and pain, people still consider other experiences, objects or situations as value-laden, while the idea of an afterlife remains deeply rooted in the minds of humans, probably as the proper – if not the only – solution to the conundrum I mentioned in the beginning of this chapter, that of an existence embedded in time. This is also why, despite the – serious, indeed – efforts of the Epicureans, the fear of death hasn't ever ceased to haunt the souls of humans, and still stands as the ultimate challenge for the intellect. Although Epicurus himself reportedly hadn't been affected by the fear of death, at least not during the last day of his life, I feel that even materialists and hedonists are exposed to this kind of fear equally to anybody else; the human condition is too complex to be reduced to – or explained by – any single philosophical backbone, or any other set of established beliefs or convictions.

Be that as it may, the Epicurean line of reasoning against the fear of death, next to its obvious philosophical merits, can also provide ethicists and bioethicists with valuable insights into intentionally-choosing-death-related issues; although the Epicureans, very much unlike the Stoics, were strictly against "choosing death as a respite from the evils in life,"²⁶⁴ it seems that the Epicurean train of thought certainly has some appeal on those who experience states of being that urge them to weigh sensory feelings of extreme, intolerable pain against the fear of dying, or the fear of being

²⁶⁴ See supra note 248.

dead. In that sense, Epicurus' arguments against the fear of death are the ideal introduction to the suicide and euthanasia related issues that will be discussed in the following chapters of this book.

On rational suicide: The Stoics and the ‘open door’ argument

Deliberately putting an end to one’s own life is probably the most controversial as well as the most unintelligible decision one may take during one’s lifetime. To some the decision that results in suicide is the ultimate vindication of Søren Kierkegaard’s famous aphorism that “the instant of decision is a moment of madness.”²⁶⁵ Others, even among those who feel sympathetic towards suicide for various reasons, are still reluctant to condone it: in the eyes of most ethicists the decision to kill one’s own self is incomprehensible, inconsistent, just an irrational response that lacks any coherent meaning or rationale. According to Arthur Schopenhauer, suicide can only be *a clumsy experiment*:

“[...] an experiment – a question which man puts to Nature, trying to force her to an answer. The question is this: What change will death produce in a man’s existence and in his insight into the nature of things? It is a clumsy experiment to make; for it involves the destruction of the very consciousness which puts the question and awaits the answer.”²⁶⁶

²⁶⁵ Søren Kierkegaard, *Fear and Trembling* (New York: Cambridge University Press, 2006), 28–29.

²⁶⁶ Arthur Schopenhauer, “On Suicide,” in *Parerga and Paralipomena*, vol. II, trans. Eric F. J. Payne (Oxford: Clarendon Press, 2000), 311.

By and large, intuition and common sense also favor this view; in a sense, to assume that one's decision to commit suicide may ever be rational, sounds like a paradox or an oxymoron; rational suicide may only be a typical, textbook case of a *contradictio in terminis*. Not everybody would agree with this view, though.

I. Introduction

Although it has been widely practiced during the classical era and the roman times,²⁶⁷ even then suicide was a highly controversial issue that fueled a long and heated debate. The Pythagoreans, whose key ontological and metaphysical views I already discussed in the first chapter, rejected suicide on the grounds that deliberately taking one's own life would presumably disturb the transmigration of the souls' circle,²⁶⁸ since the suicide wouldn't have as many chances to repent for his sins as he normally would in case he decided to keep on with his life.²⁶⁹ Plato, probably under the influence of the Pythagorean tradition, sounds critical against suicide despite the fact that "some times and for some persons it is better to die than to live,"²⁷⁰ even those, however, "for whom it is better to die, can-

²⁶⁷ Ludwig Edelstein, "The Hippocratic Oath: Text, Translation and Interpretation," in *Ancient Medicine, Selected Papers of Ludwig Edelstein*, ed. Owsei Temkin and Lilian C. Temkin (Baltimore: The Johns Hopkins Press, 1967), 62.

²⁶⁸ Kalman J. Kaplan, and Matthew B. Schwartz, *A Psychology of Hope: A Biblical Response to Tragedy and Suicide* (Grand Rapids: B. Eerdmans Publishing, 2008), 18.

²⁶⁹ Athenaeus, *The Learned Banqueters (The Deipnosophists)*: The Loeb Classical Library, trans. Douglas Olson (Harvard: Harvard University Press, 2006), 2.216.

²⁷⁰ Plato, *Phaedo*, 62a, in *Plato in Twelve Volumes*, trans. Harold North Fowler, with an Introduction by W. R. M. Lamb, vol. 1 (London: William Heine-

not without impiety do good to themselves, but must wait for some other benefactor.”²⁷¹ This ‘impiety’ Socrates mentions while discussing with Cebes is indicative of his view that suicide is disrespect towards the gods and an abrupt violation of the divine plan. As far as the thread of one’s life is concerned, one can only entrust one’s self to the gods:

“Now the doctrine that is taught in secret about this matter, that we men are in a kind of prison and must not set ourselves free or run away, seems to me to be weighty and not easy to understand. But this at least, Cebes, I do believe is sound, that the gods are our guardians and that we men are one of the chattels of the gods. Do you not believe this?”²⁷²

Poor Cebes agrees, of course; Plato, on the other hand, in his later works doesn’t sound that adamant on this: under specific circumstances “he that slays the person who is, as men say, nearest and dearest of all,”²⁷³ while not justified to do so “merely inflicting upon himself this iniquitous penalty owing to sloth and unmanly cowardice,”²⁷⁴ may have good reasons to decide to put an end to his own life “when he is [...] compelled to it by the occurrence of some intolerable and inevitable misfortune, [or] by falling into some disgrace that is beyond remedy or endurance.”²⁷⁵ In the *Republic*, although

mann, 1966).

²⁷¹ Ibid.

²⁷² Ibid., 62b.

²⁷³ Plato, *Laws*, 9.873c, in *Plato in Twelve Volumes*, trans. R. G. Bury, vol. 9 (London: William Heinemann, 1966).

²⁷⁴ Ibid.

²⁷⁵ Ibid.

he makes no explicit reference to suicide, Plato seems to imply that there are forms of life not worth living; he mentions Herodicus to make his point that “lingering out one’s death” and “struggling against death” may only make one worthy of the “prize of a doting old age.”²⁷⁶

To Aristotle, on the other hand, suicide can never be justifiable under any circumstances, since the decision that results in it could never be in accord with the *golden mean*; on the contrary, the act of suicide is indicative of cowardice that is an *extreme in deficiency*, and nothing is more despised by Aristotle than extremes:

“But to seek death in order to escape from poverty, or the pangs of love, or from pain or sorrow, is not the act of a courageous man, but rather of a coward; for it is weakness to fly from troubles, and the suicide does not endure death because it is noble to do so, but to escape evil.”²⁷⁷

At a later point Aristotle discusses suicide as an injustice not against one’s self, of course, since *volenti not fit iniuria*, but against the state. This according to Aristotle is the reason why the law either doesn’t sanction suicide, or explicitly forbids and punishes it “by certain marks of dishonor”:

“For instance, the law does not sanction suicide (and what it does not expressly sanction, it forbids). Further, when a man voluntarily (which

²⁷⁶ Plato, *Republic*, 3.406b, in *Plato in Twelve Volumes*, trans. Paul Shorey, vol. 5 (London: William Heinemann, 1969).

²⁷⁷ Aristotle, *Nicomachean Ethics*, 1116a.13, in *Aristotle in 23 Volumes*, vol. 19, trans. H. Rackham, vol. 19 (London: William Heinemann, 1934).

means with knowledge of the person affected and the instrument employed) does an injury (not in retaliation) that is against the law, he commits injustice. But he who kills himself in a fit of passion, voluntarily does an injury (against the right principle) which the law does not allow. Therefore the suicide commits injustice; but against whom? It seems to be against the state rather than against himself; for he suffers voluntarily, and nobody suffers injustice voluntarily. This is why the state exacts a penalty; suicide is punished by certain marks of dishonor, as being an offense against the state.”²⁷⁸

While Aristotle took a critical stand against suicide, the Epicureans adopted a rather lukewarm attitude towards it, although, as I already insinuated in the previous chapter, to them it was definitely not an option of great appeal. As a matter of fact – and taking into account the deprecative way in which they considered the pains of the body as well as those of the soul – to them suicide must have been rather unintelligible as a moral choice. After all, the disposition of the wise man cannot be affected by the capriciousness of fate, since the wise is capable of maintaining a state of blissfulness ‘even on the rack,’ and “[...] even when he has lost his sight, he will not withdraw himself from life,”²⁷⁹ according to Diogenes Laertius. Three centuries after Epicurus, Lucretius makes a scornful and bitter comment against those who choose to put an end to their own life just because they fear death:

²⁷⁸ Ibid., 1138a.

²⁷⁹ Diogenes Laertius, *Lives of Eminent Philosophers*: The Loeb Classical Library, trans. R. D. Hicks (London: William Heinemann, 1931), 10.119.

“Whilst they in filth and darkness roll around;
 some perish away for statues and a name,
 and oft to that degree, from fright of death,
 will hate of living and beholding light
 take hold on humankind that they inflict
 their own destruction with a gloomy heart.”²⁸⁰

In what is probably a veiled – though fierce – attack directed to the Stoics, Epicurus bitterly argues that:

“[...] he who admonishes the young to live well and the old to make a good end speaks foolishly, not merely because of the desirableness of life, but because the same exercise at once teaches to live well and to die well. Much worse is he who says that it were good not to be born, but when once one is born to pass with all speed through the gates of Hades. For if he truly believes this, why does he not depart from life? It were easy for him to do so, if once he were firmly convinced. If he speaks only in mockery, his words are foolishness, for those who hear believe him not.”²⁸¹

The Epicureans reportedly were willing to consider suicide as an option only for those who sense that their intellectual powers are gradually deteriorating and are about to leave them; this has allegedly been the case of Democritus of Abdera, who reportedly in the fairly advanced for the time age of

²⁸⁰ Lucretius, *De rerum natura*, trans. William Ellery Leonard (New York: Dover Publications, 2004), 3:79-83.

²⁸¹ Diogenes Laertius, 10.126-127.

ninety, asked his sister to leave him with no food or water to hasten his death, because he sensed that his mental powers – his memory, in particular – were rapidly declining and, being bed-ridden, he knew that he would be unable to maintain a state of blissfulness in case he lost the ability to recall pleasant moments, exactly as Epicurus suggests one should do when experiencing any intolerable state of being.²⁸²

Despite the fact that the classical as well as the Hellenistic period abound with striking examples of notorious suicides, suicide was met either with rejection or, at best, with skepticism by the major philosophical schools of the time. As a matter of fact, only the Stoics supported the view that suicide can be rational – and hence morally permissible – under specific circumstances.

II. Epictetus and the open door

Among the last in a long line of great philosophers, Epictetus offers a clear and comprehensive view of the Stoic teaching concerning suicide, and there is unrivalled simplicity and sincerity in the account he provides, as it has been taken down by his pupil, Arrian. To illustrate the human condition Epictetus uses the quite telling metaphor of a chamber that from time to time is filled with smoke:

“[...] only do nothing in a depressed mood, nor as one afflicted, nor as thinking that you are in misery, for no man compels you to that. Has it smoked in the chamber? If the smoke is moderate, I will stay; if it is excessive, I go out: for you

²⁸² Reported in James Warren, *Facing Death: Epicurus and his Critics* (Oxford: Clarendon Press, 2004), 207ff.

must always remember this and hold it fast, that the door is open [...] and I depart to the place where no man will hinder me from living, for that dwelling place is open to all; and as to the last garment, that is the poor body, no one has any power over me beyond this.”²⁸³

Epictetus is never weary of stressing that there is always a certain way out – that is, suicide – of even the direst condition; the recurring metaphor of human life as a room whose door constantly remains open is obviously extremely appealing to him:

“In sum remember this: the door is open; be not more timid than little children, but as they say, when the thing does not please them, “I will play no longer,” so do you, when things seem to you of such a kind, say I will no longer play, and be gone: but if you stay, do not complain.”²⁸⁴

The calm, impassionate voice of Epictetus echoes six centuries of fervent advocacy of suicide as the only rational response to certain insuperable challenges posed by the extreme situations one may face in the course of one’s life, as well as an emergency exit from a life of protracted misery.

The Stoic ethical theory, it is true, is as clear-cut as the Epicurean one, if not even more; it has also been equally controversial. According to the Stoics only *virtue* and *vice* are val-

²⁸³ Epictetus, *The Discourses*, in *The Discourses of Epictetus, with the Enchiridion and Fragments*, trans. George Long (London: George Bell and Sons, 1890), I.25.18.

²⁸⁴ Ibid., I.24.20.

ue-laden, and therefore deserving to be pursued or avoided respectively. Anything else to them counts just as *indifferent*. Of course the Stoics distinguished between three classes of indifferents, that is, the *preferred*, the *dispreferred*, and the *absolute indifferents*, which means that they still classified indifferent objects, situations or states of being into those that might be pursued, and those that might be avoided; nonetheless, all these after all are *still indifferents*, and this classification applies only as long as they don't get in the way of a virtuous life.

“[...] some [things] are said to be absolutely indifferent, such as having an odd or even number of hairs on one's head, or extending one's finger this way or that way, or to picking off some annoying object, such as a twig or a leaf. In the [other] sense one must say that [...] what is between virtue and vice is indifferent, but not [indifferent] with respect to selection and rejection; and that is why some have selective value, and some have rejective disvalue, but make no contribution at all to the happy life.”²⁸⁵

Among the preferred indifferents, the ones that are more appealing to the human nature and therefore more likely to promote virtue, the Stoics enumerated life, health, wealth, and anything in general that is pleasant to humans; among the dispreferred ones the Stoics included unappealing states of being that are more likely to become an obstacle to a virtuous life, such as death, sickness, poverty, ill reputation, etc. Let us

²⁸⁵ *Ioannis Stobaei Anthologium*, II, 7:7, quoted in *Hellenistic Philosophy: Introductory Readings*, trans. Brad Inwood and L. P. Gerson (Indianapolis: Hackett, 1997), 213.

take life, for example: to any rational human being, one that lives in accordance with nature, normally life is a means to achieve virtue; the same also applies to wealth, health and the like. There might be times, however, that life may become an obstacle in one's struggle to maintain one's virtue; the only reasonable thing to do in such a case is to deliberately abandon life in order to preserve one's virtue. According to Cicero, the Stoics held that:

“When a man has a preponderance of the things in accordance with nature, it is his proper function (*officium*) to remain alive; when he has or foresees a preponderance of their opposites, it is his proper function (*officium*) to depart from life.”²⁸⁶

The bad thing is that it rests with fate to determine whether one will have a preponderance of things in accordance with nature or not; the good thing is that, in the face of the capriciousness of fate, one is still capable of preserving one's virtue. Epictetus already from the first lines of his *Manual*, in his usual disengaged and rather relaxed style, makes a sharp distinction between things that may be *under our control*, and things that lay *beyond our powers*:

“Of things some are in our power, and others are not. In our power are opinion, movement towards a thing, desire, aversion; and in a word, whatever are our own acts: not in our power are the body, property, reputation, offices (magiste-

²⁸⁶ Cicero, *De finibus*, 3.60, in A. A. Long, and D. Sedley, *The Hellenistic Philosophers*, vol. I (Cambridge: Cambridge University Press, 1987).

rial power), and in a word, whatever are not our own acts. And the things in our power are by nature free, not subject to restraint nor hindrance: but the things not in our power are weak, slavish, subject to restraint, in the power of others.”²⁸⁷

It is definitely beyond our powers to determine what fate will bring; it is entirely up to us, though, to decide how we will eventually deal with whatever the future brings along. In the eyes of Epictetus suicide is the ultimate guarantee of human freedom; when it has become utterly impossible to keep on with a virtuous life in accordance with nature, to wit with reason, deliberately abandoning life is the only rational option available to those who consider meaningless a life devoid of virtue. Seneca, almost a contemporary of Epictetus, a few decades earlier had made exactly the same point:

“It is wrong to live under constraint; but no man is constrained to live under constraint [...] On all sides lie many short and simple paths to freedom, and let us thank God that no man can be kept in life against his will.”²⁸⁸

In this respect, suicide may be a rational choice for every person faced with overwhelming situations such as “if he suffer intolerable pain, mutilation, or incurable disease,”²⁸⁹

²⁸⁷ Epictetus, *The Encheridion*, in *The Discourses of Epictetus, with the Encheridion and Fragments*, trans. George Long (London: George Bell and Sons, 1890), 1.1.

²⁸⁸ Lucius Annaeus Seneca, *Moral Epistles*: The Loeb Classical Library, trans. Richard M. Gummere (Cambridge, Massachusetts: Harvard University Press, 1917), Epistle XII:10.

²⁸⁹ Diogenes Laertius, 7.130.

and wouldn't want to keep on living under the constraints imposed upon him by the dire circumstances he experiences, because they would have made it impossible for him to live in accordance with nature and maintain his virtue. According to Chrysippus, a forefather of Stoicism, life is like a feast, and may come to its end for the same five reasons any feast may: because of an unanticipated and pressing issue that turns up all of a sudden, or when uninvited drunkards intrude, or if the food is spoiled, or when the provisions are over, or, finally, when the guests are already lying around in a stupor.²⁹⁰ In the occurrence of any of the above, leaving the feast seems like a quite – if not the only – reasonable decision for the wise man. Next to escaping personal disasters that diminish or annihilate one's ability to live virtuously, "a Stoic wise man [would] commit suicide [when] he is called upon to give his life because of his obligations to others, such as his country or friends,"²⁹¹ or out of duty owed to one's self to maintain one's own character and act consistently to one's *personae*,²⁹² that is, one's individual nature, social status and occupation; according to Cicero this has been the case of Cato,²⁹³ whose decision to commit suicide was consistent with his beliefs, or the case of the sen-

²⁹⁰ Hans Friedrich August von Arnim, *Stoicorum Veterum Fragmenta* (Stuttgart: Teubner, 1964), 3.768.

²⁹¹ Walter Englert, "Seneca and the Stoic View of Suicide," *The Society for Ancient Greek Philosophy* 184 (1990), Newsletter. See also Diogenes Laertius, 1.130.

²⁹² See Cicero, *De officiis*, trans. Walter Miller (Cambridge: Harvard University Press, 1913), 1.107-121.

²⁹³ Ibid., 1.112: "[...] such diversity of character carries with it so great significance that suicide may be for one man a duty, for another [under the same circumstances] a crime [...] Cato had been endowed by nature with an austerity beyond belief, and he himself had strengthened it by unwavering consistency and had remained ever true to his purpose and fixed resolve; and it was for him to die rather than to look upon the face of a tyrant."

ator Priscus Helvidius mentioned by Epictetus,²⁹⁴ who at the cost of his own life defied the order of Emperor Vespasian either not to attend the senate or, if he did, to remain silent, because he considered obeying the Emperor's command to be inappropriate to his office and status.

Epictetus recapitulates the teaching of the Stoics on well-reasoned, rational suicide; by and large, to him as well as to the long line of philosophers that precede him, suicide may be justified under various circumstances, as long as these circumstances make it impossible for one to continue living a naturally flourishing, virtuous life in accordance with nature.

III. Rational suicide revisited

At the time of Epictetus defending the rationality of suicide has been a rather solitary occupation, as I have already shown. The situation remained more or less unchanged in the centuries that followed. This was partly due to the complete prevalence of Christianity in the later Roman Empire and the significant – in many respects, *decisive* – influence Christianity had on the development of the philosophical thought in the western world, and partly because of the gradual ascendancy of reason, a process that culminated in an ultimate triumph with the Enlightenment – or so it seemed at the time; inspir-

²⁹⁴ Epictetus, *The Discourses*, 1.2.25: “[...] when Vespasian sent and commanded him not to go into the senate, he replied, ‘It is in your power not to allow me to be a member of the senate, but so long as I am, I must go in.’ Well, go in then, says the emperor, but say nothing. Do not ask my opinion, and I will be silent. But I must ask your opinion. And I must say what I think right. But if you do, I shall put you to death. When then did I tell you that I am immortal? You will do your part, and I will do mine: it is your part to kill; it is mine to die, but not in fear: yours to banish me; mine to depart without sorrow.”

ing and thought-provoking as they may be, the arguments of the Stoics in favor of rational suicide still sound counter-intuitive, while their appeal seems to be limited to those who are already inclined towards heroism or martyrdom. Maybe due to this, or just because the teaching of the Stoics gradually faded into oblivion after Marcus Aurelius and regained attention only as late as during the previous century, the Stoic arguments in favor of rational suicide hardly had any impact on the debate: to the exception of only a few philosophers, most notably David Hume and Arthur Schopenhauer, suicide has drawn astonishingly sharp criticism as being irrational; Kant's downright rejection stands as the most striking example.

This would change only with the emergence of libertarianism, that introduced the concept of an individual realm or sphere, with which nobody other than the individual concerned was either entitled or justified to interfere; in the core of this sphere, of course, lays the freedom to decide upon the time or the circumstances of one's death, if one wishes to, and nobody is justified to have any claim whatsoever to one's continuous existence. Soon the debate on rationally justifiable suicide was revived, only now it was nuanced with a huge variety of subtle arguments, ranging from profoundly phenomenological to squarely utilitarian ones.

In what follows I will discuss only two among the various arguments in support of rational suicide – that is, the view that suicide may under specific conditions be rationally justified; the reason I chose these two arguments in particular is that there are certain aspects of theirs that bring them closer to the Stoic tradition – but also because they are overwhelmingly challenging and bring a breath of fresh air to the debate.

Being intuitively intelligible wouldn't suffice on its own to consider any decision as rationally justifiable, the same as

the opposite wouldn't suffice to assume that any choice is rationally unjustifiable; intuition, however, has its own merits: it may be serviceable to moral discussions as an indication that something is worth of further examination. In Jacques Choron's view, one's decision to commit suicide may be seen as meeting – *prima facie*, at least – the criteria of a rational choice in the case its rationale, motivation and purpose make sense to others and strike them as *intuitively intelligible* and comprehensible.²⁹⁵ This, according to Choron, is necessary in order to rule out cases of mental disorder on the one hand, and on the other to discuss one's decision to put an end to one's life not *in abstracto*, but in light of one's individual existence in a given cultural and social environment. To Choron any discussion on suicide that is based upon the *detached observer perspective*²⁹⁶ is by definition incapable of taking into account the individual character of the decision, as well as the particular conditions that determine it,²⁹⁷ not to mention that the concept of an impartial spectator who would be "omniscient with regard to non-ethical facts, omniperceipient, disinterested, dispassioned, consistent and normal"²⁹⁸ at the same time seems implausible and highly problematic.²⁹⁹ Discussing

²⁹⁵ Jacques Choron, *Suicide* (New York: Charles Scribner's Sons, 1972), 96-97.

²⁹⁶ Also referred to as *impartial* or *ideal observer* or *spectator*.

²⁹⁷ Carlos G. Prado and Sandra J. Taylor, *Assisted Suicide: Theory and Practice in Elective Death* (New York: Humanity Books, 1999), 34-35.

²⁹⁸ Vernon J. Bourke, "The Ethical Role of the Impartial Observer," *The Journal of Religious Ethics* 6, no. 2 (1978): 279-292, 280. Bourke quotes Firth's definition; see Roderick Firth, "Ethical Absolutism and the Ideal Observer," *Philosophy and Phenomenological Research* 12, no. 3 (1952): 317-345. For more on this issue see also Richard Brandt, "The Definition of the Ideal Observer Theory in Ethics," *Philosophy and Phenomenological Research* 15, no. 3 (1955): 407-413.

²⁹⁹ See among others Henry Aiken, "The Concept of Moral Objectivity," in

the rationality of suicide *in general*, as if suicide were a decision detached from real life circumstances, would necessarily lead to partial and biased explanations, since it would necessarily leave out of scope *peccatoris circumstantiae atque peccati*.³⁰⁰ This is the reason why, even to those who reject suicide as an utterly irrational choice, not all cases of suicide strike as equally nonsensical, and some among these cases might even be contemplated with moral awe; even Immanuel Kant sounds rather confused when he discusses the suicides of Marcus Curtius and Seneca the Younger, as well as the alleged readiness of King Frederick the Great to kill himself if the situation called for this.³⁰¹ The passage that is the most telling of Kant's ambiguity, however, is the following:

"A man who had been bitten by a mad dog already felt hydrophobia coming on. He explained, in a letter he left, that, since as far as he knew the disease was incurable, he was taking his life lest he harm others as well in his madness (the onset of which he already felt). Did he do wrong?"³⁰²

Kant's ambivalence concerning cases as the above, probably proves Choron right in his view that discussing the ratio-

Morality and the Language of Conduct, ed. H. Castaneda and G. Nakhnikian, 87-94 (Detroit: Wayne State University Press, 1963); also Richard Brandt, *A Theory of the Good and the Right* (Oxford: Oxford University Press, 1979).

³⁰⁰ "The circumstances of the sinner as well as those of the sin," that Aquinas reportedly advised confessors to take into account when judging sins. Reported in Stephen Toulmin. "How Medicine Saved the Life of Ethics," *Perspectives in Biology and Medicine* 25, no. 4 (1982): 736-750.

³⁰¹ Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1991), 6:423.

³⁰² *Ibid.*, 6:424.

nality of suicide as an abstract, unqualified, theoretical puzzle, leaves significant aspects of the issue unattended. On the other hand, any blanket rejection of suicide doesn't explain why, while one may empathize with Demosthenes or Brutus who decided to commit suicide so as to have a dignified death, it is much harder to do the same in the case of Jacques Vaché, a dandy surrealist artist who killed himself in the age of twenty four out of a sense of futility,³⁰³ or in that of Jacques Rigaut, the Dadaist who killed himself in the age of twenty nine using a ruler to make sure that the bullet passes exactly through his heart, and without providing any reason at all, except that he had announced his suicide a few years before.³⁰⁴ Though none of these four cases may indeed meet the criteria of a rational decision, Demosthenes' and Brutus' decisions are intuitively intelligible, while on the contrary Vaché's and Rigaut's decisions are utterly incomprehensible. The upshot according to Choron is that, as long as we can intuitively comprehend its rationale, motivation and purpose, the decision to commit suicide should not be rejected out of hand as falling short of meeting the demands of rationality.

In my view Choron's argument actually says nothing about whether suicide may indeed be rational; it only implies that some cases of suicide are *more intuitively intelligible* than others, and some are not at all. The distance between intelligibility and rational justification is still great, though; in this respect it is possible that even the most intuitively plausible case of suicide will prove to be utterly irrational if put under thorough examination, and this despite that its rationale,

³⁰³ David Hopkins, *Dada and Surrealism: A Very Short Introduction* (Oxford: Oxford University Press, 2004), 15

³⁰⁴ Roger L. Conover (ed.), *4 Dada Suicides: Selected Texts of Arthur Cravan, Jacques Rigaut, Julien Torma & Jacques Vaché* (London: Atlas, 2005), 91.

motivation and purpose may be perfectly intelligible. One may always cry out after Terence: “I am human; nothing human is alien to me”³⁰⁵ in the face of many human decisions, and still consider these decisions inconsistent; all the more so, one may also respect or even admire decisions that strike one as absolutely inconsistent and alien to reason. For example, the decision of Marcus Curtius, the young noble Roman who according to the legend astride his horse and in full armor leaped into a deep pit in the Forum Romanum to propitiate the gods, definitely strikes many people as an indication of admirable courage, a token of dedication to one’s people and country, etc.; at the same time, the belief that jumping into a chasm on one’s horse will make the gods so happy as to spare one’s people, strikes most of us as perfectly irrational.

Margaret Battin provides her own criteria for rational suicide; she classifies these criteria into two groups, the ‘nonimpairment’ group, and the ‘satisfaction of interests’ group respectively. The first group, that of nonimpairment, according to Battin includes three key elements, to wit [a] the ability to reason, [b] the ability to have a realistic world view as well as [c] sufficient information concerning one’s condition; the satisfaction of interests group includes on the one hand [a] the ‘avoidance of harm’ criterion, and on the other [b] ‘the accordance with fundamental interests’ one.³⁰⁶ Battin recapitulates her view by suggesting that “[...] we typically speak of a decision as ‘rational’ [...] if it is made in an unimpaired way; we also speak of a decision as ‘rational’ if

³⁰⁵ “Homo sum; nihil humani alienum a me puto.” Poblius Terentius Afer, *The Self-tormentor (Heauton timoroumenos)*, in *The Comedies*, trans. and ed. Betty Radice (London: Penguin, 2004), 77.

³⁰⁶ Margaret Battin, *Ethical Issues in Suicide* (New Jersey: Prentice Hall, 1982), 291.

it satisfies the agent's interests.”³⁰⁷ While there is no reason to discuss at length the first and the third criterion in the ‘non-impairment’ group, to wit the ones that concern one’s ability to reason and having adequate information regarding one’s condition respectively, the ‘realistic world view’ criterion is in need of clarification. Prado and Taylor provide a quite telling example concerning what it is – better, what *it is not* – to have a realistic world view:

“Regardless of how firm the underlying beliefs, there are some things we won’t accept as reasons for suicide. A good example of a ‘confused’ reason for suicide was the Heaven’s Gate group’s belief that the appearance of the Hale-Bopp’s comet in March 1997 was a sign that members of the group had to kill themselves to be rid of their physical bodies in order to be taken to heaven in the comet.”³⁰⁸

As far as the ‘satisfactory of interests’ group is concerned, Battin has to defend her criterion towards what is probably the ‘flagship’ argument against the rationality of suicide, to wit that suicide *can never be in accordance to one’s own interests*, since it brings about death, that is, the ultimate harm to any living being on the one hand, and the *annihilation of all interests* as well as of one’s capability of having any interests at all on the other. Against this Battin suggests a subjective notion of interest: in her view interests are determined by one’s own value system, by what one thinks as value-laden, and by the kind of value one assigns to things in one’s life.

³⁰⁷ Ibid., 289.

³⁰⁸ Prado and Taylor, 45, n. 31.

Therefore, she argues that in assessing whether killing one's self is in accordance with one's interests, we need to take into account "[...] the amount of other experience permitted [...] and whether this other experience is of intrinsic value."³⁰⁹ Her point is that what is in one's interests, is what one actually values; from this it follows also that what is to one's harm or detriment, is what one disvalues. Now, the things that moral agents value and disvalue differ greatly, and this means that there can be no objective values and, therefore, no objective interests at the same time. In this respect the continuation of one's life may be against one's interests – and therefore, harmful to one – in the case one would be justified to anticipate from remaining alive only things and experiences one disvalues, like, for example, extreme pain, without any "[...] important experience during the pain-free intervals."³¹⁰ In that sense, Battin's 'avoidance of harm' criterion seems to be fully met: a life devoid of value-laden experiences, and burdened instead with experiences that the person disvalues would be harmful, therefore self-inflicted death would be a means – in that case, *the only means* – of avoiding further harm. The same applies to Battin's 'accordance with fundamental interests' criterion; there might be cases that suicide can be rationally justified on the basis that those who decide to terminate their life "[...] value something else more than their own survival."³¹¹ In general,

"People can value survival for reasons other than that it is survival. This shows that survival can be the object of evaluative assessment and delibera-

³⁰⁹ Battin, 312.

³¹⁰ Ibid.

³¹¹ Prado and Taylor, 36.

tion, and therefore that it can sometimes be subordinate to other values [...]. In fact, the ability to value something more than personal survival partly defines what it is to be rational.”³¹²

What seems to be controversial with this line of reasoning is that in its light almost every decision to commit suicide may qualify as rational, the ones made by Vaché and Rigaut included. If judged by Battin’s criteria, Vaché’s and Rigaut’s decisions have been no less rational than Demosthenes’ and Brutus’: both Vaché and Rigaut had the ability to reason, a realistic world view, and adequate information concerning their condition, which means that their decision was by no means an impaired one; next to these, the decision to bring about their own death also meets Battin’s satisfaction of interests criterion, since Vaché and Rigaut obviously valued something else more than their own survival: the continuation of their lives would be harmful to them, since it wasn’t likely to ‘permit other experience of intrinsic value.’ This view, however, apart from being counter-intuitive, at the end of the day makes forming any judgment in general absolutely impossible; if all our values and interests are of only personal or subjective character, and if any decision of ours is considered rational in the case it accords with our personal interests, then every decision is *a priori* rational, apart from those that would be contrary to our subjective interests, if there could be any such decisions anyway. In general, there would be no room for judgement or moral evaluation – and this, of course, is the key objection to relativism in general, and moral relativism in particular.

³¹² Ibid.

IV. A postscript

The most controversial issue in the debate on suicide remains whether the decision that results to it could be seen as rational, at least under specific circumstances.³¹³ What makes rational suicide a seemingly impossible oxymoron is that it brings about death, and death is considered to be not *just an evil*, but the *ultimate evil*, a *summum malum*.³¹⁴ In that sense death should be counted as *the* unqualified evil, a *malum ad se* that allows for no exceptions, and under no circumstances should be preferable to anything else. In light of the above one's decision to commit suicide can never be rational. On the other hand, there is also much controversy on whether the view that death is an evil anyway – let alone the ultimate evil – is grounded on reason, or it is just a ‘gut feeling,’ an instinctive, affective aversion towards something, death, that may have no effect on us whatsoever, as Epicurus argues; the – broadly accepted, and definitely appealing to intuition – claim that “the most terrible thing of all is death”³¹⁵ stands in need of further proof, as well.

In Thomas Nagel's view, death – that is, “permanent death, unsupplemented by any form of conscious surviv-

³¹³ Prado and Taylor, 32.

³¹⁴ “Hence it is not lawful for man to take his own life that he may pass to a happier life, nor that he may escape any unhappiness whatsoever of the present life, because the ultimate and most fearsome evil of this life is death.” Aquinas, *Summa Theologica* (Notre Dame: Christian Classics, 1981), SS, Q. 64, art. 5.

³¹⁵ See Aristotle, *Nicomachean Ethics*, 3.6.6: “Now the most terrible thing of all is death; for it is the end, and when a man is dead, nothing, we think, either good or evil can befall him anymore.”

al,”³¹⁶ cannot be considered an evil as such; death is not an evil as a state, the state of being dead, but only because it deprives us of life. To Nagel it couldn’t be otherwise, since we indeed know nothing about what it is like to be dead; we may only know what we will be deprived of when our life will come to its end. In this respect death may indeed be dreadful not because of what it may bring along, but due to what it will deprive us of:

“First, the value of life and its contents does not attach to mere organic survival: almost everyone would be indifferent (other things equal) between immediate death and immediate coma followed by death twenty years later without reawakening. And second, like most goods, this can be multiplied by time: more is better than less.”³¹⁷

If death is seen as Nagel suggests, that is, just as a state of non-existence, a *blank* unfollowed by any kind of experience, the only thing that may be bad about death is that it robs us of a desirable state of being, but never the state of not existing itself; if it wasn’t like this, we should consider the state of not yet being born as equally bad or dreadful with the state of being dead, as Lucretius argues,³¹⁸ but this would sound rather absurd. In light of the above, death cannot be the *ultimate evil* as

³¹⁶ Thomas Nagel, “Death,” in *Applied Ethics*, ed. Peter Singer, 9-18 (New York: Oxford University Press, 1986), 9.

³¹⁷ Nagel, 10.

³¹⁸ “[...] the same estate as if never born before, when death immortal hath taken the mortal life.” Lucretius, *De rerum natura*, trans. William Ellery Leonard (New York: Dover Publications, 2004), 3.974-5; cf. Stephen Hetherington, “Lucretian Death: Asymmetries and Agency,” *American Philosophical Quarterly* 42, no. 3 (2005): 211-219, 211.

such, but only because it deprives us of what we desire or hold dear: things, experiences, prospects, and states of being.

It could also be argued that death is the ultimate evil because it deprives us of the ultimate good, that is, life. Not everybody would agree with the view that life is the supreme good, though; by this I don't mean only the Stoics: the parents of an infantile Tay-Sachs newborn would find no relief in that their offspring is at least alive. The same applies to those who decide to give their life up for any cause whatsoever; it seems that being alive is not an unconditional good as such, but that there are some *further facts* of subjective character that make life worth living. May it be preserving one's virtue, as it is with the Stoics, or staying true to one's religion, as it is with martyrs, or defending one's people, family and country, as it has been with Marcus Curtius, or anything else humans may value more than mere survival, these further facts seem to provide support for the view that one's decision to commit suicide may under certain circumstances be rational.

On active and passive euthanasia

Despite what artists and novelists often seem to assume,³¹⁹ to average people killing or letting another human (or one's self) die is neither easy nor pleasant; even *watching* a person die is to most people a horrible experience. Nevertheless, neither killing nor letting die constitute necessarily an unconditionally morally reprehensible deed; self-defense, the common good, a great cause, even avenging the death of – or the harm done to – one's loved ones, are often invoked as strong reasons for taking a life, either one's own or another's. In any case, the reasons for taking one's own life or purposefully letting it fade away have to be so strong, as to be at least *prima facie* plausible, intuitively intelligible, and empathetically acceptable. Life is usually conceived and portrayed as both a miracle and a gift, and deciding to destroy a miracle, or throw away the most precious gift, requires nothing less than strong, convincing reasons.

I. Introduction

When it comes to reasons for killing a person or letting it die, it seems almost impossible to think of any better and more convincing one than the expressed free will of a competent person who asks to be put to death; it is not that responding to such a plea makes killing or letting die an uncontroversial

³¹⁹ On the aesthetic appreciation of murder see Thomas De Quincey's celebrated essay *On Murder Considered as One of the Fine Arts* (New York: Penguin, 2015).

or morally justifiable deed. It is rather that such a justification, unlike any other, seems to be at least morally debatable; even those who would reject out of hand any other case of killing on moral, religious or other grounds would – actually, they *do* – engage in the debate on euthanasia and assisted suicide instead of bluntly dismissing both as *a priori* morally unacceptable. One's request to be killed or be left to die might not strike everybody as a good reason for readily accepting euthanasia and assisted suicide, but to most ethicists it is still a quite good reason to join the moral debates concerning both issues. And in fact both euthanasia and assisted suicide, that is, taking the life of a competent terminally ill patient (or, respectively, aiding one to take his own life) who experiences intense agony and extreme suffering and, being fully aware of the facts concerning his current situation as well as his future prospects, persistently requests to have his death hastened so as to be relieved from excessive and hopeless agony,³²⁰ undoubtedly have some quite strong arguments on their side.

Endorsing the view that the best judge for one's interests can only be one's self, many bioethicists claim that accepting a patient's request to hasten his death is respecting the patient's autonomy³²¹ and meeting his preferences. As Tom L. Beauchamp puts it, such claims:

“[...] preserve a range of options for patients, including last-resort remedies such as refusal of nutrition and hydration and ingestion of a fatal medication. This is the logical extension of a pri-

³²⁰ Sheila McLean, “End-of-life Decisions and the Law,” *Journal of Medical Ethics* 22, no. 5 (1996): 261-262.

³²¹ Patrick Nowell-Smith, “Euthanasia and the Doctors – A Rejection of the BMA's Report,” *Journal of Medical Ethics* 15, no. 3 (1989): 124-128, 128.

mary commitment to patient autonomy. Second, many are coming to the view that physicians who provide assistance in hastening death are adhering to a legitimate interpretation of the physician's traditional commitment to the patient: to care for and meet the needs and preferences of the patient in all stages of the patient's life.”³²²

To libertarians euthanasia and assisted suicide are either the actualization of the patient's right (or liberty) to die,³²³ or the only means to have the patient's right to privacy³²⁴ or self-determination enforced under the circumstances:

“Self-determination by definition does not encompass decisions made for an individual by a third party. In contrast, a competent terminal patient's right to choose the time and manner of his death fits squarely within the right to privacy doctrine and should be given effect [...].”³²⁵

Some bioethicists who are under the influence of the Kantian tradition find euthanasia compatible with the second formula³²⁶

³²² Tom L. Beauchamp, “The Right to Die as the Triumph of Autonomy,” *Journal of Medicine and Philosophy* 31, no. 6 (2006): 643-654, 651.

³²³ John A. Robertson, “Cruzan: No Rights Violated,” *Hastings Center Report* 20, no. 5 (1990): 8-9.

³²⁴ Derek Humphry and Ann Wickett, *The Right to Die: Understanding Euthanasia* (London: Bodley Head, 1986), 68.

³²⁵ Steven J. Wolhandler, “Voluntary Active Euthanasia for the Terminally Ill and the Constitutional Right to Privacy,” *Cornell Law Review* 69, no. 2 (1984): 363-383.

³²⁶ The *formula of humanity as end in itself* is classified by some as the third formulation of Kant's categorical imperative, after the *formula of universal law* and the *formula of the law of nature*. Here – and in general – I abide by

of the categorical imperative,³²⁷ according to which the patient ought to be treated always as an end and never merely as a means:

"In those cases when a person wants us to kill him, when that desire is necessary and sufficient to motivate us to kill him, and in which we have no other motivationally *erf* desire to kill him, it would be difficult to sustain the charge that we are acting in such a way so as to make a person a means to our end. And so it seems that voluntary euthanasia can be fairly easily shown to be compatible with CI2."³²⁸

Kantian ethicists, however, are by no means the most committed advocates of euthanasia; this title rightfully belongs to utilitarian thinkers. The backbone of pro-euthanasia utilitarian arguments rests in the view that allowing euthanasia is expected to produce the best possible outcome for everybody involved or affected.³²⁹ The above arguments and others as such show that there are indeed strong reasons for

Allen Wood's classification, according to which the law of nature formula is only a variant of the universal law formula, and not a principal formulation. See Immanuel Kant, *Groundwork for the Metaphysics of Morals*, ed. and trans. Allen W. Wood (New Haven and London: Yale University Press, 2002), xviii.

³²⁷ Brian Bix, "Physician Assisted Suicide and the United States Constitution," *Modern Law Review* 58, no. 3 (1995): 404-411, 411.

³²⁸ Iain Brassington, "Killing People: What Kant Could Have Said about Suicide and Euthanasia but Did Not," *Journal of Medical Ethics* 32, no. 10 (2006): 571-574.

³²⁹ See Peter Singer, "Voluntary Euthanasia: A Utilitarian Perspective," *Bioethics* 17, nos. 5-6 (2003): 526-541; also Arthur J. Dyck, "Physician-Assisted-Suicide: Is it Ethical?" *Trends in Health Care, Law, and Ethics* 7, no. 2 (1992): 19-22, 21.

considering both euthanasia and assisted suicide as morally justifiable options; the least they do is to make opposing euthanasia as difficult as defending it. However, this is only half of the picture: rejecting euthanasia means the end of the road for its opponents, while its defenders still need to cover a lot more distance; accepting euthanasia as a morally justifiable option necessarily ignites the debate concerning the way euthanasia should be carried out.

II. Active vs. passive euthanasia

Depending on the procedure that is being followed in order to hasten death, euthanasia is classified as *active* or *passive*. Active euthanasia is usually performed by means of injecting the patient with a lethal chemical substance; there are several other options available to hasten the patient's death, of course, but the one that involves injecting the patient with a lethal drug is favored in most of the cases due to its efficiency, for being immediately effective, and for bringing about death in the most humane way possible.³³⁰ Passive euthanasia, on the other hand, usually consists in withdrawing life supporting means, or withholding food and water.³³¹

While both methods aim to (and eventually bring about) the same result, morally assessing them against each other reveals their inherent differences. The active termination of life upon the patient's request is usually considered to be an instance of killing, and on that basis it is rejected as morally unjustifiable.³³² Remov-

³³⁰ Ronald Munson, *Intervention and Reflection: Basic Issues in Medical Ethics* (Belmont, California: Wadsworth Publishing Company, 1983), 181.

³³¹ Gary T. Stewart, William R. Curter and Timothy J. Demy, *Suicide and Euthanasia* (Grand Rapids: Kregel Publications, 1998), 23.

³³² Tom L. Beauchamp, *Intending Death: The Ethics of Assisted Suicide and Euthanasia* (New Jersey: Prentice Hall, 1995), 3.

ing any life-supporting means, on the contrary, is usually taken as letting one die, and therefore it is considered to be not as morally objectionable, if at all.³³³ In other words, in the case of active euthanasia it is the doctor who intervenes and cuts the thread of the patient's life, while in that of passive euthanasia the doctor does nothing to hasten death, and just "lets nature take its course," or "the condition of the patient develop."³³⁴ Since killing a human being is in general seen as morally reprehensible, while failing to prevent one's death is not *per se* wrongful, active euthanasia is severely criticized for being as morally unjustifiable as killing, while passive euthanasia is morally equivalent to inaction, as, for example, it is in the case one does nothing to prevent death from starvation or from lack of medicine for people in poor countries, although one could possibly do something to save those people.

It is not at all counter-intuitive to suggest that action and inaction should be assessed in a different manner. Shared moral intuition, however, isn't much of a protective shield against neither challenge nor criticism.³³⁵ Consider, for example, the case in which somebody falsely accuses you for being a thief with the purpose to put you to jail. What he does is by all means morally wrong, since it involves two morally unacceptable decisions: to lie on the one hand, and try to harm an innocent person on the other. Now consider the case in which false or misleading evidence has made you the main suspect of a crime, and the only person who could confirm your alibi does not present himself in court, although this would be of no cost

³³³ Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics* (Oxford: Oxford University Press, 1994), 220.

³³⁴ Robert M. Baird and Stuart Rosenbaum, *Euthanasia: The Moral Issues* (New York: Prometheus Books, 1989), 12.

³³⁵ James Rachels, "Active and Passive Euthanasia," in *Applied Ethics*, ed. Peter Singer, 29-36 (Oxford: Oxford University Press, 1986), 31.

to him whatsoever; he does this only because he wants to see you judged guilty and put to jail. One could assume that in the first case the accuser acted so as to harm and wrong you, while in the second case the only witness who could confirm your alibi did nothing to save you from jail. But such a view would be at least as counter-intuitive as the one that assumes that action is morally different from inaction: the accuser wrongs you no less than the witness who doesn't show up, and with no different motivation or purpose. Moral intuition seems to contradict itself in this case: even among those who maintain that inaction may not be assessed on a par with action, some would still feel that the witness who fled has wronged you no less than the accuser, all the more so since both persons' motives, intentions and purpose have been identical.

The same seems to apply also in the case of euthanasia: when the doctor intentionally lets 'nature takes its course' although he could save the patient, he seems to be no less morally responsible for the patient's death than he would be in the case he intentionally killed the patient upon the patient's request. In both scenarios the key moral determinants are the same, assuming, of course, that – all other things being equal – the key moral determinants of any human action are limited to the agent's motivation, intentions and purposes, as well as to the results of the action undertaken. In my view the fact that different procedures are being followed in each case is morally irrelevant, as it would be irrelevant if one who wishes evil for you would send you to jail either by willfully and knowingly giving a false testimony against you, or by not showing up in court to verify your alibi. Assuming that all other things are equal, choosing to inflict death by means of passive instead of active euthanasia (or, vice versa) seems to be mostly a matter of strategy, and much less – if at all – a matter of moral con-

cern. To Philippa Foot the line of demarcation between action and inaction in the case of euthanasia is a rather blurry one:

“In the first place it must be said that the word ‘act’ is not to be taken to exclude omission: we shall speak of an act of euthanasia when someone is deliberately allowed to die, for his own good, and not only when positive measures are taken to see that he does. The very general idea we want is that of a choice of action or inaction directed at another man’s death and causally effective in the sense that, in conjunction with actual circumstances, it is a sufficient condition of death.”³³⁶

In support of Foot’s argument I should add here that the view that passive euthanasia consists in inaction rather than in action most of the times looks rather arbitrary as well as counter-intuitive.³³⁷ For what it is worth, I am totally unaware of any strong argument in support of the view that switching off any life supporting machine should be thought of as an instance of inaction rather than of action – in my view extending one’s finger and pressing a button is no less of an action than squeezing the trigger of a gun. Foot reverses the argument to reach the same conclusion:

“Where then do the boundaries of the ‘active’ and ‘passive’ lie? [...] But the act of turning off

³³⁶ Cf. Philippa Foot, *Virtues and Vices and Other Essays in Moral Philosophy* (Berkeley: University of California Press, 1978), 34-35.

³³⁷ Carlos G. Prado and Sandra J. Taylor, *Assisted Suicide: Theory and Practice in Elective Death* (New York: Humanity Books, 1999), 11.

a respirator should surely be thought of as no different from the decision not to start it; if doctors had decided that a patient should be allowed to die, either course of action might follow, and both should be counted as passive rather than active euthanasia if euthanasia were in question.”³³⁸

Foot’s argument, however, while employed to support the view that the boundaries between action and inaction are quite blurry in the case of euthanasia, also seems to imply that active and passive euthanasia are still distinguishable from each other with regard to whether action or inaction is involved in each course of action: the decision not to connect the patient to the respirator in the first place, or disconnect him after he was connected, in Foot’s view is *not acting* in order to preserve the patient’s life, and this is probably the reason why Foot claims that both courses of action should be counted as *passive euthanasia*; reversely, connecting or leaving connected the patient to the respirator is positively acting to keep him alive. This still doesn’t explain, however, why connecting one to a machine should be taken as an action, while disconnecting him shouldn’t.

By and large, the view that underlies this distinction is that the respirator is a man-made means of interfering with the patient’s condition in order to prolong his life, one that hadn’t been invented, the patient would anyway have long expired;³³⁹ therefore, switching the respirator off upon the patient’s request is just not interfering, exactly as it would be not to connect him in the first place. From this perspective

³³⁸ Foot, 48.

³³⁹ Daniel Callahan, “Pursuing a Peaceful Death,” *Hastings Center Report* 23, no. 4 (1993): 33-38, 34.

inaction equals non-interference, and since non-interference is normally (or, in the case of euthanasia) morally neutral or, at least, less unjustifiable than interference, the passive form of euthanasia should also be considered as either morally neutral or, at least, more easily justifiable than its active type.

Nevertheless, I still remain unconvinced that not interfering with one's condition by man-made means should be thought of as morally neutral, or more easily justifiable; as Foot argues, action doesn't necessarily exclude omission, which implies that at least under certain circumstances both interfering and not interfering should be equally evaluated. In my view both action and inaction are equally capable of producing person-affecting consequences, and this suffices to evaluate them as equally wrong in the case they make one equally worse off. Willfully injecting one with a malaria contaminated solution is to harm one, and harming one is morally wrong; willfully withholding anti-malaria treatment when such treatment is available means no less harm, however, exactly as torturing somebody before he dies is no worse than denying somebody the *coup de grâce* just to watch him dying an agonizing death: each course of action in both cases is bound to bring about the same effect, therefore the decision to proceed with either one is indicative of the same moral disposition. One may harm another either passively or actively, and harming is morally wrong irrespective of whether the harm has been due to action or inaction.

So far I have argued on the one hand that the boundaries between active and passive euthanasia are not clear enough, and on the other that the moral supremacy of active over passive euthanasia, while it is intuitively plausible, it is not supported by strong moral justification, therefore it remains controversial and open to challenge. In addition to these, and

considering the way in which passive euthanasia is usually being performed, I cannot help thinking if and to what extent the term 'passive euthanasia' should be thought of as a textbook case of a *contradictio in terminis*. Death in the case of passive euthanasia is usually sought either by means of withholding food or water, or by withdrawing life-supporting machines such as the respirator, the hemodialysis machine, etc. In all cases death comes slowly and in agony; starvation, dehydration, suffocation, and intoxication are certainly ways to have one's death hastened, but they are by no means ways to allow one die a good death. In that sense *passive euthanasia* is no *euthanasia* at all, therefore the term 'passive euthanasia' should be dismissed as misleading.

Assuming that the patient asks for the best and less protracted death possible under the circumstances – to assume otherwise would be counter-intuitive, but also contrary to reason, and given that only in the case of active euthanasia death comes fast and almost unnoticed, while with the passive form of euthanasia it is quite the opposite, in the case of passive euthanasia one would be justified to entertain serious doubts on whether the actual request of the patient has been indeed met on the one hand, and on the other on whether the doctor has proceeded with this course of action taking into account only the patient's request and best interests, and not his own security against possible legal consequences above anything else.³⁴⁰ By and large, in the case one feels that meeting the patient's request to be allowed a good death is the right thing to do, inflicting death by means of passive instead of active euthanasia is choosing the wrong means to a right end.

³⁴⁰ Margaret Battin, "The Least Worse Death," *Hastings Center Report* 13, no. 2 (1983): 13-16.

III. A utilitarian perspective

As I previously argued, moral intuition normally leads one to assume that letting die should not be taken as morally objectionable as killing, if at all. Euthanasia is a real life scenario, however, therefore dealing with it requires much more than moral intuition; doctors need to make instant, on the spot decisions according to their pragmatic moral judgment: they have to determine the optimal balance between harms and benefits, and this by taking into consideration as many significant determinants as they are able to: the patient's actual condition and prospects, in which way and to what extent the patient's relatives would be affected by any decision taken, the means that are available, etc. In this respect any decision to perform euthanasia necessarily has to take into account also utility-related issues.³⁴¹ From this perspective, by conceding to the patient's request to put him to death, the doctor indicates that according to his judgement the best consequences for everybody involved would follow from hastening the patient's death. However, if euthanasia in general is to be evaluated on the basis of the harms or benefits it is expected to produce, one cannot be indifferent to the harms or benefits each alternative course of action is expected to produce. The decision to perform euthanasia is a two-fold one; better, it consists in two stand-alone decisions in the face of the following dilemmas: [a] "Should I respect the patient's request and put him to death, and why?" and [b] "Should I do this actively or passively, and why?" If the answer to the first question is "Yes, because this would produce the best consequences for everybody in-

³⁴¹ John D. Swales, "Medical Ethics: Some Reservations," *Journal of Medical Ethics* 8, no. 3 (1982): 117-119.

volved, concerned or affected, and primarily for the patient,” the answer to the second cannot be “Passively, although this wouldn’t produce the best balance of benefits and harms for everybody else involved, concerned or affected, except perhaps for me.” If anything, adopting a utilitarian perspective means to disregard egoistic considerations, when self-interest is incompatible with the best possible results for everybody who would be affected by one’s decision; this applies equally to both the major variances of utilitarianism.

To act utilitarians any action is right only insofar as its consequences are expected to produce at least as much happiness as those of any other choice available to the moral agent; in other words, any course of action is preferable to all its alternative ones, if the expected utility is at least as great as that of any other.³⁴² Assuming for the sake of the discussion that the decision to perform euthanasia is in the first place accepted as a morally justifiable one, what remains is to determine the right way to execute it; in order to decide on whether to undertake action or ‘let nature take its course,’ an act utilitarian would have to calculate the amount of utility each one among these two possible decisions would result in for everyone involved, affected or concerned: first of all for the patient, of course, but also for the doctor and the medical staff, the patient’s relatives, the resources of the medical establishment where the patient is being hospitalized, and so on. It is self-evident that the patient would be much better off with active euthanasia, since, as I already argued, passive euthanasia is hardly euthanasia at all. The doctor and the medical staff would probably feel much more secure with passive euthanasia in

³⁴² Brad Hooker, “Rule-Utilitarianism and Euthanasia,” in *Ethics in Practice*, ed. Hugh LaFollette, 22-31 (Malden, MA: Blackwell Publishing, 2002), 24-25.

the case euthanasia in general was illegal; in every other case, however, the active form of euthanasia would be much more beneficial also for them, since they would be spared the emotional burden to watch their patient die a protracted and agonizing death. Exactly the same would apply to the patient's relatives, as well: an instant and peaceful death with dignity is the most one may wish for his loved ones if death is inevitable, and not only for their sake. Next to these, deciding in favor of active euthanasia would make the staff and the resources of the medical establishment almost instantaneously available to other patients in need; given that intensive care units have limited capacity and the resources are also finite and hardly meet the demand, this should also be a major moral concern to an act utilitarian, unless one fails to grasp the plain fact that for every patient kept in life against his will in an intensive care unit, another person is being denied access to critical care treatment. Assuming that all the above are true, if Bentham's felicific calculus³⁴³ was applied in order to determine which type of euthanasia should be preferred, the outcome would definitely be in favor of active euthanasia: all its variables (or, 'circumstances' according to Bentham)³⁴⁴ would provide strong support for the decision to choose active instead of passive euthanasia. By and large, the dilemma concerning the type of euthanasia would hardly be a dilemma to an act utilitarian.

Rule utilitarianism, on the other hand, doesn't appear to be so favorable to passive euthanasia; after all, rule utilitari-

³⁴³ Jeremy Bentham, *Principles of Morals and Legislation*, ed. Robert Baird and Stuart Rosenbaum (New York: Prometheus Books, 1988), 30.

³⁴⁴ For a thorough analysis of Bentham's *utility* or *felicific calculus* see also Wesley C. Mitchell, "Bentham's Felicific Calculus," *Political Science Quarterly* 33, no. 2 (1918): 161-183.

anism has produced some of the strongest arguments against the legalization of euthanasia. To rule utilitarianism the right action is the one that conforms to the rule that is expected to maximize utility if followed;³⁴⁵ now the rule with which passive euthanasia complies, that is, "thou shalt not kill," seems to guarantee maximum utility if compared to any other rule concerning killing, such as 'thou shalt kill depending on the circumstances', or 'thou shalt kill one upon one's request;' this definitely rules out active euthanasia. Euthanasia, however, is not an ordinary instance of killing, therefore the underlying maxim for each one of its two alternative types cannot be one as broad as this; if it were, in the case of euthanasia rule utilitarianism would necessarily collapse into act utilitarianism, since the particular character of the issue would definitely call for exceptions to the rule that would eventually go as low as any individual case in question.³⁴⁶ Therefore, we first need to determine to which rule exactly both active and passive euthanasia would respectively conform, and then examine which rule, if followed, would maximize utility. As far as active euthanasia is concerned, a fairly good suggestion might be: "whenever you have to respond to a dying person's request to be put to death either by action or inaction, whereas action would be much more beneficial to everybody involved or concerned, and inaction would be much more harmful than action, you ought to respond by acting;" with regard to passive euthanasia the rule would be exactly the opposite. If this is indeed the way to put it, also rule utilitarians do not really have a lot to consider.

³⁴⁵ Hooker, 24-25.

³⁴⁶ Rule utilitarianism is often challenged as necessarily collapsing into act utilitarianism, for exactly the same reasons I suggested that apply in the case of euthanasia.

IV. A (probably unexpected) Kantian perspective

To most bioethicists that are under the influence of the Kantian tradition, euthanasia isn't supposed to be an option at all, and this irrespective of whether the patient would be euthanized actively or passively; this is because the moral maxim upon which euthanasia is based, is identical to the one that underlies suicide, and the maxim of suicide according to Kant is self-defeating, since it:

“[...] would require using the ability to govern one’s own life to destroy one’s ability to govern one’s own life – that is, both willing the existence and the non-existence of the same thing.”³⁴⁷

As Kant puts it, “the first, though not the principal, duty of man to himself as an animal being is *to preserve himself* in his animal nature.”³⁴⁸ Contrary to the Stoic view that it is a prerogative for the sage to depart from life at his own discretion, Kant claims that:

“Man cannot renounce his personality as long as he is a subject of duty, hence as long as he lives; and it is a contradiction that he should be authorized to withdraw from all obligation, that is, freely to act as if no authorization were needed for this action. To annihilate the subject of mo-

³⁴⁷ Rosamond Rhodes, “A Kantian Duty to Commit Suicide and Its Implications for Bioethics,” *American Journal of Bioethics* 7, no. 6 (2007): 45-47.

³⁴⁸ Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1991), 6:421.

rality in one's own person is to root out the existence of morality itself from the world, as far as one can, even though morality is an end in itself. Consequently, disposing of oneself as a mere means to some discretionary end is debasing humanity in one's person (*homo noumenon*), to which man (*homo phaenomenon*) was nevertheless entrusted for preservation.”³⁴⁹

Annihilating the subject of morality in one's own person would also imply that under specific circumstances some forms of life are not unconditionally worth-living – and this would be equally contradictory: by and large, any maxim that would support the intentional destruction of human life – either one's own, or another's – cannot meet Kant's requirements for becoming a universal law, therefore euthanasia no less than suicide should be rejected in the first place.

It is true that some among the most vigilant and aggressive opponents of euthanasia are devoted Kantians. This, however, does not make all Kantian bioethicists hostile to euthanasia; on the contrary, many see euthanasia as the only means of respecting and preserving the autonomy³⁵⁰ and the dignity³⁵¹ of terminally ill patients under the circumstances, and as I have already elsewhere explained the notions of autonomy and dignity are the pillars of Kantian ethics. But which type of euthanasia? The question is, of course, which type's maxim one could at the same time rationally want to become through one's will a universal

³⁴⁹ Ibid., 6:422-423.

³⁵⁰ Onora O'Neill, *Acting on Principle: An Essay on Kantian Ethics* (New York: Columbia University Press, 1975), 79 ff.

³⁵¹ Dennis R. Cooley, “A Kantian Moral Duty for the Soon-to-be Demented to Commit Suicide,” *American Journal of Bioethics* 7, no. 6 (2007): 37-44.

law of nature – this is the first formula of the categorical imperative in its second variant, the *formula of the law of nature*.³⁵²

In the *Groundwork for the Metaphysics of Morals* Kant argues that what turns a human being into a person is the quality of autonomy, a quality that in his view is the ground of human dignity³⁵³ and the sole principle of morality.³⁵⁴ To Kant autonomy – as opposed to heteronomy³⁵⁵ – is one's (a person's) ability to freely and deliberately set one's own laws of moral action.³⁵⁶ In Kant's view, however, such

“[...] freedom, even though it is not a quality of the will in accordance with natural laws, is not for this reason lawless, but rather it has to be a causality in accordance with unchangeable laws, but of a particular kind; for otherwise a free will would be an impossibility.”³⁵⁷

The ‘unchangeable laws’ Kant refers to are principles “of acting in accordance with no other maxim than that which

³⁵² “So act as if the maxim of your action were to become through your will a universal law of nature,” and “Act only in accordance with that maxim through which you can at the same time will that it become a universal law.” Kant, *Groundwork*, 4:421 and 4:436 respectively. I abide by Allen W. Wood's classification, according to which the *formula of the law of nature* is a variant of the *formula of the universal law*. *Ibid.*, xviii.

³⁵³ Kant, *Groundwork*, 4:436: “Autonomy is thus the ground of the dignity of the human and of every rational nature.”

³⁵⁴ *Ibid.*, 4:440: “Yet that the specified principle of autonomy is the sole principle of morals may well be established through the mere analysis of the concepts of morality.”

³⁵⁵ *Ibid.*, 4:433.

³⁵⁶ *Ibid.*, 4:447: “[...] what else, then, could the freedom of the will be, except autonomy, i.e., the quality of the will of being a law to itself?”

³⁵⁷ *Ibid.*, 4:446.

can also have itself as a universal law as its object,”³⁵⁸ to wit principles that would be in accordance with reason³⁵⁹ or, at least, would not contradict reason, and would therefore be eligible to acquire the status of universal laws,³⁶⁰ since they would “[...] harmonize from one’s own legislation into a possible realm of ends as a realm of nature.”³⁶¹

In their effort to justify euthanasia Kantian bioethicists often also appeal to the second formulation of the categorical imperative, the formula of *humanity as end in itself*, namely the one that urges to

“Act so that you use humanity, as much in your own person as in the person of every other, always at the same time as end and never merely as means,”³⁶²

as well as to Kant’s theory of duties, according to which duties are classified into perfect and imperfect to one’s self and to others.³⁶³ Kant exemplifies imperfect duties to others in the moral duty of solidarity.³⁶⁴ These three key components of Kantian ethics, that is, autonomy, the formula of humanity as end in itself, and the imperfect duty of solidarity owed to

³⁵⁸ Ibid., 4:447.

³⁵⁹ Ibid., 4:411: “[...] it is clear that all moral concepts have their seat and origin fully *a priori* in reason [...]”

³⁶⁰ Ibid., 4:437: “Act in accordance with that maxim which can at the same time make itself into a universal law.”

³⁶¹ Ibid., 4:436.

³⁶² Ibid., respectively: 4:429, 4:436.

³⁶³ For an excellent analysis concerning perfect and imperfect duties, see Shelly Kagan, “Kantianism for Consequentialists,” in Kant, *Groundwork*, 128 ff.

³⁶⁴ Kant, *Groundwork*, 4:423.

others, have a central role in the debate concerning euthanasia in general, and with regard to the line of demarcation between active and passive euthanasia in particular.

Euthanasia in both its active and passive forms is often justified on either an autonomy or a solidarity related basis: the patient most of the times asks to be put to death because he experiences intolerable pain and sees no point in having his agony protracted. The doctor or the relatives respond to his plea either because they feel for the patient, or out of respect for the patient's autonomy: weren't he unable to kill himself, the patient would have committed suicide. If this is so, there are two possible maxims underlying the doctor's decision to respond to the patient's request for euthanasia: either "I ought to allow the maximum possible autonomy for my patient," or "I ought to treat the patient as compassionately as I can." The first maxim could serve as the major premise of the following argument:

- A. Within my powers I ought to allow the maximum possible autonomy for the patient.
- B. The patient wills to have his death hastened, but natural necessity (heteronomy) prevents him from taking his own life.
- C. I have the power to hasten the patient's death according to his will.
- D. Therefore I ought to hasten the patient's death.

In the second case the argument could be as follows:

- A. I ought to treat my patient as compassionately as I can.
- B. Under the circumstances, treating my patient

as compassionately as I can means putting him to death.

C. Therefore, I ought to accept my patient's request for euthanasia.

Both these arguments outline duties owed to the patient, since their negations, that is, arguments whose major premises would be maxims opposed to the ones I mentioned, to wit something like "I ought to treat my patient as inconsiderably or callously as I can," and "Within my powers I ought to allow the minimum possible autonomy for my patient," would fail the test of universalizability. However, this failure would be due to different reasons in each case: the first maxim would fail the test of universalizability due to the fact that one cannot rationally want a world in which the maxim "I ought to treat my patient as inconsiderably or callously as I can" is a universal law; as to the second, this would fail the test because no one could coherently conceive of a world in which the maxim "I ought to allow the minimum possible autonomy for my patient" would be a universal law: in such a world the will would want – and at the same time it wouldn't want – to be a law to itself. This is the most significant difference between perfect and imperfect duties: one cannot coherently *conceive* of a world where the former do not apply, while one cannot rationally *will* a world in which the latter are not being respected. From this point of view expressing solidarity is an imperfect duty towards others, and respecting one's autonomy is a perfect one.

Elsewhere³⁶⁵ I have discussed at length the relation between perfect and imperfect duties, as well as the extent to which imperfect duties should be considered to be morally

³⁶⁵ See chapter three.

binding. Either way, in the case one decides to harmonize one's actions with the duty of solidarity in any specific euthanasia-related case (for even if imperfect duties *in general* allow for some latitude in complying with them, in individual cases they either allow for compliance or non-compliance), one ought rather to put the patient to death upon the patient's request than just let him die, since letting him die is the least compassionate and humane option among the two, as I have already argued.

As to the perfect duty to respect the patient's autonomy, again in this case the active form of euthanasia seems much more favorable: it would be entirely counter-intuitive – and also contrary to reason – to assume that, when the patient asks to be put to death because he cannot anymore stand pain and suffering, or the debasing conditions he has to experience until he dies, the patient asks for the most agonizing and humiliating way to die among the two that are available to him: what the patient wills is to be relieved from the pain and the agony he experiences, and have a peaceful death, one that is compatible only with active euthanasia. Therefore, respecting the patient's autonomy seems to be compatible only with active euthanasia.

In addition to these, passive euthanasia seems to be incompatible with the formula of humanity as end in itself. Since the purpose of euthanasia may only be to relieve the patient of the agony and the pain he experiences, and allow him to die a peaceful death with dignity, and given that this may be achieved only by means of active euthanasia, as I have already argued, there have to be reasons other than the patient's will or best interests for choosing the passive form of euthanasia instead of the active; these reasons could probably be related to the doctor's reasonable unease towards ac-

tive euthanasia, his absolutely justifiable concerns to avoid possible legal consequences, to the interest the community may have in shielding the unconditional value of human life, etc. All the above obviously have nothing to do with the patient' expressed will. This way, though, the patient is used merely as a means towards somebody else's ends, and not at the same time as an end in himself. This, however, would be morally questionable also to non-Kantian bioethicists.

V. A postscript

In my view the debate on whether euthanasia could be accepted as a morally justifiable option in general is unlikely to ever reach any unanimous conclusion; very much like the debate on abortion, it is probably bound to remain open to dispute. In a sense, after all, all life and death related issues seem to exceed the capabilities of any single field; the issue of euthanasia is definitely much larger than the potential of Bioethics, since any possible answer would necessarily be connected to personal worldviews, religious beliefs, cognitively complex moral intuitions, baseline moral beliefs, etc. From this point of view, the moral discussion on whether euthanasia should be performed actively or passively may strike as absolutely redundant or even preposterous, since it sets out to examine the proper course of action with regard to an option whose moral justification is by no means so far conclusively determined, and most likely will never be.

However, Bioethics is not only – or, not primarily – about conclusive, all-encompassing answers that would be morally binding for everybody; those who have already accepted euthanasia as a legitimate moral option – and they are not few – are perfectly justified to be concerned about (and debate on)

the most morally justifiable course of action with regard to it. The objective of this chapter has been to address *their* concerns by providing alternative viewpoints, shedding light on several aspects of the underlying theoretical basis of the debate, and challenging traditional views.

To this purpose at first I set out to examine whether the boundaries between the two types of euthanasia are clear enough so as to be counted as boundaries after all, and the extent to which the standard classification of euthanasia into active and passive is of any moral significance. Then I discussed the moral justification of each one of the two possible courses of action firstly from a utilitarian point of view, and then from a Kantian perspective. Being perfectly aware of the fact that this discussion is as inconclusive as any other on euthanasia, I only wish that this chapter has been at least insightful to the reader.

On the right to die

The concept of the right to die lies at the core of the moral discussion on deliberately self-inflicted, elective death, but it principally concerns euthanasia and assisted suicide in all their types and variants. It is in respect to voluntary passive euthanasia, however, that the right to die rises to the heights of its potential, standing as probably the most decisive moral determinant in the debate; it is often claimed that the decision to die in the manner and the time of one's own choosing belongs to the private realm of the individual, with which nobody is morally justified to interfere. In that sense, the right to die is a typical *autonomy* or *non-interference right*³⁶⁶ or, according to Wesley Hohfeld's classification of legal rights, a *privilege* or a *liberty*.³⁶⁷ In the case of euthanasia, however, the putative right to die usually is being discussed as a *claim right*, to wit as being equivalent to others' duties towards the bearer of the right.

I. Introduction

The right to die among all rights is the most controversial, because it necessarily implies that human life may on occasion be not worth living,³⁶⁸ or that death may under specific

³⁶⁶ Jozef Raz, *Ethics in the Public Domain* (Oxford: Oxford University Press, 1994), 275: "A person who says to another 'I have a right to do it' is not saying that [...] is claiming that the other has a duty not to interfere."

³⁶⁷ Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions*, ed. W. Cook (New Haven: Yale University Press, 1919).

³⁶⁸ See Suzan Beryl Chetwynd, "Right to Life, Right to Die and Assisted Suicide," *Journal of Applied Philosophy* 21, no. 2 (2004): 173-182; also David

circumstances be preferable to life; while the first implication most of the times is challenged as violating common sense, as being contrary to common experience, and also as constituting a slippery slope,³⁶⁹ the latter is typically rejected as a common logical fallacy, since there is no common scale on which life and death may be compared: non-existence is simply inaccessible to human experience.³⁷⁰ Next to these objections, there is also extensive ambiguity with regard to the classification of such a right, assuming that in the first place it could be accepted as a standard, legitimate one: it remains still a matter of controversy among ethicists whether such a right should be taken as a claim or a liberty right, to wit as a positive or a negative one. The discussion on the putative right to die poses major challenges to ethics in general, and especially to law ethics and Bioethics, literally driving their potential to its limits: to paraphrase Kant's argument against suicide, the assumption of a right to die puts to challenge the intrinsic value of life "through the same [faculty] whose voca-

A. J. Richards, "Constitutional Privacy, the Right to Die and the Meaning of Life: A Moral Analysis," *William & Mary Law Review* 22, no. 3 (1981): 327-419, 382ff.

³⁶⁹ Relevant literature is vast; see among others John D. Arras, "The Right to Die on the Slippery Slope," *Social Theory and Practice* 8, no. 3 (1982): 285-328; David Benatar, "A Legal Right to Die: Responding to Slippery Slope and Abuse Arguments," *Current Oncology* 18, no. 5 (2011): 206-207; Danny Scoccia, "Slippery-Slope Objections to Legalizing Physician-Assisted Suicide and Voluntary Euthanasia," *Public Affairs Quarterly* 19, no. 2 (2005): 143-161; Daniel Callahan, "When Self-Determination Runs Amok," *The Hastings Center Report* 22, no. 2 (1992): 52-55.

³⁷⁰ For a discussion of the 'incommensurability' or 'lack of contrast' argument see mine "Epictetus' Smoky Chamber: A Study on Rational Suicide as a Moral Choice," in *Antiquity and Modern World: Religion and Culture*, ed. K. M. Gadjanski, 279-292 (Belgrade: The Serbian Society for Ancient Studies, 2011), 289 ff.

tion is to impel the furtherance of life.”³⁷¹ It is not surprising at all that the endeavor to establish a moral or/and legal right to die has been vigorously rejected as inconsistent, unsound, barren and meaningless.

While its counterpart, the right to life,³⁷² recapitulates concepts that are intuitively intelligible, much keener to our moral sentiments, and therefore less vulnerable to criticism as less likely to be challenged or questioned³⁷³ *prima facie* at least, the situation is quite the opposite when it comes to the right to die, since death is the negation of life and, therefore, the complete annulment of any right. On the other hand, while the concept of moral rights is considered to be the crest of ratio-

³⁷¹ Immanuel Kant, *Groundwork for the Metaphysics of Morals*, ed. Allen W. Wood (New Haven & London: Yale University Press, 2002), 4:422. By ‘faculty’ I replace ‘feeling’ in the original text.

³⁷² Expressly declared already since 1948 in the *Universal Declaration of Human Rights* (article 3): “Everyone has the right to life, liberty and security of person;” again in the 1950 *Convention for the Protection of Human Rights and Fundamental Freedoms* (article 2): “1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: a. in defence of any person from unlawful violence; b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; c. in action lawfully taken for the purpose of quelling a riot or insurrection;” the right to life is mentioned in all relevant constitutional texts henceforth.

³⁷³ See, among others, Hans Jonas, “The Right to Die,” *Hastings Center Report* 8, no. 4 (1978): 31–36, 31. Jonas considers the right to life as the most plausible and fundamental one, but also as the basis of every other right – quite surprisingly, but not without adequate justification, of the right to die as well: “It is thus ultimately the concept of life, not the concept of death, which rules the question of the ‘right to die’. We have come back to the beginning, where we found the right to life standing as the basis of all rights. Fully understood, it also includes the right to death.”

nality and rational moral humanity,³⁷⁴ death is by definition a scandal for reason, and scandals can be resolved only by faith, religious or other. In light of the above, it is often suggested that a putative 'right to die' could only be considered as a textbook case of a *contradictio in terminis*,³⁷⁵ since it makes appeal to an impossible connection: it sets out to harmonize what is by definition irrational and incomprehensible with one of the most remarkable offsprings of rationality. Against this view I will argue in this chapter that the right to die might be justified in the case of passive euthanasia as an autonomy-related negative right – or, a liberty right – on the one hand, or as a solidarity-based positive right – or, a claim right – on the other.

II. The right to die

Rights, regardless of their nature, to wit whether they are viewed as legal, moral, human or other, are either permissions or entitlements acknowledged to the right-holder to do (or, to be done unto) or not to do something (or, to be left alone). In light of the above the debate concerning the 'right to die' obviously could never be about *the fact or the event* of death *per se*; instead, what is actually debated is whether moral agents are entitled (or, should be allowed anyway) to decide on the time, the fashion after, and the circumstances in which they will experience their inevitable death. In other words, the proponents of the right to die claim that in their view moral

³⁷⁴ By "humanity" I refer to the term "Menschlichkeit" Immanuel Kant uses to denote, among others, rational nature. See Wood's relevant comment in Immanuel Kant, *Groundwork*, 47, n. 63.

³⁷⁵ On the contradiction that underlies the assumption of a right to die see among others David J. Velleman, "Against the Right to Die," *The Journal of Medicine and Philosophy* 17, no. 6 (1992): 665-681, as well as David J. Velleman, "A Right of Self-Termination?" *Ethics* 109, no. 3 (1999): 606-628.

agents should be permitted – or even assisted – to die when the continuation of their life would be against their will and their best interests on the one hand, and on the other in the most humane and less agonizing way possible, if this is what they wish. A right that would safe-guard the above would be neither incomprehensible, nor inconsistent; after all, we are all mortals, and we are only expected to entertain strong interest in being allowed as much control as possible over the time and the manner of our death.

That said, introducing a right to die would be much more likely to pass unchallenged in the case the discussion was restricted to suicide, and didn't concern euthanasia. But, of course, suicide is in no need of any right to be protected as an option available to those interested, since the decision to commit suicide rests with the person concerned, and nobody has the power to prevent a free, competent person from taking his own life, at least under normal circumstances; as Seneca reassuringly asserts:

“[...] no man is constrained to live under constraint [since] on all sides lie many short and simple paths to freedom, and let us thank God that no man can be kept in life against his will.”³⁷⁶

When it comes to euthanasia, however, the concept of the right to die is of pivotal importance.³⁷⁷ The most morally significant difference between euthanasia and suicide is that

³⁷⁶ Lucius Annaeus Seneca, *Moral Epistles*: The Loeb Classical Library, trans. Richard M. Gummere (Cambridge, Massachusetts: Harvard University Press, 1917), Epistle XII:10.

³⁷⁷ Tom L. Beauchamp, “The Right to Die as the Triumph of Autonomy,” *Journal of Medicine and Philosophy* 31, no. 6 (2006): 643-654, 645.

euthanasia, very much unlike suicide, necessarily involves a second person who intervenes in such a way as to bring about the death of the person who has asked to be killed. Therefore, in the case of euthanasia, accepting the right to die might mean that on the one hand [a] under specific circumstances a person may justifiably claim that others should undertake certain actions (or deliberately refrain from any action) to hasten one's death, and on the other that [b] there are good reasons that others should respect such a claim, probably due to some corresponding duty of theirs to do so. From this point of view, however, the right to die seems like a typical *claim right*,³⁷⁸ and this is exactly what sparks controversy among ethicists, and makes many of them reluctant to include it within any standard account of moral rights.

In particular, and this *par excellence* applies to bioethicists who are under the influence of the Kantian tradition in ethics, rights are considered to be intrinsically related to – and dependent upon – already established³⁷⁹ corresponding duties,³⁸⁰ upon which these rights are based,³⁸¹ and from which

³⁷⁸ See Leif Wenar, "The Nature of Claim-Rights," *Ethics* 123, no. 2 (2013): 202-229.

³⁷⁹ Matthew Kramer, "Rights without Trimmings," in *A Debater Over Rights*, ed. Matthew Kramer, Nigel Simmonds, and Hillel Steiner (Oxford: Clarendon, 1998), 26.

³⁸⁰ See James A. Sherman, *Renewing Liberalism* (Dordrecht: Springer, 2016), especially chapter "From Moral Duties to Moral Rights," 383-434; also Richard Tuck, *Natural Rights Theories: Their Origin and Development* (New York: Cambridge University Press, 1979), 159-161; and Knud Haakonssen, *Natural Law and Moral Philosophy* (Cambridge, Mass.: Cambridge University Press, 1996), 41.

³⁸¹ Pierfrancesco Biasetti, "Rights, Duties, and Moral Conflicts," *Ethics & Politics* 25, no. 2 (2014): 1042-1062, 1042, where Biasetti quotes Mahatma Gandhi suggesting to Herbert George Wells to "[...] begin with a charter of Duties of Man and I promise the rights will follow as spring follows winter."

they draw their justification. Or, according to Jozef Raz, “I have a right iff some aspect of my interests is sufficient reason to hold another person to be under a duty.”³⁸² In Kantian terms any duty is a voluntary, self-imposed and mandated by reason³⁸³ absolute obligation: in brief, if I have the duty to (do or abstain from doing) something, there would be no rational justification if I decided to act in any other way. If, for instance, it is a perfect duty of mine towards others to keep the promises I give, there is no other rational alternative for me except than to act in such way as to be true to the promises I have given, and this irrespective of whether acting thus would be against my best interests at the moment, or contrary to my wishes.³⁸⁴ Duties, on this account, are self-imposed restrictions that control the various irrational tendencies and inclinations that are part of my non-rational nature; and insofar as I make my decisions as a rational moral agent, reason allows for nothing else save to act as duties compel me to.

On the other hand, any moral right is an ultimate permission, entitlement or freedom to do or to be done unto what this right concerns. The right to property, for example, means that one is allowed to dispose of one’s property according to one’s wishes: one is free to retain it, to quit it in favor of any beneficiary one chooses to, or even destroy it. And insofar as the right to property is being accepted as a legitimate moral right by the moral community one lives in, others are morally obliged to refrain from any action that would disallow one to deal with one’s property according to one’s own free will.

³⁸² Jozef Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1988), 166.

³⁸³ “For the rest, I understand by a perfect duty that which permits no exception to the advantage of inclination.” Kant, *Groundwork*, 4:421, note.

³⁸⁴ On perfect duties to others see *ibidem*, 4:422.

Unlike legal rights that are bestowed onto persons by legal systems, as far as moral rights are concerned the most heated controversy is with regard to their foundation and justification. Both these have been sought either in God's will, or in human nature, social contract or consensus, utility, or reason. In my view the most stable ground for establishing any moral right can only be reason; I feel that every other alternative necessarily has to be utterly dependent either on ontological and metaphysical views, or on individual taste, and this would make the concept of moral rights collapse into personal preferences, particular lifestyles, or idiosyncratic worldviews. Moral rights, though, may only indirectly be founded upon reason, to the extent they are based onto – or, better, derive from – corresponding duties that have been already proven by reason; in such case to challenge or reject a moral right would be to challenge or reject reason, which would be self-defeating, since one should make use of rational arguments to do so. In short, at least in the light of the Kantian tradition in ethics, moral duties come first and moral rights follow. In that sense, one has a right to one's property only because all other moral agents already accept that they are bound by the duty to respect property in general, since not respecting it would imply that one assumes a world in which the notion of property obtains, and at the same time doesn't obtain: if moral agents decided to act according to the maxim 'property shouldn't be respected', the notion of property would instantly vanish into thin air, but moral agents would still strive to conform their actions to the maxim 'property shouldn't be respected' – which is utterly irrational, since property would exist as an idea in the intellect, but wouldn't correspond to anything existing in the real world. In a nutshell, from this point of view any moral right that is not founded upon a commensurate

moral duty is nothing more than a *flatus vocis*.³⁸⁵ The right to life, in that sense, is sustained by the corresponding duty not to threaten, harm or take one's life no matter what. Given this, the right to life is a negative one,³⁸⁶ since it doesn't make it compelling for moral agents to undertake any action, but to refrain from acting instead: it disallows one, for example, to shoot another person to kill him, but it doesn't mandate that one should do anything to save another person from a hungry lion that has chosen him as its prey.³⁸⁷ Negative duties result in negative rights, and the right to life is an exemplary case of this type of rights.

Next to negative rights that derive from negative duties – or, according to Kant's classification, from *perfect* or *strict* duties – there are also positive rights³⁸⁸ that have their foundation upon positive duties, the ones Kant refers to as *imperfect* or *praiseworthy*. *X*'s positive duty towards *z* to *f*, means that *x* should undertake certain actions in order that *z* is allowed or facilitated to *f* or *fin*; from this, in turn, may be inferred that *z* has a right against *x* that *z* is allowed or facilitated to *f* or *fin*. In other words, if everybody is bound by duty to undertake a certain course of action towards me, I may be justified to claim it as a moral right of mine to be acted upon in a certain

³⁸⁵ The term is attributed to Roscelin of Compiègne by Anselm of Canterbury. See Frederick Copleston, *A History of Philosophy*, vol. II (London: Continuum, 2003), 143.

³⁸⁶ On negative duties – and the way they interweave with positive ones – see Raymond A. Belliotti, "Negative and Positive Duties," *Theoria* 47, no. 2 (1981): 82-92; also James Rachels, "Killing and Starving to Death," *Philosophy* 54 (1979): 159-171.

³⁸⁷ Onora O'Neill, *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge: Cambridge University Press, 1989), 230.

³⁸⁸ See Richard L. Lippke, "The Elusive Distinction between Negative and Positive Rights," *The Southern Journal of Philosophy* 33 (1995): 335-346.

way, and not in any other.³⁸⁹ As an example of imperfect (positive) duties towards others Kant mentions the duty to come to one's aid when one is in need;³⁹⁰ commensurate to this duty is the right to solidarity, by virtue of which one may claim it as one's right to be aided when in need, as it is in the case of the *right to easy-rescue*.³⁹¹

As far as the right to die is concerned, it is obvious that it can only be discussed as a positive or a claim right, since anyone who asks for euthanasia necessarily demands that one is acted upon by one's doctor or relatives in such a way, as to have his death hastened. Nevertheless, raising such a claim against others as one's claim right would mean that others would be morally bound by a corresponding positive duty of theirs to act in such a way as to hasten the death of anyone who would raise such a claim; however, introducing a moral duty of the kind "I ought to put to death anyone upon his request" sounds at the least as an extremely demanding project; even assuming that such a duty could be taken as an imperfect, solidarity-based one, its consistency and soundness would remain extremely controversial, since acting in such a way as to terminate one's life could hardly count as a means of expressing solidarity, at least not in the light of the Kantian tradition in ethics: hastening one's death would be violating the second formula of the categorical imperative that compels moral agents not to treat humanity whether in one's own person

³⁸⁹ See Jack Donnelly, *International Human Rights* (Boulder: Westview Press, 2007), 25 ff.

³⁹⁰ Kant, *Groundwork*, 4:423.

³⁹¹ For a discussion on the duty to easy-rescue see Ernest J. Weinrib, "The Case for a Duty to Rescue," *Yale Law Journal* 90, no. 2 (1980): 247-293; for the right to easy-rescue see George W. Rainbolt, *The Concept of Rights* (Dordrecht: Springer, 2006), 153.

or in the person of any other solely as a means, but always at the same time as an end.³⁹²

In light of the above, the putative right to die doesn't seem to correspond to any moral duty, either negative or positive; in that sense the concept of a right to die may only be a *flatus vocis*. Even in the case that for the sake of the discussion the right to die was accepted as a solidarity-based right, it would still be devoid of any actual meaning, since the duty to express solidarity to those in need, as long as it is classified as an imperfect one, is not morally binding. To sum up, typical moral rights are dependent upon either positive or negative duties; the right to die does not depend upon either positive or negative duties, therefore it cannot be accepted as a typical, standard moral right.

III. Rethinking the right to die

All these would pass unchallenged in times when death was a much less complex issue than it is now. In our time, however, I feel that we do not have the luxury of unqualified claims and categorical imperatives anymore; on the contrary, it seems that the debate on euthanasia and the right to die calls for rather modest and more flexible approaches. Contrary to what one may assume, for instance, today the request for euthanasia mostly concerns comatose patients in persistent, irreversible vegetative state, and most of the times it is not the patient who asks to be put to death, but one's relatives;³⁹³ the cases in which a competent and conscious patient asks for euthanasia are much more rare, and this is primarily due to the advances in

³⁹² Kant, *Groundwork*, 4:429.

³⁹³ See Jose Pereira, "Legalizing Euthanasia or Assisted Suicide: The Illusion of Safeguards and Controls," *Current Oncology* 18, no. 2 (2011): e38-e45.

palliative care and pain management during the last decades. But even when the patient asks for euthanasia himself, he is usually in a condition that beats anything that Kant might have contemplated before altogether rejecting suicide³⁹⁴ as utterly irrational and ‘debasing of humanity in one’s person’:

“Man cannot renounce his personality as long as he is a subject of duty, hence as long as he lives; and it is a contradiction that he should be authorized to withdraw from all obligation, that is, freely to act as if no authorization were needed for this action. To annihilate the subject of morality in one’s own person is to root out the existence of morality itself from the world, as far as one can, even though morality is an end in itself. Consequently, disposing of oneself as a mere means to some discretionary end is debasing humanity in one’s person (*homo noumenon*), to which man (*homo phaenomenon*) was nevertheless entrusted for preservation.”³⁹⁵

Contrary to what Kant argues, today one might plausibly claim that rejecting the patient’s request for euthanasia would be “annihilating the subject of morality in one’s own person and rooting out the existence of morality itself of the world;” you see, nowadays a typical patient who claims his right to die has probably been kept to a burdensome, humiliating and unnaturally prolonged life against his will, a life that would have naturally long ended if it weren’t for the magnificent – but in

³⁹⁴ Kant, *Groundwork*, 4:421-422.

³⁹⁵ Immanuel Kant, *The Metaphysics of Morals*, ed. Mary Gregor (Cambridge: Cambridge University Press, 1991), 6:422-423.

his case, unwanted – achievements of medical technology, medicine and biomedicine, by means of which life – or, *something resembling a life* – can be supported beyond Kant's wildest imagination. Today a patient in persistent vegetative state may be kept 'alive' for decades without any prospect of recovery, and even outlive his perfectly healthy offspring.³⁹⁶ On the other hand, terminally-ill patients often see their lives being unnaturally prolonged without any obvious reason, prospect or benefit for them whatsoever. In light of the above, the issue of euthanasia seems to be less about inflicting death, and more about *not prolonging life*. This, however, casts a totally new light on the right to die debate.

I have already argued that no one would be justified to raise any claim towards others that they ought to act in such a way as to hasten one's death upon one's request; I wouldn't be equally adamant, though, with regard to one's claim not to have one's life prolonged against one's will. In other words, while the right to die is probably incomprehensible and inconsistent as a positive right, since it isn't founded upon any positive duty of others towards the person who claims it, as a negative right – or a *right to non-interference* – it seems to make some sense. I probably wouldn't have argued anything like this a century ago: back then death just couldn't be postponed and life couldn't be prolonged. On the contrary, today one may be denied one's natural death, and sometimes this may be against one's own will and best interests. Even from this perspective, however, the right to die still seeks its justification to a corresponding duty of others towards the bearer.

³⁹⁶ Theresa Marie Schiavo was kept in a comatose state for 15 years with no prospect of recovery whatsoever. For the moral aspects of the debate on Schiavo's case see Tom Koch, "The Challenge of Terri Schiavo: Lessons for Bioethics," *Journal of Medical Ethics* 31, no. 7 (2005): 376-378.

In the unique, fascinating universe of Kantian Bioethics the duty not to prolong one's life against one's will and to one's detriment is usually discussed either as a solidarity-related duty, to wit as an *imperfect duty* owed to others according to Kant's classification, or as not at all a duty, but rather as a supererogatory decision, one that goes beyond duty. Both these views, however, are still philosophically unhappy, since neither imperfect duties nor supererogatory decisions are the proper foundation for derivative liberty or claim rights. Against these views I believe that the right to die as a negative right, to wit as a *right to be left to die*, could be discussed as an *autonomy right*, one that would be dependent upon – or necessitated by – the *perfect duty* to respect the freedom, the autonomy and the dignity of rational moral humanity.

In my view, in case one is forced to keep on with a debasing life that is being unnaturally prolonged by artificial means against one's will, one seems to be under some kind of heteronomy totally undue for rational moral humanity; even more so, this kind of heteronomy has nothing in common with the inevitable and inescapable *natural heteronomy* – on the contrary, it is man-imposed, therefore it is in need of good reasons to be justified. One would have to show, for example, that the person who claims it as his right to be left to die a natural death because he sees no prospect whatsoever in the continuation of his life, while at the same time he experiences extreme pain and agony that is definitely debasing humanity in his own person, is not rationally justified in raising such a claim; that such a claim is irrational, inconsistent and incomprehensible. I can't really see how such a view could stand, though, probably because I cannot see any meaning in prolonging one's agonizing life against one's will, save to put one to torment. Under the circumstances I described I believe that

one's decision not to have one's life prolonged may perfectly be in accordance with reason, and hence taken as an autonomous one, that is, as the expression of one's free, rational will. In such a case the maxim that would underlie the decision to disrespect one's claim to be left to die could by no means be a good candidate to become a universal law of nature, since such a maxim would only be applicable in a world where the will *is*, and at the same time *isn't*, a ruler to itself. To sum up, not every request for euthanasia is necessarily in accordance with a maxim that is in accordance with reason so as to be eligible to become a universal law of nature. When, however, this request is about *not prolonging* a burdensome, agonizing and desperate life that otherwise would have ended, I see no reason why this request shouldn't qualify as perfectly rational. If I am right in my view, not acceding to one's request to be left to die is violating one's autonomy and thus disrespecting one's dignity. In that sense, the right to die may have a certain appeal even to Kantian ethicists as a negative, a non-interference right.

IV. A postscript

In light of the above, as far as active euthanasia is concerned one doesn't seem justified to request the termination of his life by claiming one's positive right to be actively killed, since there is no corresponding positive duty of others towards one to act so, as to hasten one's death upon one's serious and persistent request. To accede to this request would at best be complying with an imperfect, a solidarity related duty towards others; even so, imperfect duties are not suitable to support derivative claim rights. When it comes to passive euthanasia, however, that is, when one claims one's right to be disconnected from

life supporting means so as to be left to die a natural death according to one's own free will, proper respect for one's autonomy and dignity might imply that one's request ought to be granted.³⁹⁷ In this respect, acceding to the request for passive euthanasia seems to be in accordance to an autonomy-related duty towards others, one that derives directly from the first formulation of Kant's categorical imperative: any rational will who decides according to maxims through which it can at the same time will that they become universal laws³⁹⁸ should be respected, unless the will is not a ruler to itself, which would be nonetheless self-defeating.

In the case of passive euthanasia respect for the autonomy and the dignity of rational moral humanity seems to provide strong justification for a right to die that could be seen as a negative right to non-interference, that is, the right to be left to die a natural death unhindered by actions undertaken by others on purpose of prolonging one's life by artificial means against one's own rational deliberation. The key question, however, still regards whether any rational will under specific circumstances might decide according to a maxim that is only expected to result in the cessation of its own existence; it seems – and this is the flagship Kantian argument against suicide and euthanasia – that in such a case the will would necessarily contradict itself, since it would will to cease willing. Surprisingly enough, even Kant himself doesn't always

³⁹⁷ Jonas, "The Right to Die," 36: "To defend the right to die, therefore, the real vocation of medicine must be reaffirmed, so as to free both patient and physician from their present bondage. The novel condition of the patient's impotence coupled with the power of life-prolonging technologies prompts such a reaffirmation. I suggest that the trust of medicine is the wholeness of life. Its commitment is to keep the flame of life burning, not its embers glimmering. Least of all is it the infliction of suffering and indignity."

³⁹⁸ Kant, *Groundwork*, 4:421.

sound that adamant in his rejection of such a maxim as totally contrary to reason; all the more so, when one's decision to adhere to life would necessarily compromise one's autonomy and dignity, Kant's downright rejection of one's decision to commit suicide becomes dubious bewilderment and confusion. In Kant's time the possible threats for one's autonomy and dignity were much more limited, and Kant is not weary to mention all he can come up with, even hydrophobia. He wonders in his *Metaphysics of Morals*:

"A man who had been bitten by a mad dog already felt hydrophobia coming on. He explained, in a letter he left, that, since as far as he knew the disease was incurable, he was taking his life lest he harm others as well in his madness (the onset of which he already felt). Did he do wrong?"³⁹⁹

And again in his *Lectures on Ethics*:

"In the cases where a man is liable to dishonour, he is duty bound to give up his life, rather than dishonour the humanity in his own person. For does he do honour to it, if it is to be dishonoured by others? If a man can preserve his life no otherwise than by dishonouring his humanity, he ought rather to sacrifice it. He then, indeed, puts his animal life in danger, yet he feels that, so long as he has lived, he has lived honourably. It matters not that a man lives long (for it is not his life that he loses by the event, but only the prolongation of the years of his life, since na-

³⁹⁹ Kant, *The Metaphysics of Morals*, 6:423-424.

ture has already decreed that he will someday die); what matters is, that so long as he lives, he should live honourably, and not dishonour the dignity of humanity. If he can now no longer live in that fashion, he cannot live at all; his moral life is then at an end. But moral life is at an end if it no longer accords with the dignity of humanity. This moral life is determined through its evil and hardships. Amid all torments, I can still live morally, and must endure them all, even death itself, before ever I perform a disreputable act. At the moment when I can no longer live with honour, and become by such an action unworthy of life, I cannot live at all. It is therefore far better to die with honour and reputation, than to prolong one's life by a few years through a discreditable action. If somebody, for example, can preserve life no longer save by surrendering their person to the will of another, they are bound rather to sacrifice their life, than to dishonour the dignity of humanity in their person, which is what they do by giving themselves up as a thing to the will of someone else.”⁴⁰⁰

I don't see why this account couldn't include cases of passive euthanasia; in my view there can be only a few – if any – occasions more dishonoring and humiliating than being condemned to an undesired life of meaningless, agonizing torment, a life extended far beyond its natural limits.

⁴⁰⁰ Immanuel Kant, *Lectures on Ethics*, ed. Peter Heath and J. B. Schneewind, trans. Peter Heath (Cambridge: Cambridge University Press, 1997), 29:377.

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