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REVISITING EUTHANASIA AND ASSISTED SUICIDE: THE ISSUE OF SUFFERING

by

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A thesis submitted in conformity with the requirements for the degree of Ph.D.

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ABSTRACT

The purpose of this doctoral thesis is to revisit the debate on euthanasia and assisted suicide through an analysis of the issue of suffering, which is one important element underpinning most requests for voluntary termination of a human life. The thesis aims at making a contribution by analyzing a specific type of suffering, which is described as "overwhelming unpleasant experience", and by reflecting on its ethical implications. Its contention is to develop a rationale supporting the view that there could be living states worse than death; to suggest criteria that could contribute to our understanding of how suicide may be rational and ethical; and to revisit why the legalization of voluntary termination of human life may be a reasonable option within the Canadian context, especially under the provisions made by the Canadian Charter of Rights and Freedoms.

Chapter 1 gives a historical overview of the debate on euthanasia and assisted suicide; reviews its status in other countries (especially the Netherlands and the U.S.); situates it within the Canadian legal context; and analyzes important events that occurred in the last decade.

Chapter 2 develops an analysis of the suffering experience, which narrows the definition of suffering to an "overwhelming unpleasant experience". As a result, suffering's assertiveness on the sufferer's life becomes idiosyncratic and the implications of such an influence are analyzed.
Chapter 3 discusses how the narrowed concept of suffering may be valued. It establishes that suffering may have three different values: intrinsically negative and instrumentally positive and negative. It is argued that suffering’s instrumental value may be determined according to how the state affects the sufferer’s “personhood”.

Chapter 4 analyzes the ethical implications of chapters 2 and 3. The ethical analysis is articulated within a consequentialist framework and the theoretical issues stemming from such an approach are discussed.

Chapter 5 argues that, within the specific context of the debate on euthanasia and assisted suicide, the possible opposition between the right to self-determination and the right to life embedded in the Canadian Charter of Rights and Freedoms could be mediated by a right to die, which is an idea that may be supported by the arguments that stem from this thesis.

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INTRODUCTION
The contemporary issue as to whether or not euthanasia and assisted suicide represent a rational and ethical option that should be legalized and offered to those who express the wish to voluntarily terminate their life has been debated for more than three decades and is still divisive. Alongside other core debates such as the one on abortion or more recently on cloning, the euthanasia and assisted suicide debate constitutes an important arena in which our society's core values reveal themselves. At the heart of the euthanasia and assisted suicide debate is our attitude and beliefs, as individuals and as a society, regarding our finitude and the meaning of death.

The progress brought about by modern medicine resulted in an increased control over our lives and on its counterpart: death. We now have the possibility of prolonging and sustaining life to a point where both signs of death and life cohabitate in the same human being for a period of time that ranges from minimal to significant. Conversely, the increased certainty with which medical science can predict the timing and conditions of a terminally ill patient's death raised fundamental questions. Amongst them, an important one arose from our increased ability to control life: Should we control death as well?

This question is a difficult one especially since our occidental culture has traditionally been resistant to include death as part of life. This cleavage between life and death translated into what could be called a strong "culture of life", which excludes death as a fundamental element of it. The Hippocratic oath that constitutes the foundation of modern medicine clearly contains allusions to the rejection of death as part of life and even less as part of medical practice: "I will keep them [patients]".

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from harm and injustice. I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect.

This somewhat frames death as the enemy and makes a sharp distinction between death and life. The underlying intention was probably to make sure that it is clearly stated that a physician should not kill, but the consequences of the Oath might have gone beyond this legitimate intention. It may have contributed to develop a medical and social culture that frames death as the denial of life and thereby excludes death from the options that are available to us to serve and respect life. In other words, death became the negation of life instead of one of its essential components. Consider the words of Dr. E. Latimer, a palliative-care specialist with 27 years of experience:

Our original goal in medicine, which was to conquer disease and illness, may have got sidetracked to fight death, which isn't really (...) a possible goal in many cases. We are a death-denying society and in medicine we embrace technology to fend off death. But we now have to be challenged with the idea of when is death inevitable and how to adapt to that. Fear of death also prevents some relatives and friends of patients from acknowledging dying as an integral human stage of living.
(Quoted from the Toronto Star, Saturday, Dec.2, 2000, Special Report: The Final Journey, p.2)

But the increased control that we gained on life with the progress of medical science increasingly raised questions regarding this cleavage between life and death. One of the first questions that arose was concerned with the limits beyond which medical science could reasonably stop fighting the course of nature; that is whether or not withholding and withdrawing treatment should become an option. The resolution of this problem was facilitated by the growing recognition of the patient's

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autonomy and the related right to self-determination. Naturally, the issues related to withholding and withdrawing treatment touched on the abovementioned approach to death and raised further questions as to whether or not death itself could / should become an option. At this point, the pro and against sides clearly parted and the ethical debate saw two irreconcilable standpoints develop over the years.

As the ethical debate stabilized in an opposition between two strong stances, the issue was increasingly expressed in the language of rights and brought before the courts of law. Whether or not there should be a “right to die” has now become a legal challenge that is regularly brought before the highest legal authorities. For instance, this challenge is currently (December, 2000) facing the Canadian Supreme Court of Canada in the matter of Regina v. Latimer and was recently highly publicized in the U.S. when the State of Michigan prosecuted and convicted Dr. J. Kevorkian for helping one of his patients die.

At the heart of this debate is the issue of suffering. Advocates of euthanasia and assisted suicide frequently refer to the unbearable suffering that may underpin a rationale supporting the voluntary termination of a human life. Surprisingly, little can be found in the contemporary bioethics literature on the experience of suffering itself. This is surprising because it constitutes an important element of the debate, which may be crucial in the determination as to whether or not a right to die could ever be recognized. This is so because it is hard to imagine a rationale that could (compellingly) support any given case of euthanasia and assisted suicide in which suffering would not be present at all and in any form. It may therefore be safe to

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assume that suffering represents an aspect of the debate that is need of more attention.

The aim of this thesis is to make a contribution to a better understanding of the issue of suffering and of how it may play out in the debate on euthanasia and assisted suicide. The suffering state that will here be analyzed is the one that is commonly referred to as "unbearable" or "excruciating". This suffering may be framed as the vertical limit of all unpleasant experiences. By doing so and by focusing on this type of suffering, we will circumscribe an important element at play in the debate on the legalization of euthanasia and assisted suicide. A better understanding of this element may therefore help us revisit certain aspects of the debate in a way that could provide piecemeal information as to how a right to die could and should be articulated within the specific Canadian legal context and especially under the provisions made by the Canadian Charter of Rights and Freedoms.

In this sense, the following thesis purports to make a contribution to the development of a Canadian rationale supporting the legalization of euthanasia and assisted suicide within a limited scope, under specific conditions, and with strict eligibility criteria.

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*Euthanasia and Assisted Suicide: The Canadian Legal Context*
Euthanasia and assisted suicide represent the two arms of a well-debated issue, which in turn has two sides: legal and ethical. The ethical assessment of all aspects of these practices yielded an enormous literature in the past thirty years. The arguments aimed either at showing the relevance of taking steps toward a legislation that would provide for some forms of euthanasia and for assisted suicide, or at stressing the unethical aspect of such practices, the risks associated with taking favorable legal steps and the unacceptable breach of human and medical duties. The "pro" and "against" sides now have a tradition of disagreement and it is unlikely that the ethical controversy surrounding euthanasia and assisted suicide will ever be resolved. As a result, it may be reasonable to assume that even though more discussion and research could enhance our understanding of the ethics of euthanasia and assisted suicide, it would be a theoretical suicide to aim at providing a renewed ethical assessment that would put an end to the existing ethical controversy. The gap between diverging ethical viewpoints cannot be bridged. That being said, it may still be relevant to continue exploring the ethics of euthanasia and assisted suicide for such a reflection could certainly continue to inform the legal side of the debate.

From a legal standpoint, the issue is currently less problematic. Euthanasia and assisted suicide are illegal in most jurisdictions around the world. A few exceptions include the Netherlands and the State of Oregon where legal provisions indirectly or directly allow for certain forms of euthanasia and assisted suicide to take place. The provisions are however timid and except for the Netherlands, few people use their legal prerogative. Since we will here focus on the Canadian legal setting and since euthanasia and assisted suicide are currently illegal practices in Canada,

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we could then summarize the topic of the present reflection in the following way: Ethically controversial and illegal. Having qualified our topic in such a way, it may be safe to assume that the relevance of any scholarly contribution to the ethics of euthanasia and assisted suicide will be directly proportional to its relevance for future legislation.

In this chapter, we will review and reflect on the Canadian legal context to assess whether or not theoretical grounds that may open the door for a reassessment of the legal status of euthanasia and assisted suicide could be found. We will first make preliminary remarks on the debate itself and on how it fares on the international scene. We will then focus on the Canadian laws and analyze the 1993 Sue Rodriguez case that resulted in a significant ruling \(^3\) of the Supreme Court of Canada on the issue of third party assistance to commit suicide. We will see that at least one essential tension between diverging interpretations of the law has not yet been dissipated. This tension appears to stem in part from the question of how far we, as a society, want to stretch the legal application of the right to self-determination.

On the one hand, it may be argued that the legal application of this right could and should be extended so as to include one's views and wishes regarding the circumstances of one's own death; that denying people this ramification of their right to self-determination is an unjustified form of paternalism. On the other hand, one could maintain that the State's interest in protecting its citizens overrides the possibility of extending the right to self-determination that far. In other words,

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prevention of harm for the common good supersedes the promotion of private interests; that is that in the name of public interest, private ones have to be restricted.

It may be trivial to say that there is a tension between private and public interests within the law itself. Historically, the weighing of personal rights and freedoms against public interest has been one of the basic functions of the legal system. Nevertheless, revisiting old truths may yield new insights and assessing how the classic legal tension between private and public interests plays out in the euthanasia and assisted suicide problematic may be revealing.

The debate on the decriminalization of assisted suicide and subsequently of some forms of euthanasia has been resistant to any final resolution. After three decades of public debate, it is still alive and dividing people's opinion. This may be due in part to the fact that it is intimately linked to the tension between private and public interests. The 1993 Supreme Court ruling in the Rodriguez case is of particular interest because not only is it a milestone Canadian ruling on the scope and limitations of the Charter of Rights and Freedoms and for the euthanasia and assisted suicide debate but also because it clearly shows that the tension between private and public interests may significantly impact our legal reasoning on euthanasia and assisted suicide.

Once the abovementioned reflection is completed, final remarks will then take stock of the results of the analysis of the Canadian legal framework and glance at

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possible theoretical avenues that could help us revisit the Canadian legal viewpoint on euthanasia and assisted suicide.

Preliminary Remarks

We already have mentioned that the ultimate dilemma with respect to euthanasia and assisted suicide may be whether or not these practices should become a legal option in our society; whether or not they should be included in the wide spectrum of choices fostered by our liberal tradition and protected by our legal system. We also have glanced at the fact that it may be reasonable to think that the ethical dimension of the debate is in a somewhat stalemate situation. This may be one of the reasons why ethical claims increasingly find themselves translated into legal ones. Even though most jurisdictions still maintain the illegal status of euthanasia and assisted suicide, a few pioneer legislation efforts have been made to accommodate assisted suicide and some forms of euthanasia.

In the Netherlands, the criminal status of euthanasia has gradually and increasingly been challenged since the 1973 ruling of the Leeuwarden Tribunal. The case involved a family physician who performed voluntary active euthanasia on his mother. Even though the Court was sensitive to the particular circumstances of the case and the strong support coming from other physicians and the community, the ruling was nevertheless a conviction. The rationale supporting the conviction was that the law left no choice but to convict the family physician. It may be of interest to note that the physician was only sentenced to one week of imprisonment.

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This conviction triggered a public debate, which raged for eleven years until the Dutch Supreme Court ruled, in 1984, that euthanasia could be deemed acceptable under certain conditions. Euthanasia remained illegal but immunity against prosecution would be granted if certain specific criteria were met (e.g. terminal illness, consent). This line of thinking was reaffirmed two years later (1986) by a similar ruling of the same legal instance (Dutch Supreme Court).

The final stage of the development of legal provisions that allowed assisted suicide and some forms of euthanasia to take place in the Netherlands unfolded in the nineties. Further to the recommendations of the Remmelink Commission in 1990, the Dutch Parliament passed new legislation providing for assisted suicide and some forms of euthanasia. The historical vote was held on February 9th, 1993 and the new legislation took effect on June 1st, 1995. The new provisions consisted in a revised set of guidelines for prosecution that provided room for exceptions that would meet specific criteria. So this means that assisted suicide and euthanasia were not officially decriminalized since the 1986 penal code\(^6\) was not amended. Nevertheless, threat of prosecution became mild if the following criteria are present:

1) The patient made voluntary, well-considered, persistent, and explicit requests for euthanasia.
2) The doctor had a close enough relationship with the patient to be able to establish whether the request was both voluntary and well considered.
3) According to prevailing medical opinion, the patient’s suffering was unbearable and without prospect of improvement.
4) The doctor and the patient discussed alternatives to euthanasia.
5) The doctor consulted at least one other physician with an independent viewpoint.
6) Euthanasia was performed in accordance with good medical practices.

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At the time, the Dutch laws required physicians to report cases of euthanasia in which they play a role, so that they could be evaluated according to whether or not there should be criminal prosecution.

But in the course of writing this thesis, important developments occurred in the Netherlands. On November 28, 2000, the Dutch Parliament voted to allow terminally ill patients to make written requests for euthanasia. Patients can also leave written statements authorizing euthanasia if they later become too physically or mentally ill to decide for themselves. The bill passed by a vote of 104-40. The law still requires approval by the Dutch Senate, but that is considered a formality. So we may say that the Netherlands recently became the first country in the world to legalize euthanasia.

The requests for euthanasia will have to meet the following criteria. The requests should:

1) Be made by adult patients
2) Be a voluntary decision
3) Involve unbearable and continuous suffering

The third criterion may be an indicator that further reflection on how suffering plays out in the debate on euthanasia and assisted suicide may be appropriate and timely.

The Netherlands is the most prominent example of a jurisdiction that has legal provision for assisted suicide and voluntary euthanasia. It is reported that euthanasia has become a regular practice in this country. In such instances, not only is passive euthanasia practiced, in which useless medical treatment and nutrition and hydration are discontinued, but so is active euthanasia, in which physicians

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administer lethal injections to patients who have made a conscious and deliberate choice to die. The Netherlands has a population of 15 million and is by far the worldwide leading jurisdiction in terms of facilitating the occurrence of euthanasia and assisted suicide.

The State of Oregon and the Australian Northern Territory also took concrete action regarding the legalization of assisted suicide and euthanasia. Their effort focused on third party assistance to commit suicide and left the euthanasia issue aside. In November 1994, a small majority (51% for – 49% against) of the citizens of the State of Oregon supported “Measure 16”. This measure basically asked whether or not the law should allow terminally ill patients of Oregon who are well informed about their condition to get a prescription of medication designed to end their lives. The controversial referendum on Measure 16 resulted in the now well-known Oregon Death with Dignity Act. The coming into force of the Act was bumpy, however. Immediate implementation of the Act was first delayed by a legal injunction since the constitutionality of the Act was being challenged. After multiple legal proceedings, including a petition that was denied by the United States Supreme Court, the Ninth Circuit Court of Appeals lifted the injunction on October 27, 1997 and physician-assisted suicide then became a legal option for terminally ill patients in Oregon. A month later, in November 1997, Measure 51 was then placed on the general election ballot and asked Oregon voters to repeal the Death with Dignity Act. Voters chose to retain the Act by a margin of 60% to 40%.

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In 1996, on the other side of the planet, an Australian cancer patient became the first person to legally receive assistance from a physician to commit suicide under the Australian Northern Territory Rights of the Terminally Ill Act\textsuperscript{12}. This Act was short lived since the Australian federal parliament later disallowed\textsuperscript{13} it. The Act is no longer in effect and euthanasia and assisted suicide have gotten their full criminal offence status back.

In Canada and the U.S., recent court rulings have shown a cautious openness to evaluate the validity of euthanasia and assisted suicide requests when specific circumstances and criteria are met. However, Canadian and American courts of law are still reluctant\textsuperscript{14} to either grant the assistance needed for someone to commit suicide or to recognize third-party discretion to perform the "last act" on behalf of a consenting first party. Nevertheless, courts also show signs of recognition that euthanasia and assisted suicide requests may have some legitimacy.

In Canada, the Supreme Court ruling in the Sue Rodriguez case\textsuperscript{15} was significant in this respect. The Supreme Court's nine judges divided five against to four in favour of Sue Rodriguez' request for assistance to commit suicide. The tight vote and the arguments\textsuperscript{16} upheld by the dissenting judges clearly show two important elements of the current approach. The dissenting judgments\textsuperscript{17} translated into a clear message that requests for euthanasia and assisted suicide may be found legitimate under current Canadian law. More specifically, the minority judgments made clear that there is room within the Canadian law and the Charter of Rights and Freedoms that could at least accommodate the practice of assisted suicide. The dissenting

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judgments of the Supreme Court also confirmed that lay and expert opinions supporting revisions to the current unilateral illegal status of assisted suicide and some forms of euthanasia are a pervasive phenomenon now getting support in all spheres of our society, including the Supreme Court. The cautious but still powerful support that came from four of the nine Supreme Court judges proved the issue to be of national dimension and "...may have reflected the division in Canadian society."8

The front line reality of medical practice may be another significant reason explaining why the ethical dimension of the debate is either merely translated into legal claims or at least weighed against appropriate legal provisions. It is likely that the real life pressures felt in an evolving health care system have contributed to the change of attitude toward euthanasia and assisted suicide. There is a profound division in public opinion on the matter and this division is echoed in the community of health care professionals. The reality of medical practice has significantly changed over the past three decades and theoretical concerns are now being outweighed by the urgency of practical and legal ones.

Even though there is still a strong ethical and legal force pushing back the acceptance of euthanasia and assisted suicide, the front line situation appears to be ahead of the public and expert debates. In fact, there is evidence that euthanasia and assisted suicide are regularly being performed in the clinical setting9. In 1990 in the U.S., approximately 6,000 deaths10 per day were said to be in some way planned or indirectly assisted. Most of the cases were a "passive" type of help as opposed to an "active" one and occurred by means of the "double-effect" of pain-relieving

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medications that may hasten death at the same time. Nevertheless, the numbers are disturbing.

In addition to the above-mentioned situation, it may be assumed that the overall number of terminally ill patients could grow. For instance in Canada, the statistics about cancer-related deaths are informative. In 1995, approximately 61,500\textsuperscript{21} patients died of cancer and it is predicted that by the year 2010, the number of annual deaths will swell to over 105,000. Moreover, the World Health Organization (WHO) projects that, by the year 2015, fifteen million\textsuperscript{22} people around the world will develop cancer. Even though these numbers only represent the cancer-related deaths, it may be safe to expect an increased number of terminally ill patients whose situation could directly or indirectly be affected by a legal reform on euthanasia and assisted suicide. Our aging society and life-prolonging medical technologies also support such an extrapolation of the cancer-related statistics to an overall growth of terminally-ill patients whose situation could be affected by a legal reform on euthanasia and/or assisted suicide. It may be safe to assume that an increasing number of terminally ill patients could in turn influence the number of requests for assisted suicide and euthanasia. This could translate into increased pressure for legal reform.

Alongside this frontline reality, another clear sign confirming the increasing legal essence of the debate is that current legislation is now openly (and regularly) challenged. From people seeking a court ruling that would support their request to being helped to die (e.g. Sue Rodriguez\textsuperscript{23} in Canada and N. Cruzan\textsuperscript{24} in the U.S.) to

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deliberate unlawful acts (e.g. Timothy Quill’s case\textsuperscript{25} in the U.S. and Robert Latimer’s case\textsuperscript{26} in Canada), the pro-side advocates have increasingly become vocal and made the situation challenging for both the current laws and for the courts mandated to interpret and enforce them. Moreover, it may not be exaggerated to further believe that the situation may reach the point of civil disobedience. Civil disobedience is defined by John Rawls as:

\ldots a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government. By acting in this way one addresses the sense of justice of the majority of the community and declares that in one’s considered opinion the principles of social cooperation among free and equal men are not being respected.\textsuperscript{27}

Jack Kevorkian’s case undoubtedly meets the criteria of civil disobedience. In September 1998, Dr. Kevorkian, a U.S. physician, terminated the life of one of his patients with his now well-known “death-machine”. The termination was performed upon request of the informed and consenting patient. The procedure was tape-recorded and broadcast two months later on the popular American television show “60 minutes”. Following the broadcast, Kevorkian was arrested, prosecuted and convicted\textsuperscript{28} under Michigan State law. Kevorkian publicly said that he wished to be arrested so that the existing laws could be put on trial at the same time he would be. Kevorkian had previously restricted his activities to medically assisted suicide. In the above case, he performed voluntary euthanasia. Since the law clearly prohibits this practice, Kevorkian was straightforwardly inviting prosecution. Failure to prosecute could only be seen as an acknowledgment of the inadequacy of the law but prosecution was by no means certain to succeed. Kevorkian’s defiant attitude and his threat to refuse food if jailed further fed the complexity of the case. From this

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perspective, it may be safe to interpret Kevorkian's attitude as an act of civil disobedience; act that aimed at challenging the current legal provisions against third party assistance and third party performance.

Given the above, it may be reasonable to believe that the debate on euthanasia and assisted suicide has reached a particularly sensitive stage. Pioneer legislation in the Netherlands and in the State of Oregon opened the door to further reflect on the legal stance of other jurisdictions. In addition, statistics and the front line reality of health care professionals demand that an answer be given to the following question: Should a legal reform accommodate the frontline reality and provide appropriate and clear safeguards for third party assistance and/or for third party performing or should the enforcement of the existing Canadian law be tightened to efficiently eliminate and deter these practices?

At the moment, it seems that neither the enforcement of the law is strict enough to deter people from committing euthanasia and assisted suicide nor is the law designed to provide appropriate safeguards and guidance for third party assistance and/or third party performing so that both terminally-ill patients and physicians are adequately protected. As a result, discomfort is obvious. Legal authorities are reluctant to prosecute mild cases and courts of law, when prosecution and conviction cannot be avoided, often show reservations to impose sentences they may consider excessive29.
Whether or not euthanasia and assisted suicide should become a legal option with appropriate safeguards therefore is an important question that is asked in our society. The failure to reach a conclusion on whether or not euthanasia and assisted suicide are ethically justified at the theoretical level and in public opinion stresses the role of the law not only as a protector of the general ethical norms our society is built on, but also as a mediator of these norms. Opposing viewpoints on the issue have developed compelling ethical arguments in support of both sides (for and against). Interestingly, most arguments on both sides are rooted in principles that we, as a society, equally support such as the right to self-determination and the sanctity of life. The conflict could therefore be said to be internal and this internal division may be reflected in Canadian law.

**Canadian Law**

The Canadian part of the legal history of the euthanasia and assisted suicide debate began in 1972 when, further to Great Britain’s law reform, the act of attempted suicide was decriminalized. However, even though attempted suicide became no longer subject to prosecution, assisting suicide remained a criminal offence. Section 241 of the Criminal Code stipulates that either counseling (241a), or aiding or abetting (241b) someone to commit suicide is an indictable offence whether or not suicide ensues.

It is important to note that the underlying intention of the decriminalization of attempted suicide and suicide itself was not to recognize one’s right to terminate one’s life. The rationale behind making attempted suicide a criminal offence was

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deemed inappropriate when weighed against the social problem of suicide. Humanitarian reasons were thus behind the legal reform\textsuperscript{30}; the survivor of an attempted suicide being much more a victim in need of help than a criminal offender who should be prosecuted. Since one's right to terminate one's life was not recognized as such by the legal reform, request for third party assistance and for third party performing could not be grounded in the reformed law. This is further addressed and clarified by sections 241a and b of the Criminal Code. In addition, section 14 provides against one's consent to one's own death. It does so by stipulating that such unlawful "...consent does not affect the criminal responsibility of any person by whom death may be inflicted on the person by whom consent is given."

In 1982, at the occasion of the repatriation of the Canadian Constitution, the Canadian legal context changed. The insertion of the Charter of Rights and Freedoms in the Canadian constitution modified the way in which the Canadian law could be interpreted and challenged. This was a significant moment for the euthanasia and assisted suicide debate since from this point on, fundamental ethical principles could affect the constitutionality of all existing Canadian laws and the necessity to accordingly revise them in order to meet the demands of the Charter. This new legal context gave the Canadian people who may feel that their fundamental rights and freedoms are being infringed the power to seek remedy before the courts of law. Therefore, if the infringement does come from specific legal provisions, Canadians would now literally have the power to put the existing laws on trial. Section 24(1) of the Charter constitutes a written guarantee that all Canadians have a say in the enforcement of their own rights and freedoms:

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Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

This is precisely the rationale Sue Rodriguez used in 1993 and her request for third party assistance in committing suicide found its legitimacy henceforth. Her case was debated almost entirely over whether or not the existing legal provisions against third party assistance infringed Ms. Rodriguez' protected rights and freedoms.

In addition to section 24(1), the relevant sections of the Canadian Charter of Rights and Freedoms for the debate on euthanasia and assisted suicide are:

1. **The Canadian Charter of Rights and Freedoms** guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

15(1). Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability.

We will see that, in the Sue Rodriguez case, the interpretation of the above sections of the Charter of Rights and Freedoms created a conceptual and ethical tension within the law that the 1993 Supreme Court ruling did not dissipate.

One year after the inclusion of the Charter of Rights and Freedoms in the Canadian constitution, a commission was mandated to assess the status of

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euthanasia and assisted suicide and to make recommendations as to whether or not the Canadian law made adequate provisions to address these issues. The 1983 Report of the Law Reform Commission of Canada concluded that regarding euthanasia, section 229 of the Criminal Code likening euthanasia to murder by defining the two elements of murder as being 1) a culpable homicide and 2) the intention to cause death, should be left untouched. Section 229 reads as follow:

**Culpable homicide is murder**

a) where a person who causes the death of a human being

i) means to cause his death, or

ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not

This recommendation for a status quo approach to section 229 is in accordance with that of most countries with a Common Law tradition. In a few other countries, such as Switzerland, euthanasia is also a criminal offence but is associated with "mercy killing" rather than with plain murder. In addition, it is important to note that the Commission's recommendation to retain the status quo regarding section 229 was made in a context where it was believed that aiding suicide is "...in practice rarely invoked". This may have influenced the recommendation.

The Commission also made an important distinction between euthanasia and cessation of treatment. Confusion amongst health care professionals about whether or not they have a duty to prolong treatment regardless of its futility made the distinction necessary. Sections 216 and 217 of the Criminal Code have ambiguous provisions that could have misled the health care professionals in their interpretation of their duty to prolong treatment. On the one hand, Section 216 stipulates that:

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Every one who undertakes to administer surgical or medical treatment to another person or to do any other lawful act that may endanger the life of another person is, except in cases of necessity, under a legal duty to give and to use reasonable knowledge, skill and care in doing so.

On the other hand, section 217 states that:

Every one who undertakes to do an act is under a legal duty to do it if an omission to do the act is or may be dangerous to life.

Section 217 is particularly ambiguous and raises two problems now referred to as the withholding and the withdrawing of treatment. The problem of withdrawing treatment led to the now notorious distinction between passive and active euthanasia. To address the ambiguity of sections 216 and 217 of the Criminal Code and the issues of futility and cessation of treatment, the Commission recommended that:

1) it be specified in the Criminal code that a physician cannot be held criminally liable merely for undertaking or continuing the administration of appropriate palliative care in order to eliminate or reduce the suffering of an individual, only because of the effect that this action might have on the latter’s life expectancy.

2) an amendment [should be made] to the Criminal Code to remove the ambiguity created by some of the current provisions, in particular by section 199 [now section 217].

3) a physician should not incur any criminal liability if he decides to discontinue or not initiate treatment for an incompetent person, when that treatment is no longer therapeutically useful and is not in the person’s best interests.

Nine years later, in 1992, the Nancy B. case became a milestone example of lawful withdrawing of treatment in Canada. Nancy B. was a young woman completely dependent of a respirator as a result of her suffering from the “Guillain-Barré” syndrome. Her condition was permanent. She asked the Cour Supérieure du Québec to give permission to her physician to wean her off the respirator. It was known that

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death would be an inevitable and direct consequence of withdrawing treatment. Judge Dufour granted Nancy B's request on the ground that patients have the right to let nature take its normal course even if death consequently ensues. This ruling was received as a formal recognition that patients have a right to refuse treatment. The right to refuse treatment is now widely endorsed and is intimately linked to the core bioethical principle of autonomy, which in turn is intimately associated with the right to self-determination. Although the ethics of the practices does not generate a consensus, withholding and withdrawing treatment are now common practices in Canada.

So sections 14, 216, 217, 229 and 241a and b of the Canadian Criminal Code; the provisions made be sections 1, 7, 12 and 15(1) of the Canadian Charter of Rights and Freedoms; the 1983 Report of the Law Reform Commission on euthanasia and assisted suicide and cessation of treatment; and milestone legal cases (such as the 1992 Nancy B. case) set the stage for the 1993 Sue Rodriguez case to which we will now turn.

The Sue Rodriguez Case

Sue Rodriguez was a 42 year-old victim of advanced amyotrophic lateral sclerosis (ALS, commonly known as the Lou Gehrig disease). Since ALS is a degenerative terminal illness, Ms. Rodriguez sought legal recognition of her right to medical assistance to commit suicide when her condition would have worsened to the point where she could not enjoy life any more. Further to the dismissal of her case by the British Columbia trial court and the British Columbia court of appeal, Ms.

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Rodriguez brought her case before the Supreme Court of Canada to challenge the constitutionality of section 241 of the Canadian Criminal Code that provides against third party assistance.

Her argument was that section 241 (mainly 241b) was denying her a full enjoyment of her basic rights and freedoms protected by the Canadian Charter of Rights and Freedoms. More specifically, she claimed that section 241 of the Criminal Code should be found unconstitutional on the grounds that it violates sections 7, 12 and 15(1) of the Charter. We already established that these sections provide for everyone's right to "life, liberty and security" (section 7), protection against "cruel and unusual treatment" (section 12) and an equal treatment before the law "without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability" (section 15(1)). Ms. Rodriguez argued that since the law does not recognize suicide as a criminal offence (since 1972), denying third party assistance to people unable to commit suicide forces them to suffer from a condition they would otherwise be able to avoid were they capable of committing suicide. Ms. Rodriguez claimed that this was a cruel and unusual treatment infringing section 12 of the Charter. In addition, she argued that the right to life and liberty protected by section 7 should include one's right to determine the circumstances of one's death.

In 1993, Ms. Rodriguez' request was denied by the Supreme Court of Canada. The fact that the vote was tight (judges divided five to four) is particularly revealing of the division amongst Canadians regarding euthanasia and assisted suicide. The majority judgments that denied Sue Rodriguez the right to lawful third

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party assistance to commit suicide frequently emphasized the need to protect vulnerable people from abuse. A complete prohibition of any form of third party assistance to suicide was thought to be the only viable option that could provide adequate safeguards against possible abuse. Judges La Forest, Sopinka, Gonthier, Iacobucci and Major agreed that:

The long-standing blanket prohibition in s. 241(b), which fulfills the government’s objective of protecting the vulnerable, is grounded in the state interest in protecting life and reflects the policy of the state that human life should not be depreciated by allowing life to be taken.

They added that:

The prohibition relates to the state’s interest in protecting the vulnerable and is reflective of fundamental values at play in our society.

So they concluded that:

...in order to protect life and those who are vulnerable in society effectively, a prohibition without exception on the giving of assistance to commit suicide is the best approach.

The line of argument of the majority judgments focused more on prevention than on whether or not the assistance needed to commit suicide in a particular case (i.e. Sue Rodriguez’) could lawfully be granted. The judges argued that section 241 of the Criminal Code represented an adequate and necessary guarantee for the prevention of possible abuse. The necessity of such guarantee proved the request for a right to lawful assistance to commit suicide to be outside the “reasonable limits prescribed by law” (Charter, section 1). This rationale supported the rejection of Ms. Rodriguez’ allegation that the situation was discriminatory and therefore represented...
a breach of section 15(1) of the Charter. It is interesting to note that the judges did not directly reject the allegation of discrimination, however. They found that they did not have to rule on this, since section 241(b) of the criminal code either did not violate section 15(1) of the Charter or did violate it but was saved by the "reasonable limits prescribed by law" of section 1 of the Charter. They acknowledged that the argument of discrimination might be defensible but they upheld that provisions against counseling, aiding and abetting anyone to commit suicide made be section 241 represent a "reasonable limit on individuals' right to non-discrimination under s. 1 of the Charter."^42

An idiosyncratic line of argument can be found in the dissenting judgments as well. They argued that all disabled people, including those in Ms. Rodriguez's condition, were not given equal opportunity to enjoy their right to self-determination (autonomy). Even though this line of argument seems to point in the direction of a discrimination-based analysis of the case, one of the most significant elements of the dissenting judgment was the reference to the right to self-determination. The principle of autonomy was a key concern for the dissenting judges. Judges L'Heureux-Dubé and McLachlin thought that:

Section 241(b) of the Code infringes the right to security of the person included in s.7 of the Charter. This right has an element of personal autonomy, which protects the dignity and privacy of individuals with respect to decisions concerning their own body.

They further added that:

Parliament has put into force a legislative scheme, which makes suicide lawful but assisted suicide unlawful. The effect of this distinction is to deny to some people the choice of ending Chapter 1
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their lives solely because they are physically unable to do so, preventing them from exercising the autonomy over their bodies available to other people.

In their ruling, the dissenting judges clearly extended the principle of autonomy so as to include a right to choose the circumstances of one's own death even if the consequence of such a right is the necessity to assist. Alongside this line of thinking, we may interpret the dissenting judges' words in a way that means that we, as a society, have a duty to assist or at least a duty not to interfere with assistance. The dissenting judges' analysis of the law based on the principle of autonomy implied that the only thing that would be essential in all cases is that: "...the judge be satisfied that if and when the assisted suicide takes place, it will be with the full and free consent of the applicant." The right to self-determination was obviously of paramount importance for the dissenting judgments, which consequently rejected the relevance of the aforementioned fear of abuse. The reason behind this rejection was that:

...neither the fear that unless assisted suicide is prohibited, it will be used for murder, nor the fear that consent to death may not in fact be given voluntarily, is sufficient to override the appellant's entitlement under s.7 [of the Charter] to end her life in the manner and at the time of her choosing.

Another dissenting judge, Chief Justice Lamer, summarized the whole argument as follows:

This inequality – the deprivation of the right to choose suicide – may be characterized as a burden or disadvantage, since it limits the ability of those who are subject to this inequality to take and act upon fundamental decisions regarding their lives and persons. For them, the principles of self-determination and individual autonomy, which are of fundamental importance in our legal system, have been limited.

The dissenting judgments apparently disagreed with the 1983 Report of the Law Reform Commission's statement that the decriminalization of attempted suicide,

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in 1972, was not a recognition of one’s right to ending one’s life. By extending the right to self-determination so as to include one’s right to determine the circumstances of one’s own death, the dissenting judges interpreted the decriminalization of attempted suicide as a clear endorsement of one’s right to end one’s life. If there is such a right already embedded in the law, the argument against discrimination could therefore outweigh the provision made by section 241 on the ground established by section 15(1) of the Charter. Disabled people would indeed be deprived of an opportunity that is available to others (one’s voluntary termination of one’s life).

Even though the issue of discrimination played a role in the dissenting judges’ interpretations of the Charter, the weighing of the State’s interest against the legally protected right to self-determination appears to have been of greater importance. This tension between private and public interests is well documented in the literature. On the one hand, fear of abuse and the protection of the vulnerable are recurrent concerns expressed by people against the legalization of euthanasia and assisted suicide. For instance, the American Geriatric Association states, “…the benefit of allowing this choice [voluntary termination of life] must be weighed against possible abuse of euthanasia on the frail, disabled, and economically disadvantaged members of society.”45 This goes along the lines of part of the public opinion as well. The New York Times published an article stating that:

…the case against both physician-assisted suicide and voluntary euthanasia is based mainly on the implications for public policy. (...) The slippery slope argument asserts that permissive policies would inevitably lead to subtle coercion of the powerless to choose death rather than become burdens to society or their families.”48

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On the other hand, the right to self-determination is at the very root of most support for the legalization of euthanasia and assisted suicide. For instance, Joel Feinberg argues that whether or not one's life should be terminated is a matter of one's personal choice. He maintains that since we live in a choice-based society, the spectrum of available options ought to be extended so as to include the possibility of choosing the circumstances in which our own existence will come to an end.

The Sue Rodriguez case was an important moment of the Canadian arm of the euthanasia and assisted suicide debate. Further to Sue Rodriguez' suicide, in February 1994, the Canadian Government ordered a public debate which resulted in the 1995 Report of the Special Senate Committee on Euthanasia and Assisted Suicide. The report's recommendations were that both euthanasia and assisted suicide should remain a criminal offence. Opinions were nevertheless divided. The report defined assisted suicide as "...the act of killing oneself intentionally with the assistance of another who provides the means, the knowledge, or both." A majority of the committee members recommended that section 241a and b should be left intact. The provisions against counseling and aiding suicide were thought to be necessary and adequate. However, a minority of members suggested that an exemption to section 241b of the Criminal Code be "...added, under clearly defined safeguards, to protect individuals who assist in another's suicide... [and that] in order to avoid abuse, procedural safeguards must provide for review both prior to and after the act of assisted suicide."
The issue of euthanasia was dealt with in a similar way. The report acknowledged the already widely accepted distinction between three forms of euthanasia: voluntary (with person's consent), nonvoluntary (with proxy and / or unknown consent) and involuntary (against person's wish not to die). It further suggested a general definition that reads as follow: "The deliberate act undertaken by one person with the intention of ending the life of another person in order to relieve that person's suffering where the act is the cause of death." This definition is of particular interest because it opens the door to a possible inclusion of the withdrawing of treatment. According to this definition, withdrawing treatment could become an act of euthanasia if the intention behind it is actually to end the patient's life. If this is true, difficulties in drawing a sharp line between both practices are obvious. Since withdrawing treatment is already seen as an acceptable practice whereas euthanasia is not, the line between what is acceptable and what is not is somewhat blurred.

The report's final recommendations on euthanasia were divided. A consensus was reached for the categories of nonvoluntary and involuntary euthanasia but division prevailed about the important category of voluntary euthanasia. The consensus on nonvoluntary euthanasia was that the act should remain a criminal offence. However, it was also recommended that amendments to the Criminal Code be made "...to provide for a less severe penalty in cases where there is the essential element of compassion or mercy." The following two possible amendments were suggested:

1) A third category of murder could be created that would not carry a mandatory life sentence but rather would carry a less severe penalty.

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2) A separate offence of compassionate homicide could be established that would carry a less severe penalty.\textsuperscript{55}

The case of involuntary euthanasia was simple. The committee recommended that the unilateral prohibition against involuntary euthanasia should be maintained. The act should continue to be considered as murder and to fall under the relevant already existing provisions made by the Criminal code.

The consensus on the above two forms of euthanasia was not extended to voluntary euthanasia. A minority of members in favour of the decriminalization of voluntary euthanasia opposed a majority who recommended that this category of euthanasia should also remain a criminal offence. However, all members agreed on the relevance of amending the Criminal Code to allow for a less severe punishment. It was argued that the amendment should be similar to the one referring to nonvoluntary euthanasia. A majority of members parted with the minority's opinion when it was suggested that the practice itself should be permitted for "...competent individuals who are physically incapable of committing assisted suicide"\textsuperscript{56}.

The Senate report was not followed by any legal reform. After its publication, the debate on euthanasia and assisted suicide was somewhat set aside. The 1994 promise of a full parliamentary debate followed by a vote on the issue is still awaiting fulfillment. However, recent legal cases and growing public pressure for legal reform have revived the debate. In addition, the debate on euthanasia and assisted suicide in the U.S. is alive and well and this could influence the Canadian attitude.
Final Remarks

We established at the outset that the euthanasia and assisted suicide debate has two sides: legal and ethical. We also determined that the ethical controversy is unlikely to be resolved; that the frontline reality of the health care professionals appears to be ahead of the theoretical debate; and that the legal arena will likely host the final stage of the debate. Whether or not we should tighten the enforcement of the existing legal provisions against euthanasia and assisted suicide or loosen the current prohibition so as to include, when specific conditions and criteria are met, one’s lawful right to determine the circumstances of one’s own death has not yet been decided. However, it has become clearer that no matter what the answer to this question is, the final decision will have to be weighed against the ethical principles embedded in the law (mainly the Charter of Rights and Freedoms). The dissenting judgments in the Sue Rodriguez case support this claim. Diverging opinions on how to weigh the ethical principles of the Charter of Rights and Freedoms were strong on each side.

For all of the above reasons, it may be safe to say that the ultimate dilemma of the euthanasia and assisted suicide debate is whether or not these practices should be included in the wide spectrum of choices fostered by our liberal tradition and protected by our legal system.

The obvious intimacy between the relevant Canadian legal provisions and underpinning ethical principles stresses the dual role of the legal system. The law is now as much a protector of our society’s ethical norms as it is a mediator of these

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noms. In Canada, the 1982 insertion of the Charter of Rights and Freedoms in the Canadian Constitution is a good example of the contemporary increased intimacy between ethics and the law. The ethical principles and the basic rights underpinning the essence of our society have now legal force. Consequently, the law has become a mediator to which we can turn to when ethical controversies, such as the one that qualifies the euthanasia and assisted suicide debate, reach a point where agreement and consensus is no longer a viable option. This may in part explain why the ethical claims pertaining to the euthanasia and assisted suicide debate increasingly trigger a legal reflection.

Having discussed the international and Canadian legal contexts of the debate on euthanasia and assisted suicide, we are still faced with the task of determining how more research and reflection could make a contribution in providing new elements of what could constitute an appropriate answer to the problem. An enormous literature already discusses numerous ramifications of the problem but a common theoretical territory where divergent arguments, claims and opinions could meet has not yet been defined. We may even wonder whether or not a shared concern could be found in the first place. There may be at least one.

An insightful suggestion was made by one of the participants of the public hearings reported in the 1995 Senate report. A physician, Dr. Mount, presented a summary of his viewpoint on the euthanasia and assisted suicide debate taken as a whole. The summary reads as follow:

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I do not think that this is a national debate about death with dignity because I would suggest that people who would come down on both sides of the question would favor death with dignity. Second, I do not feel this debate is helpfully characterized by either pro-life or pro-choice alternatives. Again, I feel that people on both sides of the question would see themselves as holding both views. Third, I think this debate is not about discontinuing or withholding inappropriate life-prolonging treatment, an issue that has been under debate in our country and others for some three decades and on which consensus has largely been reached. Fourth, this debate is not about double effect. That is the risk of shortening life as a consequence of treatment given for the purpose of alleviating suffering. That may happen as a consequence of good palliative care and it is unrelated to euthanasia or assisted suicide. Fifth, I think this debate is about the best response and the best way for Canada as a nation to respond to the sort of suffering we have heard about [our emphasis].

It may seem a truism to affirm that the issue of suffering is fundamental for the euthanasia and assisted suicide debate. Suffering is one of the main reasons, if not the only one, why we have a debate on euthanasia and assisted suicide in the first place. However and surprisingly, when we turn to the literature to find some answers on what suffering is, what the mechanisms involved are, how it can be measured, and what the possible ethical avenues to explore it are, we find very little. Physical pain is abundantly documented and thoroughly researched. Suffering is not. Little secular research has been devoted to sorting out human suffering. Since pain and suffering walk hand in hand in our common use of the terms, since pain may significantly be different from suffering and since pain is so well researched and documented, it is puzzling to realize that suffering as a topic in itself has been somewhat overlooked.

The harsh reality of human suffering and the need to develop appropriate measures to deal with its occurrence prompted the debate on euthanasia and assisted suicide. By its very essence, suffering provides a rationale in which the
debate found its legitimacy. It would be hard to think of a legitimate request for euthanasia or assisted suicide that would involve neither pain nor suffering\(^6^0\) (either mental or physical). However, many questions on suffering remain open. What is the nature of suffering? What are the mechanisms that prompt and sustain its occurrence? What cause its intensity? Are there different levels of intensity that can be sorted out? If yes, how can we measure them? How can we measure suffering? Is suffering merely subjective or does it have objective features? What are the ethical implications of a thorough analysis of suffering? Is suffering strictly bad? Does it have any instrumental or intrinsic value? What is the impact of a secular analysis of suffering on the euthanasia and assisted suicide debate?

The fact that suffering plays such an important role in defining the legitimacy of the debate on euthanasia and assisted suicide creates a need for a fuller and better understanding of the phenomenon. By revisiting the question of suffering in a renewed secular way, it may be possible to shed some light on both the premises of the debate and its current problems and on possible solutions. We saw that the classic tension between public and private interests constitutes an important unresolved dilemma of the debate. B. Dickens\(^6^1\) has summarized this problem in an insightful way. The problem is

\[\ldots\text{how to balance macroethical concerns that vulnerable persons be protected from abuse with microethical concerns that the autonomy and dignity of incapacitated terminal or other patients intellectually capable of self-determination be respected.}\]

A thorough analysis of suffering as a distinct phenomenon may have an impact on the weighing of macroethical concerns with microethical ones. The reflection on

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the problems of ethical justification and end-of-life decision-making may also benefit from a reflection on suffering. Understanding more accurately what suffering is in itself will contribute to clarifying how suffering plays out in the debate on euthanasia and assisted suicide. The latter clarification may provide significant new information that could contribute to determining whether or not euthanasia and assisted suicide should become a lawful option under specific circumstances and when certain criteria are met.

In a nutshell, suffering may be an important element of an answer that could shed new light on the euthanasia and assisted suicide debate. Revisiting euthanasia and assisted suicide with a better understanding of suffering may contribute to renew / solidify our interpretation of the Charter of Rights and Freedoms and current legal provisions, our opinion on the possibility / necessity of revising these provisions and our approach to the weighing of private interests against public ones. In addition, we established that even though the ethical controversy surrounding euthanasia and assisted suicide is in a somewhat stalemate situation that is unlikely to be resolved, we also saw that more ethical reflection may impact our legal reasoning mainly through a renewed interpretation of the Charter of Rights and Freedoms.

It is against this background of possible legal reform that the following chapters will analyze the issue of suffering, its ethical ramifications and the resulting new light that could be shed on the Canadian context. It should be noted that the scope of the discussion is limited to assisted suicide and voluntary euthanasia.  

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Furthermore and hopefully, a consequence of appropriately addressing the issue of suffering in this particular context will also be to provide a general understanding of suffering that could find an application in all domains of health care delivery as well as in any relevant sphere of human experience.

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1 This tradition of disagreement can be traced back to the abortion debate, which had a similar opposition between the “pro-life” side and the “pro-choice” one.
2 Recent important developments took place in the Netherlands. On November 29, 2000, euthanasia was legalized. Specific criteria and conditions apply. These latest developments are discussed in chapter 5 under “Recent Developments”.
4 There are three categories of euthanasia defined in the literature: 1) voluntary: Person wants it 2) nonvoluntary: Person has expressed no preference and person’s state precludes the possibility to directly determine person’s preference 3) involuntary: Person opposes it. The first form is the one mainly targeted. The rationale supporting the first form of euthanasia could be extended to the second one after related problems, such as surrogate decision-making, would be dealt with. The complete and unilateral rejection of the third and last form is widely endorsed.
6 It is interesting to note that the Dutch have abandoned the distinction between assisted suicide and euthanasia. See De Watcher, M.A.M., (1992), "Euthanasia in the Netherlands", in Hastings Center Report, 22(2), March-April.
7 It may be argued that this approach could represent an interesting middle-ground where the Court of Law convicts as a matter of principle, but impose no deterrent or punitive punishment as a matter of practice. However, it is unlikely that this approach would be deemed acceptable by each side. On the one hand, it may be upheld by the "against side" that conviction without consequences is an inadequate measure to prevent the use and abuse of the practices and, on the other hand, it may be put forth that conceding that the practices are wrong, even just as a matter of principle, would undermine the essence of the pro-side arguments, which purport to show the contrary.
9 The Dutch Euthanasia Society estimated that 3500 terminally ill patients chose when they wanted to die in 1999 (www.cbc.ca/news/euthanasia001128).
10 Passive euthanasia refers to “letting nature takes its course” whereas active euthanasia denotes a concrete human intervention causing death.
13 Australian territorial legislation is subject to federal "disallowance".
14 Prevention is one of the key concerns. Fear of abuse and the protection of the vulnerable people are core elements in rulings. The issue will be addressed more in depth later in this chapter. For Canada, see Of Life and Death: Report of the Special Senate Committee on Euthanasia and Assisted Suicide, (1995), Ottawa: Supply and Services Canada.
16 The arguments upheld by the majority and the dissenting judgments will be looked at more closely later in this chapter.

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17 The four judges divided 2:2 on key issues. Diverging views nevertheless showed openness toward recognizing the legitimacy of requests for euthanasia and assisted suicide under specific conditions and criteria.

18 Dickens, B., (1994), "When Terminally Ill Patients Request Death: Assisted Suicide Before Canadian Courts", in JPC, 10:2, pp. 52-56.


20 ibid.

21 See Internet website: http://www.pallcare.org/today.html

22 ibid.


28 Jack Kevorkian was initially charged with violating the Michigan state statute, in addition to first-degree murder and delivering a controlled substance without a license. The assisted suicide charge was dropped, however, and he was eventually convicted of second degree murder and delivering a controlled substance without a license. He was then sentenced to 10 to 25 years of imprisonment.

29 The Latimer case is a prominent Canadian case in this regard. R. v. Latimer, (1997).


32 According to section 221(3) of the Criminal Code a "...homicide that is not culpable is not an offence."

33 ibid., p. 36.

34 At the time of the Commission, these sections of the Criminal Code were respectively section 198 (now 216) and section 199 (now 217).

35 The distinction between passive and active euthanasia is losing popularity and its relevance is decreasing for an ethical reflection on the issue. James Rachels was the first to question the validity of this distinction. See Rachels, J., (1975), "Active and Passive Euthanasia", in The New England Journal of Medicine, 292(2), January, pp. 78-80.

36 The fact that these recommendations were not enacted in Criminal Code revisions may be significant in showing a reluctance toward revising the existing laws to make them more accommodating.


38 It is important to note that the Nancy B. case was processed only at the Trial level and therefore does not constitute legal precedent as such.

39 Rodriguez v. Attorney General of B.C., British Columbia Court of Appeal, 4 W.W.R. 109, (1992). This is understandable since both courts knew that their verdict would be reversible by higher courts. See Dickens, B.M., (1994), pp.52-56.

40 All excerpts in this section referring to the Supreme Court judges' opinions in the Sue Rodriguez case are quoted from Rodriguez v. British Columbia, (1993).


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42 Ibid.
43 Even though the dissenting judges divided 2:2 on certain issues, the four judges supported a main line of argument.
44 A duty to assist would therefore refer to a positive right whereas a duty not to interfere with assistance would only grant a negative right. Whether the right should be positive or negative is however a second-degree question that needs to be looked at after the initial problems are appropriately dealt with, that is after we determine with sufficient certainty that one's right to choose the circumstances of one’s own death can and should be accommodated within the Canadian law and based on the ethical provisions made by the Canadian Charter of Rights and Freedoms.
48 Regardless of the Supreme Court ruling, Sue Rodriguez committed suicide with the help of a physician who remained anonymous and could therefore not be prosecuted.
50 Ibid., p.51.
51 Ibid., p.74.
52 Ibid., p.75.
53 This remark cuts across the debate on passive and active euthanasia. On the one hand, it could be argued that withdrawing treatment is acceptable on the ground that it is passive whereas euthanasia is active. However, the relevance of the distinction between active and passive euthanasia has been challenged (see Rachels, J., (1975), pp.78-80), leaving fewer possibilities to make a clear distinction between withdrawing treatment and euthanasia. The definition of euthanasia suggested by the Senate Report faces the same difficulties. In addition, remarks on the relevance of the intention behind the act could also lead to the well-debated "doctrine of double-effect". See Pellegrino, E., "Intending to Kill and the Doctrine of Double-Effect" in Beauchamp, T. & Veatch, R. eds, (1996), Ethical Issues in Death and Dying, New Jersey: Upper Saddle River, Prentice Hall, 2nd ed., pp.240-42.
55 Idem.
56 Idem.
59 This exclusively refers to secular research. Thousands of years of religious research on suffering provides a wealth of religious knowledge on suffering. However, our current multicultural and secular society stresses the need for a secular understanding of suffering, which is currently minimal.
60 One might argue that a case could be made for one’s right to terminate one’s own life based on the mere principle of autonomy. One could further claim that this autonomy-based right may not require pain and suffering to root its legitimacy. Even though this may be true, the point here is to flag the fact that it is unlikely that anyone would want to terminate one’s life if one is not suffering at all and in any way (e.g. physical, relational, existential). The question would therefore be: Why would this non-suffering person want to terminate his/her

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life? It is hard to imagine a legitimate answer that would not include or be based on some form of suffering.


62 This focus excludes nonvoluntary and involuntary euthanasia, which would necessitate a much broader analysis to articulate the ethics of terminate one's life without one's explicit consent. So our discussion will be limited to the cases in which the explicit consent of the person whose life is at stake could be obtained.
CHAPTER 2

Pain and Suffering
... to bring knowledge of suffering within the ken of the profession of medicine will require the investigation of avenues hitherto shunned by the molecular thrust of medical science. What are required are kinds of knowledge and a view of knowing whose existence has been largely ignored or denied during this century [207]. And this, I believe, will be the agenda of the next century.

- E. Cassell

This chapter aims at suggesting an alternative to the horizontal framework with which pain and suffering are usually understood and articulated. In this latter framework, pain is placed at one end of a continuum and is mainly associated with its physical dimension whereas suffering is situated at the other end with a strong psychological component. A gradation that goes from physical pain to psychological suffering can be found in between. This horizontal view has theoretical problems that cannot be resolved within such a framework for it is the framework itself that triggers and nurtures them. For instance, an ontological distinction between pain and suffering can be defined if we compare both ends of the spectrum, but it is almost impossible to draw a sharp line between the two concepts as we move toward the middle area of the horizontal line. Hybrids of physical pain and psychological suffering are harder to grasp and with their fuzzy nature comes a series of theoretical problems we may be able to avoid by reframing the overall problematic in a different way.

As an alternative to the horizontal view and to develop a sharper distinction between pain and suffering, a vertical approach may be developed. According to a vertical theory, pain could be the starting point from which suffering is reached through an ascending or escalating motion (bottom-up). One important feature of the vertical approach would be to suggest that pain and suffering have a causal relation.

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and are therefore ontologically different. So instead of placing pain and suffering on a continuum that implies a similar nature but distinguishes them with either a physical or a psychological emphasis, pain could be defined as a separate phenomenon from which suffering may stem. The word “may” is crucial here because the very reasons why pain triggers suffering are at the heart of the vertical theory and define, to a great extent, the nature of suffering.

The theoretical advantage of using a vertical approach to frame our understanding of pain and suffering is that it will facilitate further ethical reflection by drawing a sharper line between pain and suffering, by expanding the definition of pain so as to include a wider range of possible sensations and feelings (e.g. psychological), by providing a more convenient account of suffering and of how it can stem from any painful experiences (including mere physical ones), and by accounting for the role of the sufferer in the suffering phenomenon. But before elaborating on our vertical reflection on pain and suffering, we first need to sort out the theoretical challenges to which a new theory will have to respond in order to prove itself as a worthy contribution to our understanding of pain and suffering and to our assessment of their ethical relevance.

**Theoretical Background**

Pain and suffering represent a significant dimension of our existence. All human lives, regardless of differences in gender, age, race, education or wealth will include, at one point or another and with variable intensities, pain and suffering. As soon as we are born (and maybe even before we are born), we make our first steps

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into the realm of pain and suffering. We usually experience physical pain first. It is physically uncomfortable to come into this world and a newborn baby's senses are constantly challenged by unpleasant stimuli. A baby's cries and grimaces attest of the occurrence of physical pain through hunger, wetness, stomachaches and so forth. As we grow older, the nature of our painful experiences outgrows its primary physical skin so as to include the ramifications of a richer and more complex reality. We soon are able to feel a wider variety of these types of sensations such as existential, emotional and relational ones to which we alternatively and variably refer to as “pain” and “suffering”.

We all share a general knowledge of what pain and suffering are. When someone says “I am in pain” or “I suffer”, we almost automatically think of a state of affairs or a state of mind which this person would rather not be in. However, this general knowledge is somewhat vague and does not fully account for the complexity of the phenomenon. Painful or suffering states can be defined in many subtle ways. For example, pain and/or suffering may be of a physical, emotional, existential, psychological or mixed nature. In addition, the degree of intensity of pain and/or suffering can greatly vary. For instance, a physical pain may be fairly mild such as when one cuts oneself with a piece of paper, or it may be severe as when one breaks one's thighbone.

Similarly, suffering may have different intensities. It is reasonable to assume that one is likely to suffer more from the loss of a loved one than from a public insult (if at all). It is a hard task to fully understand the complex nature of pain and

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suffering; how they are brought about; how they are experienced and what they represent and mean. This is true of a general understanding of pain and suffering and the level of difficulty only increases as we move toward case-specific occurrences. So even though we certainly have a rough and general idea of what pain and suffering are, the possibility of an in depth knowledge of the phenomenon faces many theoretical challenges due to the subtleties with which it manifests itself.

The first theoretical challenge that immediately surfaces is an epistemological one and is rooted in the fact that each manifestation of pain and suffering is qualitatively individualized. There is something intimate and personal about the experience of pain and suffering. Subjective features such as the way one leads one's life, one's beliefs, one's physical and inner strength, one's degree of life experience and one's relationship with oneself and with others may influence the way pain and suffering occur and are experienced. When someone is in pain or suffers, we usually have to rely on the person's explanation of the experience to better grasp what precisely is happening and to what degree. Until the sufferer discloses a personal interpretation of what is experienced, we are confined to the rough knowledge that this person "seems" to be in pain or "appears" to be suffering. The reason for this is that pain and suffering are subjectively determined to a significant extent; "subjectively" understood in the limited sense of "being dependent on a person's viewpoint". E. Cassell describes the subjectivity of suffering as follows:

Suffering is ultimately a personal matter – something whose presence and extent can only be known to the sufferer. Patients sometimes report suffering when one does not expect it or not report suffering when it can be expected. Further, people often say that they know another is suffering greatly, and then ask and find that the other person does not consider himself or

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herself suffering. Finally, a person can suffer enormously at the
distress of another, especially if the other is a loved one.9

The complexity of pain and suffering in itself coupled with a subjectively influenced
essence contributes to making a full understanding of the phenomenon (both at the
macro and micro levels) harder to reach and may partly explain why human suffering
is surprisingly under-researched9.

Another epistemological challenge to our knowledge of pain and suffering
stems from Cassell's comment and represents the counterpart of the latter: not only
can we not know pain and suffering better without the direct help of the sufferer, but
also the sufferer herself may not know whether or not she feels pain and/or suffers. In
other words, the subjective nature of the experience of pain and suffering is an even
greater epistemological challenge since from the subjective viewpoint itself it may be
difficult to fully grasp the essence of the experience. It is sometimes genuinely hard to
determine whether one only feels pain or suffering; or pain with suffering; or suffering
without pain; or pain without suffering and why it is experienced in such a way.
Furthermore, it may even also be challenging to pinpoint whether or not we are in
pain or suffering at all. J. Mayerfeld recently supported this claim:

...people who are suffering often do not know that they are
suffering. They may be stunned out of thought. They may be
mute, inarticulate, and confused. (...) their distress takes such a
hold of them that they can no longer step outside themselves
and acquire the degree of objectivity required to observe that
what is wrong (or a large part of what is wrong) is precisely that
they are suffering.10

The epistemological challenges that we face when trying to understand better pain
and suffering are therefore not limited to the inter-subjectivity problem. The confusion

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also comes from the fact that one's knowledge of one's own pain and/or suffering may be limited.

As a result, we often describe similar sensations and feelings using the words "pain" and "suffering" somewhat randomly. The hospital setting is filled with revealing examples that support this claim. Picture a patient suffering from bone cancer saying to the attending nurse "I am in pain, please give me painkillers" and the nurse to answer after administering the drug "There you go, you will not suffer for a while". Did the use of the word "pain" and the verb "to suffer" refer to the same reality? Are they part of the same phenomenon? One could argue that in this case, it seems pretty clear that the patient's cancer caused physical pain and that the nurse referred to the alleviation of this pain; therefore that the patient was "suffering from physical pain". But questions like "Was the patient suffering or was she in pain?" remain either unanswered or in need of more arguments that would purport to show that it is irrelevant to ask.

The truth may very well be that our understanding of what pain and suffering specifically refer to and mean is still in need of clarification. We do have a general sense of what is meant when people talk about pain and suffering, but we still need to bridge a significant theoretical gap in order to have a detailed and accurate appreciation of the phenomenon. Our frequent unqualified use of the words "pain" and "suffering" may be symptomatic of this void.

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Take the word "pain" for instance. In general, we would all spontaneously agree that pain usually refers to unpleasant physical stimuli such as when we cut ourselves with a knife, when we wake up after an open-heart surgery or when we burn our palate with hot coffee. Thus, pain usually has a physical connotation. However, the physical dimension associated with the word "pain" is somewhat transcended by the scope of our use of the word and of adjectives that stem from it such as "painful" and "painstaking"; think of a painful waiting period or a painstaking intellectual task. So it may be more accurate to say that our use of the word "pain" and pain-related words is not limited to our physical experience. A broken heart is a good example of this since it is often referred to as "painful" even though the pain is felt at a psychological level. Another example would be the "pain" and "painful experience" associated with the loss of a close relative; mourning is "painful". Even though one could compellingly argue that the word pain mainly refers to a physical reality, the physical reference apparently does not exhaust our common linguistic use of the word since painful life experiences may be physical, mental or a mix of the two. In fact, there appears to be neither a general rule for the use of the word "pain" nor a clear definition of it on which we could rely to have a sharp understanding of the experience.

Scholars have tried to appropriately coin the meaning of the word "pain" and to suggest an appropriate linguistic use. G. Ryle suggested that "...a pain is a sensation of a special sort, which we ordinarily dislike having." R.M. Hare further refined the formulation and argued that there may be two adequate uses of the word "pain": uses "...which refer to the bare sensation, without implying dislike" and uses "...which refer..."
to this same sensation, but in addition imply dislike. This explanatory approach to pain, even refined in the latter formulation, may not be very helpful to better define an appropriate use of the word "pain" which would clearly distinguish it from what the word "suffering" refers to. On the one hand, if we stick to pain's physical connotation not to get confused by what "bare sensation" means, we cannot deepen our understanding of the phenomenon and cannot better account for the reality that we earlier touched; that is that physical pain does not exhaust the territory covered by the word "pain". On the other hand, if we decide to broaden the scope of what "bare sensation" means so as to include other facets of the possible meaning of pain (e.g. psychological), we may find ourselves back to square one since "bare sensation" could mean anything and would likely overlap with what the word "suffering" refers to.

Furthermore, Hare's claim that our possible dislike of a pain sensation distinguishes two different kinds of pain is questionable. The argument is that it may not be appropriate to qualify a sensation as being painful if the person "likes" it or "does not mind" it. J. Mayerfeld has recently argued in this direction:

It should be noticed that there is a latent ambiguity in the word pain, such that we are not sure if a "pain sensation" is pain in the true sense of the word if the person experiencing it truly does not mind it or is able to put it out of his mind.16

Mayerfeld's point is well taken. However, his argument may be too wide in scope. It is one thing to wonder whether or not a sensation can qualify as a pain sensation if the person who feels it does not mind it (or even like it). But it is another thing to claim that whether or not the person who feels the sensation "is able to put it out of her mind" could have an impact on whether or not we can qualify a given sensation as

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painful. The reason for this is that the argument makes no clear distinction between a person who feels a sensation and does not mind it and one who does mind the sensation and then does something about it; namely, puts it out of her mind.

The distinction to be made here is that there is a passive state of “not minding” a sensation and an active one of “doing something” about it. These attitudinal states are substantially different. If one does not mind a sensation, then it is likely that one will not do anything about it. Conversely, if one does mind a sensation, then one is likely to attempt something to rectify the situation. In order to get to the “minding” point, one must necessarily recognize a sensation as being painful in the first place. Then, and only then, can one attempt to alleviate the recognized pain. This makes “minding a sensation” an element of the process by which a sensation is qualified as painful, whereas “doing something about it” constitutes a reaction to the pain that has already been recognized as such. In other words, there is a significant difference between the required elements for a sensation to qualify as painful and pain management itself.

Another approach that may be used to coin the meaning of the word “pain” is to look at the social determinants of the experience of pain. A. Kleinman suggested that the way pain is defined and experienced is intimately linked to one’s socially interconnected environment (what he calls “local worlds”) and that in order to know what pain means for someone we first need to look at what pain means in this person’s “local world”. It could very well be that pain is a concept that has a malleable meaning, which is sensitive to social determinants. This may also be true of

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suffering\textsuperscript{19}. The challenge with such a view is the inevitable relativism that comes with it and since it may not be necessary to address the problems associated with relativism in order to reframe our understanding of pain (and, consequently, of suffering), we will not engage in a dialogue with this interpretation.

Our common use of the word “suffering” is even fuzzier than our use of the word “pain”. The word “suffering” is used to describe almost any unpleasant physical and mental states from a headache to a spiritual turmoil and this includes poverty, torture, depression, mourning, and the list is endless\textsuperscript{20}. People may claim to be in a suffering state for multiple and sometimes even undetermined reasons; when they clearly are in physical pain; when they have to cope with a bad mood or with an emotionally difficult period of their life; when events that would not cause suffering alone aggregate and reach the limit at which suffering is declared; and so forth. In general, it seems that people are in agreement with the view that puts a psychological emphasis on suffering. This is reflected in the literature and has somewhat reinforced the idea that pain is physical and suffering is psychological. E. Cassell’s words convey such a view:

\begin{quote}
... we can also realize how much someone devoid of physical pain, even devoid of “symptoms”, may suffer. People suffer from what they have lost of themselves in relation to the world of objects, events, and relationships.\textsuperscript{21}

...suffering extends beyond the physical. Most generally, suffering can be defined as the state of severe distress associated with events that threaten the intactness of person.\textsuperscript{22}
\end{quote}

Cassel’s view stresses the complexity of suffering by limiting pain to its physical manifestation and by somewhat connecting the suffering phenomenon to the multiple

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and complex ramifications of the external and internal constituents of a person. The complex nature of personhood and the many interacting components of the "self" would thereby be constitutive of a person's suffering. Understanding what suffering is would therefore translate into the need to not only understand the sufferer as a person, but also to make sense of how the many inner and outer elements at play are perceived, experienced and evaluated by the sufferer. This reasoning comes across in J. Mayerfeld's view on suffering:

Suffering just means that the person feels bad. And in determining whether someone is suffering, we take a composite reading of all the different sensations, thoughts, emotions now occupying his mind in order to determine how, on balance, he is feeling.  

This aggregate view of suffering rooted in the sufferer's subjective experience is insightful and limited at the same time. It is insightful for the subjective component of the suffering phenomenon is clearly brought to light. It is limited because, on the one hand, it forces us to stick to a physical definition of pain, which is a view that we have already established as being limited and, on the other hand, Cassell's and Mayerfeld's holistic approaches to suffering do not provide us with the sufficient theoretical tools to assign a specific use to the word "suffering" and to define and limit its scope.

Our difficulty to clearly assign a specific meaning and use to the words "pain" and "suffering" sheds light on a third theoretical challenge to an in depth understanding of the phenomenon. This theoretical challenge is of an ontological nature and raises two questions: 1) Are pain and suffering different in essence? 2) If

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yes, can we draw a sharp line between *suffering* and *being in pain* without them overlapping one another at some point?

The scope of possible painful and suffering experiences is obviously broad and includes many overlapping opportunities. This renders the task of distinguishing pain from suffering even more problematic. For instance, we intuitively recognize that there is a difference between the painful experience of crushing one's finger with a hammer and the suffering that is triggered by the loss of a loved one; the former appears to merely be physical whereas the latter touches existential and relational dimensions of our lives. But the differences between types of painful and suffering experiences may not always be as obvious as in the latter example.

For example, it may seem like an easy task to distinguish the painful experience of being amputated as a result of a shark attack from the suffering that may come from being publicly humiliated. Intuitively, we can appreciate that these two experiences are very different in nature. However, similarities can also be found. Part of the suffering that is triggered by the shark attack may come from the horror of the experience itself, and so can the suffering associated with the public humiliation. In other words, both experiences may qualify as "traumatic", leaving the determination of the extent of the trauma to the person's judgment (subjective) and also possibly to a more objective assessment (e.g. physician, friends, even media). As a result, suffering may or may not stem from both experiences (regardless of any possible "theoretical forecast" on the likelihood of its occurrence).

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In the same line of thought, the variable individual manifestation of pain and suffering is particularly obvious when two people go through the same ordeal and, as a result, one suffers but the other does not. Think of the extraction of a tooth by a dentist. We can easily imagine a patient who would almost die in the dentist's chair, who would suffer a great deal from the experience. At the same time, we can also imagine another patient who would not really suffer from the experience (even if physical pain is felt). The point here is that the threshold and intensity of any given painful and/or suffering experience subjectively fluctuate and that this partly shows why distinguishing them may sometime be challenging. In fact, a number of authors argued in the past that we are best advised not to attempt to distinguish them at all.

However, contemporary authors now widely support that pain and suffering are to be distinguished. Pain usually means physical pain whereas the word "suffering" is used to refer to the psychological state in which (or from which) the sufferer suffers. According to this view, pain should not only be distinguished from suffering but also separated as an essentially different experience (one physical, the other psychological). No matter how convenient, this approach may not be accurate enough to fully account for reality. Psychological and social elements have been shown to play a role in our experience of pain and physical states may return the favor by playing a role in the occurrence and experience of suffering. So even though it is widely recognized that pain and suffering should be differentiated in nature, it seems that an adequate understanding on how it ought to be done has yet to be reached.

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One possibly crucial issue to solving the problem is methodological. Pain is usually placed at one end of a continuum and suffering at the other. We established that the gradation in between ranges from physical (pain) to psychological (suffering). As a result, we have a linear scale that has mere physical pain at one end and pure psychological suffering at the other. As we move along the horizontal gradation, we come across different hybrids of pain and suffering, which are made of a mix of physical and psychological elements. The bulk of the theoretical problems is situated mid-way on the continuum and we can see why we have great difficulty in clarifying some of the issues we so far discussed: the theoretical framework itself nurtures confusion.

This horizontal way of understanding pain and suffering makes it almost impossible to sharply distinguish pain from suffering. In addition, a gradation that goes from physical pain to psychological suffering does not sufficiently account for a definition of psychological pains and/or physical suffering (if, indeed, they can be defined as such). Since we regularly come across expressions like "emotional pain" in the literature, the horizontal approach may not be the most convenient and accommodating framework. C. Korsgaard's work may be one of the most prominent examples in which we find such linguistic use of the word "pain":

...as physical pain is a revolt against our sensations, so emotional pains like grief, rage, and disappointment are revolts against the world. And for us, physical pain is almost always accompanied by such emotional pains [our emphasis], for we revolt against the world in which we can be made to feel pain. We experience pain as an assault on the self, and may resent it as if it were an enemy. 29

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It may be argued that the problem could be resolved by assigning an appropriate and limited linguistic use to the words "pain" and "suffering". However, it is important to note here that this is precisely one of the problems that stem from the horizontal approach and that a solution to such problem may very well come at the price of the overall theoretical framework.

A vertical approach to the problem may be more accommodating. The scope of pain could be broadened so as to include all of its possible manifestations. Pain's role would be defined as "primary" and placed at the bottom of the framework. Suffering would be situated at the upper end of the bottom-up explanation and would constitute the endpoint of a causal relation with pain. The respective nature of pain and suffering would therefore be, in essence, different. A vertical approach to pain and suffering could also account for the sufferer's role in the process by defining a mid-way area in which pain is subjectively understood, mediated and/or managed by the person whose sensation it is. This mid-way area would be crucial in determining whether or not the suffering level will be reached. So three levels are needed: the level at which pain is perceived, the one at which pain is mediated and managed, and the level of suffering. We will call them: perceptive, responsive and assertive levels. The reasons why the suffering level is called "assertive" will become obvious as the arguments unfold.

So a new theory of pain and suffering would be most convenient for our reflection if it were to provide for 1) an inclusive definition and explanation of "pain" and "suffering" 2) a convenient and well-defined use of the corresponding words 3) a

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sharp *ontological distinction* of the two concepts 4) a *functional account* of the mechanisms by which and with which they are brought about and interact with one another 5) a *renewed ethical analysis* of their theoretical status and of their possible relevance to applied problems. The remainder of this chapter will mainly be devoted to tackling the first four items, keeping the bulk of the ethical analysis for the next two chapters. Let us now turn to the first step of our vertical reflection on pain and suffering: the perceptive level.

**From Pain to Unpleasant Experience: The Perceptive Level**

In the literature as well as in our daily life, "pain usually means physical pain. It refers to a specific kind of disagreeable feeling that we locate in our body". We saw that with this definition of pain comes a questionable cleavage between what is experienced at the physical level from what is experienced at the psychological level. Historically, the rationale behind this theoretical move was to provide medical science with a well-defined research target. Pain limited to *physical* pain can be assessed, tested, measured, and it is thereby possible to scientifically validate the findings and resulting theories. The interest and convenience of isolating physical pain as a research topic is obvious: it enables researchers to work on one important dimension of medical care (i.e. mainly physical pain management) without having to account for scientifically non-measurable variables such as psychological ones. Physical pain is now thoroughly researched and better understood than any other dimensions of our experience of pain and suffering.

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However, the physical focus of medical science with respect to pain and the resulting horizontal cleavage somewhat blocked the possibility of understanding the phenomenon as a whole. In a sense, physical pain became a concept on its own, shielded by its limited scope against the complexity of the broader reality of painful and suffering experiences. As a result, physical pain could be treated according to the existing medical standards; that is through an interaction with the patient’s body. It may however be reasonable, given the theoretical problems that come with it, to question whether or not such physical limitation of the scope of pain serves our understanding best. J. Mayerfeld recently stressed this point:

...physical pain [does not] cover the many mental kinds of suffering, such as fear, panic, terror, grief, depression, humiliation, loneliness, anxiety, dread. These states are often referred to as species of “mental pain”.

Even though we can, once again, witness the interchangeable use of the words “pain” and “suffering”, Mayerfeld’s point accurately reflects reality. Pain can be felt at different levels beyond the physical one and the scope of its definition should be developed accordingly.

The Oxford English Dictionary echoes this broader view of pain by defining it as being “a primary condition of sensation or consciousness, the opposite of pleasure; the sensation which one feels when hurt (in body or mind); suffering, distress”. It is interesting to find out that such a respectable and widely endorsed reference includes the mind in its definition of pain. It may also be particularly fruitful to expand on the qualification of pain as a “primary condition of sensation or consciousness”. Pain here appears to refer to a larger pool of stimuli; that is all

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primary painful stimuli that can be perceived. Since our perception of the world is not limited to our physical embodiment and since we already established that physical pain does not exhaust the scope of possible types of pain, we may be best advised to revisit and redefine pain as a broader phenomenon.

Our perceptive capacity is what connects us to the world. We can perceive a wide variety of raw stimuli (e.g. sounds, smells), but we are not limited to these basic stimuli. Our perceptive capacity covers things beyond our main five senses. For instance, we have a motion perception that enables us to feel that we are in a moving vehicle; we have an overall perception of our health that makes us know when we are getting sick from a cold; we develop early in life a capacity to perceive and gauge the fluctuations of our relationships with others and this helps us tune ourselves with them (e.g. we know when our life partner is upset even before anything is stated); and, what is most relevant here, we have the ability to feel pain through any of these "perceptive channels". It is to be noted here that the raw stimuli that are perceived through our main five senses and the ones that cover the remainder of our perceptive capacity are of a similar nature. They are primary pieces of information that are brought to our attention by our perceptive channels and to which, when appropriate, we refer to as painful.

Our perception of pain is almost automatic with respect to physical stimuli. If we inadvertently touch a hot stove, our skin sensors quickly tell us that something is wrong. Similarly, we can immediately perceive primary stimuli coming from other dimensions of our lives that tell us that something is wrong. The example of the public

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insult applies here. When someone is publicly insulted, the event brings to her attention a piece of information that tells her that something is wrong; that tells her that she would rather not be in that situation. Events like these usually translate into unpleasant experiences from which other "breeds" of pains, such as emotional pain, may be defined. However, we must here note that this broadened understanding of pain is stretched beyond the limits of what is usually understood as pain. We will later discuss how to remedy this counter-intuitive problem.

We also earlier mentioned that, in order to qualify as pain, a sensation must be recognized as such by the person who feels it. This is important for it mediates the possible confusion that "liking" pain or "not minding it" may trigger. The obvious example that comes to mind is sado-masochism. A sado-masochist may greatly enjoy stimuli that would otherwise qualify as strictly disagreeable. This opens the door for painful experiences to be deemed pleasant. In this sense, the line between pain and pleasure can be blurred and this confusion may be best avoided since it unnecessarily complicates the overall problematic we wish to reflect on. One way of tackling the problem would be to say that the concept of pain should be restricted to stimuli that are at first strictly unpleasant.

However, this restriction on the occurrence of pain does not preclude "liking" it or "not minding" it. The restriction is only a punctual criterion of recognition that still allows for the individual whose pain it is to manage and interpret the experience to the point of not minding, liking or enjoying it. The difference is that with this theoretical move, the basic essence of pain is simplified by situating possible individual

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appropriation of its occurrence in the aftermath of its recognition. So in this sense, one may "not mind" or even "like" pain, but one may do so only after recognizing pain as such. So to qualify as pain, a piece of information brought to our attention through one or many of our perceptive channels has to first impact the agent in an aversive way; that is that it has to first be recognized as unpleasant. Otherwise, the piece of information that is at stake may be best described as something other than pain such as pleasure.

We have so far understood pain as a piece of information brought to one's attention through one's perceptive channels to which the label "unpleasant" is first attributed. We also mentioned that the recognition of pain is "immediate". This requires further qualification. The word "immediate" is used to underline the fact that one's recognition of pain is a single or aggregated punctual assessment of a given piece of experiential information. In other words, even though it may be possible to have experiences that are constituted by a mix of pleasant and unpleasant features, pain is either a unilaterally unpleasant experience or a mixed experience in which the unpleasant feature outweighs anything else; a pain is a pain because the experience it qualifies is, all things considered, a primarily unpleasant one. It is important here to remember and keep in mind the difference between pain and pain management. Regardless of the fact that it is possible to manage an unpleasant experience so that it becomes either indifferent or somewhat pleasant, the primary piece of information that constitutes pain itself is immediately recognized as unpleasant.

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An example may be helpful. Think of a marathon runner’s relation with the physical pain that comes with running a marathon. A pain in the legs (amongst other possible pains) must first be recognized as such; that is the piece of information coming from the legs and canvassed by a perceptive channel is brought to the attention of the marathon runner as an unpleasant experience. Then, and only then, may the runner attempt to manage it (e.g. by focusing on her pace, by breathing deeply, by trying “not to mind it”, and so forth). Whether or not the pain management is successful is not important at the moment. What is relevant here is that there would not be a need for pain management if it were not for the piece of information coming from the legs that had already been recognized as unpleasant in the first place. In this sense, pain is the initial and primary information that is brought to our attention by a perceptive channel, which immediately qualifies as unpleasant.

However, the “immediate” status of pain does not preclude the possibility for it to have a prior background that contributed to either its construction as an unpleasant experience or its recognition as such. The claim that pain is a plain and simple experience does not imply that its roots cannot be complex and multi-faceted and that its recognition cannot come from the aggregation of many different influences interacting (or not) with each other. For instance, a love relationship can evolve in a way that triggers emotional pain. The pain in question is obviously the result of a complex interaction between two people equally rich in nuances. It would seem reasonable to describe this type of pain as a complex experience that is the result of a mediated process; that is that pain gradually occurred, layer by layer. But the claim here is not to deny the rich and complex background that nurtured the possibility for

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pain to occur. The point is only that when it does occur, it is immediately recognized as such.

Furthermore, pain can be (and often is) a pain only because the person's self who recognizes it as such has been constructed under social and interpersonal influences that enabled this or that specific pain to occur. The clash of different cultural approaches to pain is a good example of this. Experiences that are pains in North America may very well be pleasures in China. For instance, eating rats is something that most Americans would label as an "unpleasant experience" whereas eating rats in some parts of China is a common practice with which the pleasure of eating is associated. The fact that the pain that may come with eating rats in North America has a complex background (e.g. cultural) that set the stage for pain to occur does not undermine the claim that the unpleasant experience (or pain) is immediately recognized.

We have reached a point where we need to take stock of what part of our understanding of pain was successfully established and what is still problematic. We suggested that the common physical understanding of pain should be broadened so as to embrace other dimensions of its possible manifestation (e.g. emotional). To do so, we first established that pain could be felt through any perceptive channel. We then added that the occurrence of pain is "immediate" and that our punctual recognition of it is necessarily accompanied by the unpleasantness of its basic nature. Therefore, we defined pain as a piece of information brought to one's attention by one's perceptive channels, which is immediately recognized as

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unpleasant. This meaning of pain is flexible and covers the entire range of situations from which pain can be felt. These situations include sensorial ones (hot stove), relational and emotional ones such as when a romantic date does not show up, existential ones like our possible “painful” understanding of death, social ones (e.g. defamation) and the list goes on. The above meaning of pain also defines its function as an indicator that something is wrong; that is that the person perceiving it would rather be in a different state of affairs or state of mind.

However, two important problems still stand in the way. First, our attempt to stretch the meaning of pain so as to better reflect the variety of sources from which it may stem is restricted by the fact that an experience usually hurts in order to qualify as pain. This is an almost sine qua non requirement that limits the scope of possible unpleasant experiences that can qualify as painful ones. In other words, the fact that pain is an unpleasant experience does not imply that all unpleasant experiences necessarily qualify as painful ones.

The second problem cuts across the issue of causality. If pain is the sole cause of possible suffering, this implies that there cannot be suffering without pain. Intuitively, it is hard to accept such a claim since examples of suffering without pain easily come to mind such as a depressive state in which suffering is present but nothing really “hurts”.

The first problem tells us that our interchangeable use of the expression “unpleasant experience” and the word “pain” may therefore have been erroneous.

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since an experience could be "unpleasant" without necessarily being "hurtful". For instance, exhaustion may very well qualify as "unpleasant" without any specific "hurting". So even though our analysis of pain revealed important aspects of its nature and provided us with important insights on what the basic structure of the vertical theory should be composed of, we may be best advised to define pain as a sub-category of the broader in scope family of "unpleasant experiences". Since our theoretical need was to clearly define a basic experience that could constitute the starting point of a vertical reflection on suffering, we may so far have hit two targets: 1) A renewed understanding of pain which reflects better the diversity of sources from which it may stem and situates pain at the bottom of the vertical theory 2) A definition of the basic experience that is suited to constitute the foundation of a vertical reflection on suffering, that is the broad family of unpleasant experiences. In this perspective, our starting point to further reflect on suffering will be an unpleasant experience immediately recognized as such. Furthermore, we now have established that a given unpleasant experience may or may not qualify as pain depending on whether or not it "hurts".

The use of "unpleasant experiences" as the common denominator of the vertical framework further helps to tackle the second problem that stemmed from our stretched definition of pain. By not limiting the possible cause of suffering to painful experiences, we allow for the possibility that suffering occurs without pain. Intuitively, it seems more plausible to broaden the possible cause of suffering to any unpleasant experience. This approach will therefore enable us to account for suffering without being tied to the necessity of having pain as a cause.

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So we have reframed our understanding of pain to better reflect its various sources and we included the phenomenon in the broader category of unpleasant experiences, which constitutes the foundation of our vertical reflection on suffering. We defined an “unpleasant experience” as being a piece of information brought to our attention by our perceptive channels and that we immediately recognize as such. This common denominator is flexible and covers the full range of possible experiences (e.g. physical, emotional, relational, and so forth) and it functions as an indicator that something is wrong; that the person perceiving it would rather be in a different state of affairs or state of mind. We named this first step of the vertical theory of suffering: the perceptive level. The recognition of an unpleasant experience usually triggers a response (e.g. pain management) and this takes us to the next level: the responsive level.

Managing Unpleasant Experiences: The Responsive Level

It is important to mention, at the outset of this section, that since the sub-category of unpleasant experiences that also qualifies as painful is without a doubt the type of unpleasant experiences that has the strongest potential to trigger suffering, we will focus on painful experiences. The reference to “unpleasant experiences” will therefore be implied in our use of the words “pain” and “painful”.

The immediate recognition of a painful experience may trigger three different types of response by the person who perceives it. The first one is to do nothing or not even to attempt to do something. This response is not particularly relevant for the present reflection since not only is it not the most common one, but also it is more
than likely to be associated with very minor discomforts that barely qualify as pain (e.g. being forced to travel in a more than full street car); even a mild pain like the one that comes with a mosquito bite will trigger an active response. It may however be argued that doing nothing is doing something and that therefore doing nothing may be a pain management strategy as well. We will concede this but will also add that this type of response is nevertheless an acknowledgement that nothing can be done about a given pain and that this is exactly what is being done: nothing. So in a strong sense, doing nothing can only partially qualify as pain management since it implies that no option is available. In other words, doing nothing about a given pain is a response that is closer to resignation than pain management as such. We will therefore focus on the next two types of response.

The second type of response falls under the umbrella of “reflex reactions”. An obvious example of this type of response is the one that comes with physical stimuli such as when our hand touches a hot stove: we quickly remove it from the stove. This is an unmediated response to an immediate recognition of a painful experience. However, we will see that a reflex response is not necessarily limited to its physical manifestation and may include other unmediated or reflex responses that would stem from other kinds of defense mechanisms (e.g. emotional).

The third type of reaction that can be triggered by pain is a cognitive one. What distinguishes this type of response is the fact that the immediate recognition of a given pain is first processed (i.e. cognitively constructed and articulated) by the person whose experience it is and then is responded to according to standards such

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as appropriateness, efficiency, consequences, ethics, and so forth. This response is therefore a cognitively mediated one and will necessarily reflect the complex and variable subjective perspective that generated it. We will see that the third type of response is particularly important for the occurrence of suffering and also crucial to account for fluctuations in pain management capacities within the same individual and in comparison with others.

Reflex: An Unmediated Response

A reflex response is commonly associated with an unmediated reaction of the physical body. However, it may be useful to broaden the scope of possible unmediated responses so as to include any reaction that is akin to physical reflexes. "Unmediated response" refers to the fact that one does not think about one's reaction before responding to unpleasant information; one just reacts without assessing whether or not one's reaction is the most appropriate one. This is particularly self-evident when a physical reflex reaction, such as in the hot stove example, is triggered.

However, the range of possible unmediated responses should also include the spontaneous reactions that stem from other kinds of defense mechanisms. For instance, one may react in an unmediated way to a public insult, say, by insulting back; that is without even thinking about whether or not this is the most efficient and/or appropriate response to the unpleasant experience of being publicly insulted. When this happens, one just "defends" oneself without second-guessing the course of action (or, in this case, the course of "re-action"). By doing so, one tries to manage

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the unpleasant experience with an unmediated reaction that resembles in many ways a physical reflex; the only difference being the source from which it stems. So a reflex reaction can be broadly defined so as to include all species of unmediated reactions to pain. This may in part be what C. Korsgaard had in mind when she represented pain as "...the unreflective rejection of a threat to your identity."36

Cognition: A Mediated Response

Another way to manage painful experiences is to respond with a countermeasure mediated by reflection. This is not only a common response to pain, but also the most interesting one. We usually develop a mediated response to pain either when our reflex reaction failed to get rid of the painful experience and/or when the pain at stake is of a nature that warrants a more complex and tailor-made management strategy. For instance, a reflex reaction is inadequate to deal with a headache and necessitates a more elaborated course of action to manage the pain. Further to our recognition of the painful experience coming from a headache, we deliberate and may decide to breath slowly and deeply for a half-hour, to take medication, or to lie down for a while. The headache will either go away or will make us revise our strategy until we do get rid of the pain (if possible at all).

Thus, our pain management strategies can be more or less elaborated according to the level of complexity of the painful experience that needs to be dealt with. These strategies often involve the use of character traits (or their development or refinement thereof) that may facilitate pain management or directly reduce the intensity of the experienced pain such as tolerance or peacefulness. The intimate link

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between one's capacity to manage one's pain and one's attitude toward it is echoed in the literature:

Pain really is less horrible if you can curb your inclination to fight it. This is why it helps, in dealing with pain, to take a tranquilizer or to lie down. Ask yourself how, if the painfulness of pain rested just in the character of the sensations, it could help to lie down? The sensations do not change. Pain wouldn't hurt if you could just relax and enjoy it.37

...people can learn to adapt to hardship, even pain, so that the suffering they feel as a result of it diminishes over time and sometimes fades away entirely. (...) when we are able to step outside our state of hurt and point to it, we often succeed in overcoming and transcending it.38

What comes out of these excerpts and is particularly relevant to our discussion is that our attitude toward pain may be constitutive of painful experiences and therefore can play a significant role in pain management. In fact, the painfulness of a given pain may totally or partially come from our personal appropriation of the experience itself; that is how a given unpleasant experience cognitively plays out in our experiencing it. So the above-mentioned role of character traits may only be part of what influences our experience of pain and the way we manage it or, alternatively, the role of character traits could be very broadly understood so as to embrace all subjective and objective factors that are constitutive of a person's cognitive approach to unpleasant experiences; subjective factors such as emotions, inner strength, experience, level of happiness, or even faith39; objective factors such as health, wealth, age, gender or even reputation.

The cognitive process by which unpleasant experiences are transformed into a personal knowledge of this or that pain is therefore a key element to our

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understanding of pain as a phenomenon and of whether or not one’s response to it will successfully rid oneself of the pain. This process is influenced by the subjective and objective components of our life and may therefore fluctuate and vary accordingly. Variations of cognitive appropriation of painful experiences can be grouped in two main categories: inter-personal and intra-personal.

First, a cognitively individualized understanding of pain partially explains why the same experience variably qualifies as painful or not depending on the individual involved. This sheds some light on how and why it is possible that a given person is capable of coping with horrendous experiences whereas another one suffocates in pain from an experience that does not seem that horrible to others. We all have different degrees of tolerance to pain and different predispositions to self-manage it. These fluctuations from one individual to another with respect to pain and pain management are inter-personal ones.

Second, the threshold at which pain is recognized and the capacity to self-manage painful experiences may also fluctuate within a single individual. These intra-personal fluctuations are defined by comparing different views that a single individual may have, at various moments of her life, on similar painful experiences. We all have memories of experiences that used to qualify as painful ones but that now are somewhat indifferent to us or even pleasurable. On the one hand, life experience and long periods of time may distance ourselves from how we then saw the world. This evolution can modify our taste, interests, tolerance, preferences, dreams and so forth. All these modifications of what type of person we are may have a significant impact

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on how we perceive a single experience and on whether or not we recognize it as painful. The evolution of a child's threshold for pain is an obvious example.

On the other hand, intra-personal fluctuations may also occur within a short period of time and may stem from our own willingness to change our perception of a given experience. Witness J. Mayerfeld's vibrant narrative of such evolution:

...say we get our fingers caught in a closing door. (...) It hurts; it is unbearable. We devote tremendous psychic energy into forcing, wishing the pain to go away. Then as the pain recedes, and is pushed back by a wave of relief, we begin to feel all right again, and our thoughts make the subtle transition from "Go away, go away" to "It is over, it is over." Now we use our surplus mental energy to carry the process further, and we do with a vengeance what we could only desperately think before: we put the pain definitively away; we cover it up in oblivion; and we say with triumph, "It is gone!" We avoid the thought, "Well, now I'm a little sore, but – do you know? – just a moment ago it hurt so much, much more than it does now; in fact, it hurt so much I couldn't bear it." And so, farther down the road in our distant memory, we are unlikely to recall the pain easily.40

So to the process by which we cognitively construct pain and thereby individualize its experience hinges on all facets of what constitutes us as persons (subjective and objective ones) and accounts for inter-personal and intra-personal fluctuation of the threshold at which pain occurs. It therefore also influences / accounts for our respective and variable pain management capacity. Furthermore, it provides sufficient theoretical ground to explain the possible escalation of painful experiences. A painful experience may be dubbed and amplified by the very unpleasant experience of being in pain. Alternatively, a number of painful experiences may aggregate and trigger the same effect. In other words, a cognitive approach to the experience of pain and its management may help us understand why, as C.

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Korsgaard so interestingly puts it, "...it is a pain to be in pain, [and why] that is not a trivial fact."\footnote{41}

It may be here relevant to digress a bit in order to note that the claim that the experience and management of pain are constructed under a significant subjective influence does not necessarily preclude the possible compatibility of this view with a more objective assessment of painful experiences. First, it may be compatible because our response to pain is partially influenced by objective factors such as whether or not one successfully removed a nail from one's foot (undeniably – or objectively – the possible source of an unpleasant experience). These objective factors can be articulated in a way that may generate a shared understanding of a given painful experience, which, in turn, may qualify for a certain degree of objectivity. For instance, it is common knowledge that if one sticks a nail in one's foot, pain is likely to be triggered. Along this line of thought, poverty is another objective factor that may influence the experience of painful experiences and the likelihood that they occur. Even though the key to poverty's role in individual experiences depends on how it is subjectively integrated, it nevertheless is an objective factor that is external to the resulting subjective painful experience. So regardless of its variable integration into individual experiences of pain, poverty remains an objective factor and may thus be assessed as such. In this first sense, an objective view on painful experiences may be compatible with a subjective understanding of pain and pain management.

In a second sense, our cognitively mediated response to pain may be compatible with a general objective account of painful experiences by analyzing the

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inter-personal fluctuation of a number of individual experiences and management capacities of similar pains. With such comparison, we may be able to distinguish fairly objective trends that could, in turn, help us rank and classify different types of painful experiences and variable pain management capacities. For instance, the pain associated with giving birth is known to be intense. Even though individual differences may either soften the experience or make it worse, the pain associated with giving birth enjoys a fair level of objectivity. This claim stems from (and was therefore somewhat “verified”) by an inter-personal comparison of similar individual painful experiences. Of course, the type of objectivity that is involved here is of a somewhat different nature than the one we find in applied science. A milder but still significant definition for this type of objectivity may be: “the shared knowledge that stems from a consistent inter-personal comparison of similar subjective experiences of a given pain”. The point is that, even if limited in scope, “inter-personal consistency” may be an adequate marker of objectivity that may be handy to evaluate painful experiences.

Furthermore, the possibility of developing a somewhat objective scheme of reference through inter-personal comparisons may also help us situate and make sense of individual pains within the “local world” in which they are experienced. This may facilitate pain management and may be one of the reasons why “...suffering is no longer suffering when it finds a meaning”.

Nevertheless, it seems reasonable to assume that no matter how much pain may be “objectified” and no matter how helpful it may be to attempt to do so, the

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bottom line is that pain, in essence, is a subjective phenomenon. The reasons for this are that pain is necessarily subjectively felt and the response it triggers is cognitively individualized. Cognition may very well include objective factors such as wealth or physical shape but in the end, objective factors only impact the occurrence of pain through an articulation of what they mean for this or that person. In other words, the experience of pain and its fate through pain management are of a prudential nature; that is that an experience can only be painful for someone and successfully managed or not for that same person. Pain is not painful in itself. Pain is painful because it qualifies as such according to individual standards. So the painfulness of pain is not an objective attribute of a given experience but a subjectively relative one:

If the painfulness of pain rested in the character of the sensations rather than in our tendency to revolt against them, our belief that physical pain has something in common with grief, rage and disappointment would be inexplicable.  

This has obvious consequences for circumscribing individual factors that may affect the efficiency of pain management and thereby set its limits. These factors will be subjective in essence or, at least, subjectively influenced. By setting the limits of one's capacity to manage this or that pain, they will thereby set the stage for the possibility that suffering occurs.

**Individual Limits of Management Capacity**

There are four main factors that may either help or impede individual pain management and set its limits that are documented in the literature: duration, hope, meaning and control. These factors are all of a prudential nature; that is that they are all mainly determined and defined according to what they represent for the person in

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pain. The way in which they play out in the occurrence of painful experiences and in their management will therefore vary from one individual to another and from one situation to another. Nevertheless, their overall impact on painful experiences appears to be decisive as to whether or not any given person who is in pain will suffer as well.

The first factor that may influence one's pain management capacity is a temporal one and has two dimensions. First, the duration of a given painful experience seems to be inversely proportional to the success with which pain will be managed: the longer a given pain lasts, the harder it is to manage. So the possible or probable length that is associated with a painful experience may be determinant with respect to whether or not the person whose experience it is will be able to cope. A good example of this would be a contest that would test who can last the longest with red ants all over the body. Contestants may have variable thresholds of pain that will be brought to light by the undetermined length of the contest. In the end, it is likely that the duration of the painful experiences will surpass all of the contestants' respective thresholds. So one temporal way in which pain management may be affected is the sheer length of the painful experience:

Pain above a certain level of intensity and duration has a way of asserting itself in our consciousness such that it causes even the most stoical among us to suffer.46

Another dimension of the temporal factor that may influence pain management is the way in which the continuum of past, present and future is regarded and integrated by the person in pain. To be subjected to this influence or to use it as a

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pain management tool, a person must first have a sense of being in this temporal continuum; that is that the person must have a “historical self”. With this historical self comes a specific understanding of the past, the present and the future that will feed into the subjective appropriation of painful experiences and therefore may impact their management. This dimension of the temporal factor comes across in our discussion on cognitively mediated responses to pain and represents one element that may intensify or mitigate the experience of pain. However, authors like E. Loewy have stressed the importance of the historical self in the experience of pain and suffering. He argues that it is a fundamental requirement for someone to have the capacity to suffer.

…the capacity to suffer entails an ability to realize the future: I am suffering because a stimulus existed before, exists now and may, for all I know, exist in the future. (...) to suffer we must realize that there was a yesterday and that there is a tomorrow.47

It is important to note here that Loewy defines the capacity to suffer as a higher capacity that establishes a primary ethical worth to those who have it and thereby roughly distinguishes human suffering from other kinds of painful experiences. Even though the vertical theory that is here developed is in agreement that the historical self may play a role in the experience of pain and suffering, it does not attribute such a crucial role to it.

The second factor that may influence one’s pain management capacity is hope. To have hope appears to soothe painful experiences. Hope necessarily implies projecting in the future that a given state of affairs or state of mind will get better or will bring about valuable things. Hopelessness, on the other hand, refers to one’s

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dark view on one's future. No hope equals no possible improvement and this lack of possible improvement may render a punctual pain more intense. This is particularly obvious with terminally ill patients whose hope is sometime reduced to merely hope of relief by death:

Suffering has strong connections to hopelessness and despair. (...) We suffer when we realize that no chance for improvement exists or, even worse, that things are likely to get worse instead of better. Shattering hope, for example, is a way of causing people to suffer. 48

The third factor that may influence one’s pain management capacity is the meaning associated with painful experiences. The issue of meaning refers to both the painful experience itself, what it means or represents, and the cognitive individual appropriation of how the whole life situation plays out in trying to make sense of the pain in question. Individual experiences of pain can greatly vary depending on their attributed meaning and “many factors that affect the perceived “meaning” of somebody’s pain (or the perceived meaning of the situation of someone in pain) can magnify or mitigate that person’s distress”. Amongst the most common influences are whether or not the pain occurs as a result of what is interpreted as punishment, bad luck or fate, whether or not the pain means that life will come to an end or will permanently be impaired, whether or not the pain is intended or accidental, whether or not the pain is instrumental to achieving a goal, to protecting something or someone, to showing virtue or heroism, and the list is goes on. In a sense, the issue of meaning is intimately linked to and may be the result of the individual cognitive appropriation of painful experiences that we earlier defined. The meaning of a given pain is therefore extremely variable and malleable. As a result, it may either be one of the best tools for pain management or its worst enemy.

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The fourth and last factor that may influence one's pain management capacity is one's control or impression of control over one's pain. Cassell tells us that "...people in pain frequently report suffering from pain when they feel out of control." The issue of control and Cassell's take on it are particularly insightful for two reasons. First, Cassell implies that there is a relation between pain and suffering that is in line with what we are trying to show here; that is that suffering may stem from an unsuccessful pain management and thus reinforces the relevance to using a vertical approach to articulate their relation. Second, the issue of control may be seen as the most prominent factor influencing pain management since it pervades the definition of the other factors; duration, meaning and hope can all be shown to have a "controlled" dimension or that they are all instrumental to one's goal to keep one's pain under control. The issue of control may therefore have a more direct link with the occurrence of suffering.

To the above four factors that are reported in the literature we can add two more. First, external factors such as medication, massages, counseling, therapy and so forth, may help manage pain. Pending on the type of pain that is at stake, external factors may play a prominent role in pain management as, for instance, anesthetics do with physical pain. Second, we may want to include "acceptance" as a factor or character trait that may influence one's pain management capacity. There is an important distinction to make here between "acceptance" and passive management strategies such as "tolerance". Tolerance refers to the fact that a person in pain is capable of coping with this or that pain whereas acceptance implies the process by which painful experiences are integrated in a way that make them either tolerable,
indifferent or even pleasurable. Thus, acceptance is an active pain management strategy the result of which keeps painful experiences under control. Acceptance as a pain management strategy may be part (and often is) of broader approaches to the management of painful experiences such as psychotherapy or meditation.

The six factors that are described above may not exhaust all possible elements that may affect the pain management strategies that one may use to keep one's pain under control. To have a complete list of possible pain management strategies is however not a requirement for understanding the mechanism that leads to suffering. We already mentioned that the issue of "keeping pain under control" is a significant one. In fact, it may very well be the gate to suffering. If a given pain is successfully managed, it remains under control and the individual whose pain it is will likely cope with it. The other possibility is that one's painful experience may exceed one's self-management capacity and thereby trigger a state of "powerlessness" regarding the pain in question. Powerlessness or the mere impression of being powerless may be brought about through the influence of a wide variety of factors. We listed the main ones above. The point is that once the powerlessness level is attained, painful experiences become more intense and pervade the person as a "whole". It is that holistic state that is attained through one's recognized powerlessness with respect to one's pain that we shall call suffering.

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Suffering: The Assertive Level

Defining suffering as a holistic state of powerlessness with respect to a single or aggregated painful experience may help us articulate Cassell's claim that links one's suffering to one's identity:

I believe suffering to be the distress brought about by the actual or perceived impending threat to the integrity or continued existence of the whole person. 31

To become a threat to one's identity, one's pain must first be recognized as a possible or concrete overpowering force that puts one's identity (the person as a whole) in jeopardy. So suffering may be described as one's holistic state of powerlessness with respect to one's single or aggregated unpleasant experience.

Suffering as Overwhelming Unpleasant Experience

The word "powerlessness" may be problematic to accurately reflect what suffering is, however. The problem is that one may be powerless with respect to one's unpleasant experience and still claim not to be suffering. This is due to the subjective essence of unpleasant experiences that we established earlier. If one does not recognize that one's powerlessness constitutes a threat to one's identity, say, because some hope is still present or because one takes an "accepting" stance regarding one's situation, then suffering may not be triggered. In other words, we might have too quickly concluded that to be powerless with respect to an unpleasant experience means that the situation is totally out of control. Powerlessness may be compatible with some form of control such as acceptance. So in a sense, to be

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powerless does not necessarily imply to be suffering. Another quote from Cassell's work may be useful to find a more appropriate word:

... people in pain frequently report suffering from the pain when they feel out of control, when the pain is overwhelming, when the source of the pain is unknown, when the meaning of the pain is dire, or when the pain is chronic.  

The word that sticks out and may serve our purpose best is the word “overwhelming”. Cassell may be right when he claims that suffering is a state at which unpleasant experiences become overwhelming. The difference between being powerless and being overwhelmed is that the latter implies one's recognition that one's unpleasant experience is out of control whereas the former does not. To “be overwhelmed” has a stronger meaning regarding one’s state of affairs and/or state of mind. Being overwhelmed by a single or aggregated unpleasant experience means that not only one recognizes that one is powerless regarding the occurrence of the unwanted experience but also that the essence of all aspects of what constitutes one’s existence (e.g. one’s relationship with oneself and others, one’s social status, one’s character) may be exposed to and affected by the consequences of being in such a state.

In this sense, not only with suffering comes a threat to one's identity but also come consequences through which the painful experience can directly or indirectly affect the sufferer's physical and mental integrity or personhood. The vertical concept of suffering thus refers to an “overwhelming unpleasant experience” that has reached the stage where one recognizes its capacity to affect one’s personal growth.

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One consequence of framing suffering in such a way is that it seems to imply that suffering is necessarily intense, leaving no room to accommodate milder forms of suffering. "Mild suffering" is however a concept that may be integrated in many ways. According to our vertical framing of suffering, milder forms of suffering could very easily qualified as unpleasant experiences such as pain, discomfort, or disappointment. Framing milder forms of suffering in such a way is compatible with our account of the possible temporal progression of unpleasant experiences. A "mild suffering" state that would not be controllable or manageable may very well reach the suffering level over time. Consider the case of mild torture techniques. For instance, the Japanese had a revealing way of torturing people. The technique was simply to have a water drop fall onto the tortured person's head every few seconds. The key was that the procedure could last for days or even weeks. Over time, what was an unpleasant experience at the beginning became increasingly unbearable and painful and its potential to overwhelm the tortured person grew accordingly. So what would have first been described as "mild suffering" on day one had the potential to reach the vertical suffering level should the length be right (or wrong, depending on the perspective).

In this sense, the problem of accommodating the concept of "mild suffering" does not get in the way of the vertical theory since it may appropriately be accounted for within the family of "unpleasant experiences". Therefore, the specific use attributed to the word "suffering" by the vertical theory does not prevent our accounting for all other types of unpleasant experiences such as pain, mild suffering or exhaustion. The aim of the vertical approach is simply to clearly isolate an

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important dimension of human experience that will be at the heart of our forthcoming ethical reflection. So the concept of suffering that is here developed may not cover the entire territory that our vernacular use of the word. But the cost / benefit ratio of isolating this important aspect of suffering is arguably positive since all experiences left out by the vertical concept of suffering can be reframed and accounted for in our understanding of "unpleasant experience". The cost is thus merely a reassignment of meaning whereas the benefit is to have a sharp concept of suffering that will serve best our understanding of a specific dimension of human experience (overwhelming unpleasant experience) and our reflecting on its ethical relevance.

_Suffering's Assertiveness_

One last word needs to be said on the concept of suffering that was suggested in this chapter. We established that this concept of suffering stresses the "overwhelming" condition for an unpleasant experience to qualify as suffering. The theoretical importance of this is that suffering is shown to assert itself on the sufferer's self-management capacity and thereby may affect the sufferer's whole existence. In this sense, suffering establishes itself as a significant force driving possible personhood modifications. In other words, suffering's assertive nature brings with it possible consequences for who the sufferer is as a person, possible consequences over which the sufferer has very little power (if any). As a result, suffering's assertiveness stresses the possible relevance of personhood consequences to its ethical status, which in turn raises two questions: How do personhood consequences affect suffering's value? What are the normative implications of this perspective?

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Answering these two questions constitutes the main mandate of the next two chapters.

It is now time to take stock of what has been said and to assess whether or not the vertical theory that has been developed meets the criteria that were defined to qualify as an adequate theory of pain and suffering. The criteria were that a theory of pain and suffering should provide for 1) an inclusive definition and explanation of “pain” and “suffering” 2) a convenient and well-defined use of the corresponding words 3) a sharp ontological distinction of the two concepts without overlaps 4) a functional account of the mechanisms by which and with which they are brought about and interact with one another 5) a renewed ethical analysis of their theoretical status and of their possible relevance to applied problems.

The vertical theory has “unpleasant experiences” as its basic common denominator, which is most importantly represented by the sub-category of “painful experiences”.* It further defines suffering as an “overwhelming unpleasant experience”, which qualitatively distinguishes suffering from basic unpleasant experiences. Three levels describe the process by which an unpleasant experience may become suffering. The first level is called the perceptive level and deals with the mere recognition of unpleasant experiences. The second one is the responsive level and addresses the issue of individual management of unpleasant experiences through mainly two types of responses: unmediated and mediated. The third and last one is labeled “assertive” for it shows that the overwhelming essence of suffering asserts itself over the sufferer in a way that has the potential of bringing about

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"personhood" modifications, which is a promising idea to further reflect on suffering's relevance to ethics. In the end, the whole demonstration showed that the experience of suffering is subjectively influenced and that the path from unpleasant experiences to suffering is therefore a prudential one.

The vertical theory adequately met the first four criteria and opened the door to further reflection on the ethical status of suffering to which we shall now turn.

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1 To avoid any confusion, note that "psychological" is used in the broad sense of "mental", which is in opposition and therefore completes the physical dimension of human experience.

2 Even though it may be argued that infants may not have the mental capacity to experience suffering, we refer to the realm of "pain and suffering" in a generic way to avoid confusion by being inclusive and consistent throughout the chapter.

3 A gradation of words corresponding to an increasing intensity of physical pain has been developed. The words, from the least intensity to the greatest, are: mild, discomforting, distressing, horrible, and excruciating. See Melzack, R., and Torgerson, W.S., "On the Language of Pain" in Anesthesiology, 34 (1971), pp.50-59.

4 This comes across the issue of evaluating and measuring pain and suffering. J. Mayerfeld recently published a book addressing in depth the measurement of suffering: Suffering and Moral Responsibility, (1999), New York: Oxford University Press. Mayerfeld's view on the nature and measurement of suffering serves fairly different theoretical goals than ours. His theory broadly defines suffering as "feeling bad" and focuses on intensity measurement to define levels of suffering. Mayerfeld's overall goal is to show that the relief of suffering may be framed as an agent-neutral value, which further feeds into a discussion on the duty to promote such relief. Our analysis of suffering aims at a much narrower definition of suffering that is designed to serve further reflection on suffering's instrumental value. Our overall theoretical goal is to revisit suffering's role in the determination of whether or not there may be a living state rationally and ethically worse than death. The "overwhelming" status that will be attributed to our notion of suffering will serve this purpose best for two main reasons. First, the "overwhelming" status of suffering will enable us to bridge suffering's agent-relative and agent-neutral value by attributing to suffering an objective common denominator that may subjectively fluctuate. Second, the "overwhelming" status of suffering will clearly link suffering's instrumental value to issues of personhood and personal growth which will play a significant role in our assessment of the ethical relevance of suffering in determining whether or not there may be a living state rationally and ethically worse than death. Since our analysis revolves around the "overwhelming" status of suffering, issues of intensities are less important and we will therefore limit our dialogue with Mayerfeld's work to occasional references.

5 Some authors would further argue that mild unpleasant sensations may not constitute suffering at all; that the scope of what qualifies as suffering should therefore not include unpleasant sensations such as embarrassment and discomfort. See Sumner, W., Welfare, Happiness and Ethics, New York: Oxford University Press, 1996.

6 Physical pain is now better understood and is by far the most researched category of pain and suffering. See Melzack, R. and Wall, P.D., The Challenge of Pain, New York: Basic Books, 1983. Nevertheless, our overall understanding of pain and suffering, beyond physical pain, is still in need of more attention.


9 Straight "reluctance" to explore human suffering may also be an important factor. See Quill, T., "Exploring Human Suffering: Why the Reluctance?" in Bioethics-Forum, Spring 10(2), 1994, pp.3-6.


12 This is regardless of the possible occurrence of physical pain (e.g. chest pain or headache) that may accompany the psychological experience. The pain of a broken heart itself is nevertheless psychological.

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We will address the issue of pain management later on in this chapter. We will see that it may play a significant role in determining how pain and suffering are interconnected.


Meyerfeld (1999) distinguishes "objective" from "psychological" suffering. According to his view, objective suffering refers to concrete events of the world such as torture, famine, and slavery whereas psychological suffering points to the subjective experience of "feeling bad". This distinction does not serve our analysis of pain and suffering since our theoretical goal is to reframe the sufferer's experience of pain and suffering in order to explore whether or not the two phenomena can be distinguished from the sufferer's perspective.


J. Bentham, for one, did not make any difference between pain and suffering and between pleasure and happiness. See The Principles of Morals and Legislation, Buffalo: Prometheus, 1988.


This view cuts across the mind-body dichotomy and further provides a sharp distinction: pain is experienced by the body, suffering by the mind.


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32 Cognition understood as the "act of knowing" (Oxford English Dictionary), which implies the process by which we develop a personal understanding of something and by which we articulate our understanding of it into our individual reality.

39 For a compelling discussion on "faith as a character trait", see Fromm, E., Man for Himself, London: Routledge & Kegan, 1949.
40 Meyerfeld, (1999), p.34.
42 As stated in note #5, the issue of evaluating and measuring pain and suffering will be more thoroughly addressed in the next chapter.
44 Prudential theories usually attempt to determine the criteria of what constitutes a good life and/or happiness for someone. We shall here use the word "prudential" in a similar sense but applied to pain and suffering and to broadly refer to "what something represents or means for someone".
53 "Personal growth" is here understood broadly and may be roughly defined as "the process by which any or all dimensions of our lives evolve from one state to another". The idea of personal growth and its relevance for the present reflection will be discussed more in depth in the following chapters.

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Valuing Suffering
In the last chapter, we circumscribed a specific understanding of the suffering experience that focuses on the phenomenon when it becomes “overwhelming”. One important feature of this narrowed focus on suffering is its assertiveness on the sufferer’s life. We established that the possible consequences that follow from such a state could affect the essence of the sufferer’s personhood independently of the sufferer’s will since the suffering experience entails powerlessness on the sufferer’s part. This reflection on the “overwhelming” dimension of suffering may have interesting ethical ramifications that could lay down the basis of our discussion to come on the acceptability of euthanasia and assisted suicide.

*Suffering’s Normative Essence*

At the outset, it is interesting to note that the “overwhelming” dimension of our understanding of the suffering phenomenon may convey a certain degree of normativity in itself. This observation stems from two idiosyncratic features that an “overwhelming” state of suffering displays. First, an “overwhelming” suffering shows an enhanced communicability. Even though it is true to say that one may suffer in silence or voluntarily hide one’s suffering, it is also necessary to acknowledge that in order to “hide” one’s suffering one requires a certain degree of self-control over one’s state. We saw that our concept of suffering is, by definition, incompatible with such a self-controlled state. Therefore, it may be safe to assume that an “overwhelming” suffering is more likely to trigger external signs that are easily recognizable. One’s communication of one’s suffering is thereby enhanced.

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In addition, the “overwhelming” dimension of one’s suffering may significantly feed into one’s inclination toward seeking external help, which further increases the likelihood that the suffering state will be communicated. Thus, the passive and active communication of the suffering experience is significantly reinforced when confined to its “overwhelming” manifestation. In other words, by being “overwhelming”, suffering is in what could be defined as a particularly acute communicative predisposition. So if the act of communicating something can be shown to have a normative essence, then an overwhelming suffering state may be understood as having an enhanced normativity compared to other milder and/or self-controlled unpleasant experiences or states.

Second (and in relation to the first reason), the “overwhelming” status of suffering may increase the likelihood that compassion and sympathy will be triggered in others. This is so because, on the one hand, our concept of suffering is arguably intense and, on the other hand, it is easily recognizable and / or likely to be communicated. The normative twist of this second reason stems from the theoretical possibility of demonstrating that the type of feelings compassion and sympathy represent is normatively binding (at least to a certain extent). So it seems that the way we framed our understanding of suffering somewhat stresses its normativity through an enhanced communicability and a higher probability that normative feelings will be triggered in others. But these two reasons require further explanation.

The first reason why suffering possesses an enhanced normativity when the phenomenon is defined as “overwhelming” may be best explained with the use of

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metaphors. Let us start with a digression on Wittgenstein’s private language argument. Wittgenstein has demonstrated the impossibility of private languages. Roughly, his argument is that there can be such a thing as a language if and only if there is something communicated from one individual to another. One way to interpret this argument is to join C. Korsgaard in saying that “…meaning is relational because it is a normative notion: to say that X means Y is to say that one ought to take X for Y”. In this sense, the communication of a specific meaning can be understood as a normatively binding act.

Our concept of suffering may be understood along these lines. The parallel is that with suffering comes a meaning (e.g. unpleasantness, powerlessness, distress and the like) that is understandable for a great majority. Suffering is recognizable and can be communicated in many ways either voluntarily or involuntarily. Therefore, “being in a suffering state” can reasonably be understood as “being in a state that means suffering”. This communicative disposition pinpointing suffering’s presence is an intrinsic feature of the phenomenon and this may be one of the reasons why when “suffering exists, [it] makes itself known, and warrants relief”. So the communicated meaning that comes with suffering may be viewed as implying that others ought to understand it as such; that is that others ought to understand suffering as a state in which relief is wanted and sought. In this sense, suffering may be viewed as normatively binding (at least to a certain extent).

So our concept of suffering emphasizes its “communicability” in that it situates the phenomenon in a state (overwhelming) that has the most potential to

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communicate its presence either passively through third party recognition of its external signs or actively through concrete communication on the sufferer's part (e.g. verbal). This makes our specific type of suffering acutely difficult to hide since either help is likely to be sought by the overwhelmed sufferer or, alternatively, obvious signs of distress and powerlessness will make it easily recognizable and will signal its occurrence. Contrariwise, milder types of suffering\(^3\) that are not out of self-control can be more easily hidden or experienced alone or in silence. By limiting the concept of suffering to its overwhelming manifestation we circumscribe an important dimension of the phenomenon that is acutely recognizable and communicable. So if and when coupled with a normative interpretation of "meaning", this is one idiosyncratic feature of our narrowed focus on suffering that may contribute to stressing its normative essence.

However, the normativity that may be associated with "meaning" in general may very well apply to any meaning and not just suffering's meaning. This appears to strip the argument of its specific relevance for our reflection on suffering. But even though the blanket idea that meaning may be normative applies to all communicated meanings, the specific contents that are communicated may contribute to "normative fluctuations" and thereby help us distinguish and better situate the specific normative essence that may be associated with a communicated state of "overwhelming" suffering. Another metaphor that somewhat follows from the reflection on suffering's recognizable and communicable essence could be useful to clarify this point.

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If and when an overwhelming unpleasant experience is recognized and/or communicated, the content of its outward meaning may reasonably be paralleled with a cry for help from, say, a drowning person. We established that suffering means that someone is overwhelmed by an unpleasant experience that concretely threatens the intactness of her identity or personhood. In a similar (but still possibly different) way, a drowning person is also overwhelmed by a situation that concretely threatens the intactness of her being a person (or of her very existence). The dilemma here is whether or not someone who sees a drowning person is in a normative situation per se; that is mainly whether or not this someone ought to recognize the situation as normatively binding and act accordingly.

The normative question “Is there a duty to help?” that naturally arises from this viewpoint is a complex one that is well debated amongst ethicists of different theoretical allegiances. There is no need, however, to articulate all the arguments of the debate. Suffice it to say that most authors would agree that if a person who sees someone drowning is in a position to help her, this person “ought” to help her. It may be safe to assume that this is an unproblematic claim.

In any case, we may even safely go further in saying that the actual capacity to help does not really affect the normative nature of the experience. It is the very sight of such a situation that grounds its basic normativity. Regardless of whether or not the person witnessing the event is indeed in a position to help, the normativity of the situation resides in the hypothetical truth that the witness would want to do something should she have the means to do so. The actual capacity to intervene is therefore

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secondary to the normativity of the sight (even though being in a position to help may increase the normativity of the situation). The mere awareness that someone else is in such a distressful situation is normative in itself, regardless of whether or not this normativity results in concrete actions. In this sense, “seeing a person drowning” may be regarded as a normative experience per se.

This is where a parallel with suffering may be drawn. In a way, we could view suffering as a cry for help and frame it as a “normative experience” regardless of whether or not people hearing (or seeing) it are in a position to do something about it. In this sense and in parallel with the drowning metaphor, “seeing a person suffering” possesses a normative essence similar to the one that accompanies the sight of a “drowning person”. So the very fact that our concept of suffering has a high level of communicability is reinforced by the content of the communicated meaning and both factors situate suffering’s normative essence in a distinguishable category. But the normativity that is here at stake is not exclusively rooted in the communicated meaning. It also partially stems from the emotional / cognitive response that is likely to be triggered in the individuals to whom suffering is communicated. This takes us to the second reason why our “overwhelming” approach to suffering stresses its normative essence.

The second reason is that not only “seeing a person suffering” may be said to be normative in itself, but also that the very sight or recognition of suffering is likely to trigger sympathy, compassion or pity in those becoming aware of the suffering state. It is reasonable to assume that this type of emotional / cognitive response will have a

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higher rate of occurrence when faced with the type of suffering that is here analyzed. So the second reason supporting the claim that our framing of suffering stresses its normative essence therefore relies on the theoretical possibility that one's spontaneous response (e.g. sympathy) to someone else's suffering be normative (at least to a certain extent). This idea is already present in the literature either directly or indirectly. For instance, T. Nagel has suggested compelling arguments explaining why feelings like sympathy may be best understood as normatively binding:

"Sympathy is not, in general, just a feeling of discomfort produced by the recognition of distress in others, which in turn motivates one to relieve their distress. Rather, it is the pained awareness of their distress as something to be relieved."

This line of argument is also somewhat echoed in C. Korsgaard's work. She interestingly claims that when we look at something bad (in this case, when we look at an overwhelming suffering state), we may want to turn away from the sight if our recognition of an evil comes with the knowledge that we cannot do anything about it.

In a sense, Korsgaard attempts to describe a spontaneous normative response to the sight of something deemed negative or awful, which is in line with our point on

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feelings like sympathy. This may partly explain why the sight of people’s suffering sometimes trigger a flight or denial reaction: witnessing suffering against which we can do nothing may partly be unbearable because of the normative feelings it triggers in us.

Another interesting account of our reaction when faced with suffering can be found in J. Mayerfeld’s work. He claims that we tend to either deny or downsize other people’s suffering that we may witness because it constitutes a reminder that we are vulnerable to experiencing it as well. Mayerfeld calls the process by which we deny or downsize the other people’s suffering “falsification” and grounds it in the fact that:

Deep in our unconscious, we think that the existence of suffering anywhere means that we, too, are going to suffer. (In other words, there is a part of us that is unable to distinguish between the existence of suffering anywhere and our own suffering). And so the best way to assure ourselves of our safety is to deny that there is or has been any suffering going on at all.5

Mayerfeld’s point clearly shows that suffering strongly affects us whether or not it is our own. When only witnessing other people’s suffering, the denial reflex that we may have is a clear sign that the sight of suffering comes with normative force and translates into the simple fact that something “ought to be done” about it; whether it is fleeing its effects on us or attempting to alleviate it. From this perspective, our point on suffering’s normative essence is further supported.

However, the point made by Korsgaard and Mayerfeld with respect to our tendency to “flee” or “deny” third party suffering may allow more room for the witness to disregard the sight than our analysis of suffering would like to accommodate. This

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may be partly due to the fact that they both refer to an "awful or evil sight" that can accommodate a wider variety of unpleasant experiences, which in turn opens the door for milder types of suffering to enter the analysis. In this sense, our concept of suffering's normative essence may be more uniform than the wide range of possible types of suffering or awful experiences that Korsgaard and Mayerfeld refer to. From this viewpoint, our concept of suffering may be more binding in terms of requesting a response than the common broad framing of suffering that is present in the literature.

So our claim regarding suffering's normativity is fairly straightforward. On the one hand, our concept of suffering enhances its being recognizable and communicable and, on the other hand, an "overwhelming" suffering is more likely to trigger feelings of sympathy or compassion. Both features are idiosyncratic in our narrowed concept of suffering and this stresses its normative essence. So the "overwhelming" status that we attributed to the suffering experience reveals an idiosyncratic normative essence in that it situates the sufferer in a concretely threatening situation; communicates (most likely) the sufferer's distress to others; and induces a response in the people to whom suffering is communicated, which may be understood as normatively binding.

This preliminary step of our reflection on suffering's ethical ramifications leaves important questions unanswered, however: What should concretely be our response to suffering's normativity and to what extent? How does this normativity translate into prescriptions for action? In other words, what ought to be done? Should there be a unilateral duty to relieve suffering at any price and regardless of the circumstances?

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Are all individual states of suffering objectively equal? Or can (and should) we determine criteria to evaluate suffering states so that we may establish degrees of ethical relevance, which in turn could result in prescriptive variations for action? In other words, what does suffering's normativity entail?

Intuitively, it seems plausible to think that we have to be able to differentiate (from an ethical viewpoint) the "overwhelming" suffering that, for instance, may be triggered by the frustration and distress felt by a baseball fan when faced with the inevitable missing of an important game from the suffering that may be induced by the existential and physical pain that may be part of a cancer patient's life. It is reasonable to accept as a basic premise that our valuing suffering should be able to account for the wide spectrum of possible individual fluctuations and determine criteria to distinguish between types of "overwhelming" suffering. Theoretically, there appears to be no obvious difference between the above two states of suffering. According to our definition of suffering, they would both refer to an "overwhelming unpleasant experience". In reality, however, this is at best counter-intuitive. So it seems that our analysis of suffering's value will only be compelling if it equips us with deliberative tools to use discretion in assessing case-specific suffering states. By taking a closer look at the process by which value may be attributed to suffering, we may find a solution to this problem since it may be possible to account for the disparities between "types" of suffering through an analysis of how and why they part ways in the valuing process.

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This chapter will address the issues associated with the valuing process that we may use to assess suffering states. By getting a clearer view of the possible values that suffering may have and of the valuing process by which we define them, we will put ourselves in a good position to sort out suffering states and further reflect on what ought to be done when facing such a state. The clarification of suffering's value and the valuing process will be this chapter's agenda whereas the ethical analysis of what "ought to be done" will be next chapter's mandate.

So we will here discuss the issue of how we may value suffering. The analysis will be twofold. On the one hand, we will determine what the nature of suffering's value may be and, on the other hand, we will discuss how we may restrict the valuing process in a way that will enable us to account for individual fluctuations of the phenomenon and thereby validate the associated value.

*Suffering's Value*

Theories of value usually are theories of *intrinsic* value. They make claims about what is to be considered as a good in itself (e.g. actions, states, events). For instance, welfarism\(^8\) upholds that human welfare is an intrinsic good (in this case, the only intrinsic good there is) since it is valuable whatever else might be true. So an intrinsic value will be attributed to something deemed valuable in itself. Intrinsic goods are to be distinguished from things that are *instrumentally* valuable. Something is instrumentally valuable either because it is a *means* to intrinsically valuable ends or because it is a *necessary condition* of realizing intrinsic value. For example, physical training can be a means to health, which can be seen as intrinsically good. In the

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same line of thought, medical treatment can be a necessary condition to saving a human life, which can be understood as an intrinsic good. On both counts, the attributed value is of an instrumental nature. So things can be valued either intrinsically or instrumentally; the latter either as means or as necessary condition.

In most theories of values, the vast majority of things will only have an instrumental value. The hedonist theory⁹, for one, claims that the only thing that has intrinsic value is the simple, qualitative mental state of pleasure. Everything else is understood as either valueless if it does not promote pleasure; negatively valuable if it promotes unpleasant things (e.g. missing an important game for a baseball fan); or instrumentally valuable if it is a means or a necessary condition of pleasure (e.g. missing an important game for the baseball fan's life partner who does not like baseball and wishes to do something else as a couple than watch baseball). Some theories will consider certain things as being both intrinsically and instrumentally valuable. For instance, pluralist theories¹⁰ of good may see one good, say, human life, as intrinsically valuable for what it is and instrumentally valuable to realizing other goods (e.g. friendship) at the same time. So the nature of values is either intrinsic or instrumental. This basic framework can be used to reflect on suffering's values.

We saw that suffering is caused by one or many unpleasant experiences that overwhelm one's self-management capacity, thereby acquiring the power to affect one's personhood. This mechanism reveals two possible ways in which suffering may be valued. Suffering may be valued according to an evaluation of what it is in itself (its ontological status or essence) or it may be valued with respect to its role in

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bringing about consequences such as personhood modifications. The former value that we may attribute to suffering would be an *intrinsic* one whereas the latter would correspond to an *instrumental* value. So our specific concept of suffering may have two distinct values: intrinsic and instrumental\(^\text{11}\).

*Suffering's Intrinsic Value*

Our concept of suffering's intrinsic value is limited by the way we framed it. Suffering is here understood as an "overwhelming unpleasant experience". Thus, this framing of suffering necessarily rejects the possibility for it to have a positive intrinsic value since the chain of events that leads to suffering requires a negative intrinsic value. In fact, our framework enables suffering to occur if and only if an experience is 1) deemed unpleasant and 2) overwhelming (out of self-control). Otherwise, the experience is either best described as something other than suffering (something not "unpleasant", which would not meet requirement #1) or it is not powerful enough to qualify as suffering *per se* (i.e. the experience is successfully self-managed, which would fail to meet requirement #2). So to attribute a positive intrinsic value to suffering would therefore be in contradiction with the very nature of the phenomenon as we defined it. The only intrinsic value that suffering may have according to our present understanding of it is therefore a negative one.

Suffering's negative intrinsic value is unproblematic and intuitively sound. No real challenge to this idea can be found in the literature. Whenever suffering occurs, it is usually seen as something to be relieved and its ethical status ranges from "merely bad" to "evil", depending on the context in which it manifests itself and the force with

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which it does so. But an important question arises from suffering's negative intrinsic value: What if it is not alleviated? What happens then? The positive impact that suffering may have on the sufferer's life is fairly well documented. For instance, the issue of "redemptive" suffering has been an important topic for centuries of religious scholarship\(^1\).

However, the issue of suffering's negative consequences has been given much less attention in the literature. Of course, suffering's intrinsic badness, the need for its relief and the ethics of minimizing its occurrence and/or duration (if not of any use such as in a redemptive interpretation) are all very present in the reflection on suffering. However, the pervasive negative side of a persistent suffering state has not been thoroughly analyzed nor articulated in a framework where it is at the forefront of the set of issues addressed. Interestingly, the need to understand the negative consequences of a persistent suffering experience is nevertheless clearly stated in the literature and allusions to what suffering does over time to the sufferer are numerous across disciplines. But still, little can be found in terms of a concrete analysis. E. Cassell's words on the matter are as follows:

> But what happens when suffering is not relieved? If suffering occurs when there is a threat of the person or a loss of a part of the person, then suffering will continue if the person cannot be made whole again. Little is known about this aspect of suffering.\(^2\)

Furthermore, the importance of suffering's duration may even raise the question whether or not our concept of suffering's intrinsic value is of any relevance to its ethical status. The idea behind this point is the following. Granted that suffering is intrinsically bad according to how it is brought about (i.e. unpleasant experience,

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which becomes overwhelming). However, given the fact that suffering is "overwhelming" by definition, the experience can hardly be experienced without bringing about consequences in the sufferer's life. This may either take the form of a positive (e.g. redemptive) or a negative (e.g. irreparable loss either physical or psychological) contribution to the sufferer's life. So it seems that as soon as suffering's duration qualifies as "significant", its impact on the sufferer's life is almost inescapable. Our point here is that with our narrowed concept of suffering, duration is already significant when the unpleasant experience reaches the suffering threshold. As a result, our concept of suffering can barely avoid either serving something good or contributing to something bad. The theoretical possibility that our narrowed focus on the suffering experience might be instrumentally neutral is therefore improbable if not impossible (though concrete examples may be found such as if suffering would be relieved almost immediately; its instrumentality may become negligible).

In this sense, the relevance of our concept of suffering's negative intrinsic value fades away as its instrumental importance emerges. Even though this point does not annihilate the relevance of acknowledging suffering's negative intrinsic value, it certainly reveals how important the instrumental side of our concept of suffering is. Cassell's question becomes not only acutely relevant but also central to our analysis: What happens when suffering is not relieved? This stresses the importance of our concept of suffering's instrumental value to which we will now turn.

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Suffering's Instrumental Value

As we just implied, it seems that our concept of suffering may be compatible with both a positive and negative instrumental value. On the one hand, if suffering can be shown to bring about something that has positive intrinsic value, then it would have a positive instrumental value. There are many ways in which our concept of suffering could have a positive instrumental value. Once again, the concept of "redemptive suffering" that we mentioned earlier is one example of the possibilities for our concept of suffering to have a positive instrumental value (that is, if we accept the rationale behind this specific instrumental value). On the other hand, if we can demonstrate that suffering also brings about states or things that would have a negative intrinsic value (or undermine something that has positive intrinsic value), then we could conclude that our concept of suffering may also have a negative instrumental value. But to unify our analysis, we may be best advised to identify a single "good" that our concept of suffering could either instrumentally serve (positive value) or instrumentally undermine (negative value). In other words, we need to define a single reference point against which any suffering experience (within the limits of our framework) could be valued.

We established in chapter 2 that a suffering state only occurs in relation to individual lives; that is that suffering is only suffering if it is so for someone. The personal (or prudential) nature of suffering frames its intimate link with individual lives as a sine qua non condition of its occurrence. Suffering is a personal experience that can only develop from an individual standpoint. Thus, according to our understanding of how suffering is brought about, an "impersonal suffering" would be at best a

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contradiction. Since suffering's essence is personal and since the experience is subjectively brought about, it may be appropriate to rely on a "personal" good against which suffering's instrumental value could be assessed. It is important to note that this approach does not rule out the possibility that an "overwhelming" suffering could ultimately serve or undermine goods that may be framed as "impersonal" such as social justice. It is only meant to pinpoint that in order to maximize the theoretical benefits of our analysis of suffering, we are best advised to rely on a "good" that is intimately linked to the personal dimension of the sufferer's experience. Thus, we may assume that, in our case, assessing suffering's instrumental value will come down to a process by which its impact on a "personal good" will be evaluated. So what could / should this personal good be?

Obviously, suffering cannot really qualify as a personal good itself. But given suffering's negative intrinsic value, it may be argued that a personal good could stem from the suffering experience if approached by the negative; that is by framing suffering's relief as a personal good. This point is well taken. However, we already mentioned that suffering is compatible with a positive instrumental value, which may affect the ethics of its relief. This means that, from a certain viewpoint, its relief will not necessarily serve the good. For example, advocates of redemptive suffering would argue that, in appropriate circumstances, only the lack of relief will enable suffering to generate redemption. According to this viewpoint, suffering's relief cannot be a personal good per se. Consequently, suffering's relief appears to be an inadequate anchor point to articulate the full range of instrumental values suffering may have. Our current effort to understand suffering's instrumental value needs a

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personal good that may be either served (i.e. positive instrumental value) or undermined (negative instrumental value) by suffering. In chapter 2, we introduced the idea that the concept of “personhood”, broadly understood, could play this theoretical role.

The idea is that suffering’s instrumental value may be anchored to an assessment of “personhood modification” or “personal growth”, which may be brought about by the suffering experience. We very broadly defined personal growth as “the process by which any or all dimensions of our lives evolve from one state to another”\(^\text{16}\). In a nutshell, by framing personhood modification as the “personal good” to be either served or undermined by suffering, we may equip ourselves with sufficient means to distinguish suffering’s positive instrumental value from its negative counterpart. The rationale is the following. If a given suffering state represents a means or a necessary condition to attain a “wanted” or “valued” personhood modification, then it would have a positive instrumental value. Contrariwise, if the suffering state serves an opposite purpose (i.e. either impairs positive growth or generates negative growth), then it would have a negative instrumental value. Finally, if the suffering state is neutral (i.e. does not affect personal growth at all), then its intrinsic value is the only value that matters and we earlier established that with duration in time, the experience will inevitably become instrumental in the sufferer’s life. From this perspective, our concept of suffering leaves little room for the experience not to be either positively or negatively instrumental in the sufferer’s life. So with “personhood modification” as the anchor point, our concept of suffering clearly is compatible with both a positive and a negative instrumental value.

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Thus, we suggest that suffering's instrumental role can be anchored to "personhood modification" or "personal growth". No matter how the suffering experience unfolds, it is more than likely that the sufferer will learn, change, modify her bodily / psychological identity, or reshape any other elements that are constitutive of "who she is" (e.g. relationships). We can group all these elements that constitute who we are as persons under the label "personhood". In this sense, we may anchor suffering's instrumental value to this fundamental dimension of human experience and separate its positive and negative sides by an assessment of what was, is, or will be brought about in terms of personhood modification.

It is important to note here that other reference points to evaluate suffering's instrumental value could be preferred. The hedonist theory, for one, would probably reject\(^1\) the possibility that suffering could have a positive instrumental value since its reference point is the basic psychological state of pleasure\(^2\). However, the choice of "personhood modification" may be particularly interesting for our reflection since it is especially relevant to core issues of the euthanasia and assisted suicide debate such as dignity, autonomy, and identity. In addition, the relevance of this choice may also extend to other approaches to suffering like the religious frameworks in which suffering constitutes a "redemptive" instrument. So it seems that "personhood modification", broadly understood, is one of the best anchor points we may use to assess our concept of suffering's instrumental value since it is broad, malleable and encompasses various ethical reflections on the subject. For these reasons, reflecting on suffering's instrumental value through an analysis of its possible contribution to the personal good that is embodied in "personhood" may be a promising approach.

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Another interesting aspect of our framework is that it clearly makes room for suffering to have a negative instrumental value. We earlier mentioned that the positive instrumental value that suffering may have has been given a lot of attention in the literature, especially in religious scholarship. However and most interestingly, we also stated that very little attention has been given to the possible role that suffering's negative instrumental value may play in an ethical reflection on the phenomenon. Most of the attention was devoted to either suffering's instrumental worth (or positive instrumental value) or suffering's intrinsic badness (or negative intrinsic value). Paradoxically, it is not unusual to find in the literature comments that point to suffering's instrumental badness. But the reflection on this aspect usually falls short of a complete analysis of this dimension of suffering. Our approach to suffering may therefore yield interesting results with respect to an area of understanding that is still incomplete, though clearly and widely recognized.

Consider the following excerpts taken from three different disciplines: philosophy, literature and anthropology. They all point in the same direction: the possible negative impact suffering may have on the sufferer's life. E. Loewy, a philosopher and physician, first pinpoints the lasting negative impact that a suffering state stemming from unmet social needs may have:

When social needs go unmet, suffering will endure and will be intense. Persons unable to develop their talents and unable to develop their individual social selves to the fullest will be frustrated, unsatisfied, and disgruntled; they will have an often lifelong sense of suffering. (...) Furthermore, persons without proper health care are often unable to develop their talents or pursue their interests (the person with poor vision, the diabetic as well as almost all afflicted with chronic disabilities), are consequently frustrated and through this knowledge suffer all their lives.19

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M. Ondaatje's words convey a similar meaning, but this time through a literary description of the suffering that a lost love may generate and the possible negative impact of its duration:

"We will never love each other again. We can never see each other again". "I know", he says. The night of her insistence on parting. She sits, enclosed within herself, in the armour of her terrible conscience. He is unable to reach through it. Only his body is close to her. "Never again. Whatever happens". "Yes". (...) Now there is no kiss. Just one embrace. He untugs himself from her and walks away, then turns. She is still there. He comes back within a few yards of her, one finger raised to make a point. "I just want you to know. I don't miss you yet". His face awful to her, trying to smile. (...) "You will", she says. From this point on in our lives, she had whispered to him earlier, we either find or lose our souls. How does this happen? To fall in love and be disassembled.20

Finally, consider the words of anthropologist A. Kleinman depicting how the contemporary issues of pain and suffering are wrongly dealt with from a "means" perspective and not from a "human ends" one:

Suffering is not just expressed but constituted through lay and expert discourses on its sources and consequences. (...) In the contemporary discourses on pain or other forms of suffering – expert and popular – the idea of suffering has been attenuated, sometimes trivialized, and at times expunged altogether, although it may remain resonant in the personal and family encounter with suffering. Neither in the biomedical research literature nor in the pain clinic does the suffering of pain patients and their intimate social circles receive much attention as such, that is, as a moral burden or a defining existential experience. Pain as human suffering in the dominant institutions that deal with it in our times is a question of therapeutic means – analgesia, surgical procedures, rehabilitation, psychotherapy – not of human ends.21

Whether through the life consequences of the first excerpt, the intense suffering of a lost love in the second or the suffering that may accompany physical pain defined in the last one, the instrumental nature of the suffering experience reveals itself and

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clearly demonstrates the possibility for it to be negative. The three excerpts together give an idea of the wide spectrum of possible ways in which suffering may be instrumental in shaping and/or impairing one's personhood. Suffering's negative instrumental value is therefore an important element of the experience to be reckoned with. Furthermore, this aspect of the suffering experience may be of crucial importance when we are faced with specific issues such as the acceptability of euthanasia and assisted suicide. To further clarify the implications of what we so far said, it may be relevant to analyze concrete examples. So let us go back to the examples of the baseball fan and the cancer patient.

Bob is a devoted baseball fan. He knows everything there is to know about the game and he religiously follows the performance of his preferred team. The regular season is about to end and his team is in the race for a place in the playoffs. Nothing is certain but there is one crucial game coming soon and the stakes are high. Obviously, our baseball fan is very excited about it and since he never misses a game, he has the strong intention to attend the ball game as usual (i.e. he has season tickets) and to be part of what constitutes, for him, an important dimension of who he is. Moreover, his team has not been in the playoffs for more than three decades and the coming game may therefore be a historic moment. He talked about it with his friends who share the same interest and even bet some money on the outcome of the game and the season. This is very important for him and it is, from his perspective, a defining moment of his life. However, two days before the game, his wife tells him that she counts on him to accompany her to a social event on the same day of the game. The social event is very important to his wife and she makes it clear
that everyone attending the event will be accompanied and so will she. "Sell or give the tickets", she says to him. "I put up with your baseball all the time and it is your turn to do something for me". Let us say for the argument's sake that he has no choice but to give up the idea of going to the game and being part of an event that is constitutive of whom he is. As a result, he is overwhelmed by the unpleasant experience of not going to the game and suffers a great deal from being cut off from the possibility of taking part in this important ritual.

David has cancer. He was diagnosed with prostate cancer three years ago and underwent a series of tests and treatments, including chemotherapy. Unfortunately, the cancer has spread to other parts of his body and it is now attacking his bones. The physical pain is very intense and the morphine that is given to him has a limited effect on his pain and numbs him completely. He is in constant pain and many important features of who he is are impaired due to the morphine (e.g. speech). He is confined in bed and his attending physician has evaluated his life expectancy to be between two and four months. David is a fighter and is very positive. For a long period of time, he coped with his illness with grace and dedication to enjoying life and his relationships with his family and friends. But recently, David reached his limit and his debilitating situation now overwhelms him. He suffers a great deal from the uncontrollable physical pain and the slow loss of who he used to be and what he used to have and do.

At first glance, it seems natural to draw a line between Bob's and David's respective suffering. Intuitively, they have to be qualitatively different. But it seems

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that our concept of suffering equally applies to both: overwhelming unpleasant experience. However, the difference may reside in the instrumental analysis that we can make of both suffering experiences. For instance, Bob's suffering may very well serve his personal growth, say, by turning him into a more caring husband or by making him realize that there are other things of interest in the world such as social events. By going through the suffering of having to miss a crucial baseball game, he may develop a new understanding of life and of who he is. But let us assume that Bob wants to avoid this suffering since he believes it will not serve any good and reaches out for relief.

David's case is more extreme. It is the end of his life and he is going through a degenerative process, which will take him to his grave. He is well aware of it and accepts his death. However, he has reached a point where the problem is the actual decay of the person he used to be, his capacity to enjoy his relationships, and so on. In a nutshell, he is overwhelmed by the slow loss of everything that was constitutive of "David". As we said before, David is a positive person and for a long period of time he saw his illness and the consequences that come with it as a challenge and a learning opportunity. But he now has reached the point where he turned to his attending physician and said: "I just can't take it anymore. There is no point, from my perspective, in living the two to four months to come.". The life and death situation seems to distinguish David's suffering from Bob's. However, as in Bob's case, it may be possible to find the instrumental positive value of David's suffering's state. We could say, for instance, that from a "human perspective", David's experience could bring about valuable things such as rising to the occasion and showing dedication to

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life and/or becoming a role model for courage in the face of adversity. But once again, the issue is that David wants to avoid this suffering since he believes that it will not serve any good and reaches out for relief.

Both examples therefore appear to be indistinguishable. They are compatible with both suffering’s positive and negative instrumental value since both suffering states can be viewed as either serving or undermining their respective personal growth. The positive instrumentality may be more obvious in Bob’s case, but even in David’s, we established that it may be possible to come up with a rationale that would support his suffering’s usefulness in serving his “personhood”. But Bob and David seem to agree on the fact that there is no positive instrumentality in their respective suffering to come and they want to avoid it. Furthermore, they also appear to agree that their respective suffering would be instrumentally negative, that is that it would attack and undermine their “personhood”, which is the pivotal point of our assessment of suffering’s instrumental value. However, from an external standpoint, it seems that these two examples are intuitively very different. So how can we distinguish them?

The key problem here is that suffering is a personal experience, which stems from a subjective determination. So according to our analysis of the phenomenon, Bob’s suffering is not any less suffering than David’s. They both are overwhelmed by an unpleasant experience. The personal nature of suffering and its individual fluctuations cannot be questioned. If someone claims to suffer, who are we to deny that it is, indeed, suffering? We can only accept that individuals have different

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thresholds and that even though this or that situation may not be particularly challenging from one viewpoint, it may very well be from another.

However, this does not mean that the people witnessing the suffering state cannot have a say in the *valuing process*. In other words, we can and should separate suffering's *nature* from its *value*. So even though the determination of whether or not Bob and David suffer is similar (i.e. overwhelming of a personal or subjective threshold) and cannot be challenged, their identical evaluation of their respective state may be challenged from an observer's viewpoint. So the issue is therefore to determine what criterion(a) would have to be met for the valuing process to be acceptable.

One way to go about this would be to subject the sufferer's evaluation to a "validation" or "epistemic" criterion. If the personal evaluation of suffering's instrumental value is validated, then the instrumental value may be empowered with prescriptive and normative force accordingly\(^2\). If not, then the instrumental value should be revised with the help of, say, a deliberative process that would take into consideration different viewpoints, including the sufferer's and relevant parties' (e.g. family members). The valuing process of suffering states would therefore be restricted by a pre-defined epistemic criterion, which could thereby reinforce its corresponding normativity. By striking a balance between a subjective determination of suffering and an epistemic criterion for validation of its instrumental value, we would avoid the theoretical possibility that intuitively sound discrepancies between different suffering states could not be accounted for. Thus, we need a criterion that

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will insure that this or that valuing process with which a given suffering experience is evaluated is plausible to the point of being “reasonably” rejection-proof. In this sense, we are after a criterion that would provide some objectivity to our valuing process. So what could / should this criterion be? T. Nagel developed a criterion for objectivity that is more flexible than the scientific requirements for objective truth, which may constitute a solution to our problem.

**Nagel's Objective Tolerance**

In *The View from Nowhere*, Nagel starts his reflection by saying that his effort is devoted to “…a single problem: how to combine the perspective of a particular person inside the world with an objective view of that same world, the person and his viewpoint included.” This is a problem because Nagel sees the objective and subjective viewpoints as in essential tension: a tension that both demands and resists resolution. According to Nagel, objectivity is a matter of degree; there are more and less objective viewpoints. Nagel’s words are as follows:

A view or form of thought is more objective than another if it relies less on the specifics of the individual’s makeup and position in the world, or on the character of the particular type of creature he is. The wider the range of subjective types to which a form of understanding is accessible — the less it depends on specific subjective capacities — the more objective it is. A standpoint that is objective by comparison with the personal view of one individual may be subjective by comparison with a theoretical standpoint still further out. The standpoint of morality is more objective than that of private life, but less objective than the standpoint of physics. We may think of reality as a set of concentric spheres, progressively revealed as we detach gradually from the contingencies of the self.

This reflection by Nagel followed an interesting explanation of why “objectivity is a method of understanding…”.

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To acquire a more objective understanding of some aspect of life or the world, we step back from our initial view of it and form a new conception which has that view and its relation to the world as its object. In other words, we place ourselves in the world that is to be understood. The old view then comes to be regarded as an appearance, more subjective than the new view, and correctable or confirmable by reference to it. The process can be repeated...25

This then is the difference between objective and subjective viewpoints. It seems that Nagel wants to argue that we need to adopt both viewpoints though we can never succeed in rendering them compatible. Even though the tension between them cannot be resolved, we must make an effort to overcome this difficulty. Nagel seeks to convince his reader of this by discussing various examples of situations in which we want to attain objectivity and know we cannot get it at the same time. This is particularly relevant to our specific concerns regarding the valuing of suffering states. One of Nagel's examples is especially revealing in this sense.

The example in question concerns the search for autonomy, which is particularly present and much debated in the contemporary bioethics literature. Nagel's reflection focuses on practical autonomy, which is the desire to form one's practical projects and choose actions on the basis of principles which one can understand and judge to be correct (as opposed to actions chosen on the basis of influences that one cannot know, understand, endorse or the like). However, it may be more revealing to concentrate our efforts on cognitive autonomy; that is the efforts put into understanding and approving the principles by which we form and assess beliefs. The point we are trying to make here is fairly similar for both practical and cognitive autonomy, but it may be clearer with the latter.

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According to Nagel, the problem is that our desire is only to use principles judged valid from the objective view because we want to equip ourselves with principles that are objectively valid (i.e. objectively compatible with the reality of the world in which we live). Such principles would be deemed valid from a point of view that would be free of undue influence (e.g. subjective bias). But there could be no such certification of all of our principles at once because in order to be able to conduct such an assessment, the objective mind would need principles to use as a reference point in the first place. We therefore run into a contradiction, says Nagel:

In belief, as in action, rational beings aspire to autonomy. They wish to form their beliefs on the basis of principles and methods of reasoning and confirmation that they themselves can judge to be correct, rather than on the basis of influences that they do not understand, of which they are unaware, or which they cannot assess. That is the aim of knowledge. But taken to its logical limit, the aim is incoherent. We cannot assess and revise or confirm our entire system of thought and judgment from outside, for we would have nothing to do it with.26

This is of particular importance since this appears to be the only way of getting what is needed because we would otherwise merely be using some of our principles to judge others. This is where Nagel suggests a very interesting solution that may be useful in determining a criterion of objectivity to assess and distinguish types of suffering. The solution revolves around the idea that we may be best advised to adopt an "objective tolerance" strategy instead of seeking "objective affirmation". His point is that in order to reach a satisfactory level of objectivity, we should attempt to "...find grounds for acting within my [our] personal perspective that will not be rejected [our emphasis] from a larger point of view: grounds which the objective self can tolerate because of their limited pretensions to objectivity"27. This is why we

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should seek principles, which would not be rejected by the objective mind rather than those, which it would endorse.

This may be a powerful idea to articulate our assessment of suffering in a way that will enable us to distinguish types of suffering with some degree of objectivity while accommodating individual fluctuations at the same time. By using Nagel's objective tolerance as the validation criterion of the valuing process by which suffering states are attributed value, we respect the subjective nature of suffering while introducing the means by which we may distinguish types of suffering through the valuing process. With this criterion in hand, we may now put all the pieces of the puzzle together and take stock of what comes out of our reflection on the valuing process that we may use to assess suffering states.

**Valuing Suffering**

An unpleasant experience becomes a suffering state when it reaches the individual threshold that frames it as "overwhelming". This represents the subjective component that is constitutive of a suffering state and may vary according to intra-subjective fluctuations. The problem we ran into is that given the subjective nature of suffering, we could not distinguish the value of an "overwhelming" suffering that stems from missing a baseball game from one that is triggered by a cancer condition. With only a subjective component in hand (i.e. individual threshold at which the experience becomes "overwhelming"), it is hard to validate suffering's value and classify its different manifestations accordingly. In other words, if, from a valuing standpoint, our incapacity to make sense of intuitively very different suffering states

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cannot be resolved, then our analysis of suffering would be of little use to revisit the issue of euthanasia and assisted suicide. Even though the subjective component of the suffering experience is fundamental, it obviously falls short of being sufficient to compellingly value the state so that it can constitute the groundwork of a reflection on the ethics of voluntary death. It may be relevant to recapitulate our view on suffering to better situate the problem and the possible solution.

Suffering occurs at the individual level. Since the “overwhelming” threshold may greatly vary from one individual to another, we must acknowledge that the cause of suffering can significantly fluctuate depending on the individual whose suffering it is. One may suffer from, say, writing a doctoral dissertation and another may not. This renders the validation of suffering’s value very difficult since an experience deemed unbearable by one individual may be regarded as insignificant by someone else. We established that the basic structure of our analysis of suffering is a vertical one in which an unpleasant experience becomes a suffering state when it reaches the “overwhelming” level. This is the subjective starting point of the suffering experience and consequently of the valuing process as well. The essence of the valuing process is also subjective and refers to the sufferer’s viewpoint on the instrumental nature of the suffering experience; that is the subjective valuing of how the suffering experience will affect the sufferer’s personhood. Obviously, the valuing process may be biased since it is influenced by the suffering state itself. This reveals a certain circularity in the valuing process, which may not serve its accuracy. The personal view alone may therefore not be reliable enough to assess suffering’s value. So how can we assess suffering’s value in a reliable way?

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One way to solve the problem would be to impose an epistemic criterion on the subjective valuing process in order to validate the resulting value. This is where Nagel’s “objective tolerance” principle may be of use. Since an objective tolerance criterion may be flexible enough to accommodate inter-subjective fluctuations as well as intra-subjective ones, we could equip ourselves with an adequate theoretical tool to distinguish and validate suffering’s instrumental value. Nagel’s objective tolerance principle is suitable to play this role if we clarify the following point. According to Nagel’s principle, objectivity comes down to the affirmation that something (e.g. belief, judgment, and so on) is not “rejected” by the objective mind. If we agree to frame the objective mind in a way allowing it to be influenced by inter-subjective fluctuations (e.g. cultural), then we may have a suitable epistemic criterion that could make the difference in distinguishing different suffering states and in validating their respective value. The “objective” stance that is here implied is obviously milder than the rigorous scientific understanding of it, but it is nevertheless sufficiently strong to serve our purpose.

So the process by which suffering may be valued is as follows. Suffering is triggered at the individual level and may greatly vary from one person to another. This is a strictly personal step, which cannot be challenged or put into question. Once suffering is triggered, the individual’s viewpoint on how it may affect her personhood will result in a subjective evaluation of its instrumental value. However, the resulting value can be challenged and will have to meet the epistemic criterion of objective tolerance to be validated. This objective tolerance criterion, though fairly stable, may be subject to inter-subjective fluctuations and may “reasonably” vary from one

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situation to another. The valuing process may therefore be influenced by the context in which it occurs. So suffering’s value stems from a subjective evaluation that must meet an epistemic criterion in order to be validated.

In other words, the criterion of objective tolerance comes down to a standard of “reasonableness”. Even though this standard may be influenced by context-specific factors (e.g. cultural, religious, familial), the evaluation of “reasonableness” will have common themes across all cases. This is especially true for the evaluation of suffering’s negative instrumental value. Amongst important themes that will bear on the “reasonableness” of suffering’s instrumental value are the source of suffering, its duration, the associated potential for growth, and the possible consequences of the state undergoing evaluation. Even though other case-specific themes could be added to the list, the abovementioned ones should play a role in all cases. So suffering’s instrumental negative value will meet the objective tolerance criterion if and only if the sufferer’s evaluation could be deemed “reasonable” when weighed against common themes of suffering states.

Going back to our baseball fan and our cancer patient, we may now see how we could distinguish their suffering without questioning the subjective fact that they both are suffering. Bob’s negative valuing of his suffering cannot really meet the validating criterion since an assessment of some of the common themes of suffering states will quickly reveal that “reasonableness” goes against Bob’s evaluation. For instance, the source of Bob’s suffering is not particularly threatening. Also, there is obviously great potential for personal growth. With only these two elements, we

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already see that Bob’s claim fails to meet the standard of “reasonableness”. In our analysis, we implied that a suffering state that would have an instrumentally negative value constitutes a serious threat to the sufferer’s personhood. The standard of “reasonableness” separates this seriously threatening state from other suffering states that may still not be negligible but nevertheless fail to qualify as a serious threat. Given the above, we may now see why Bob’s evaluation of his suffering could hardly be “objectively tolerated”.

David’s case is different, however. Even though David’s suffering could serve his “personhood” in a certain way, the conditions of possibility for a negative evaluation are present. David’s subjective viewpoint on the experience will determine the resulting value since either a positive or a negative assessment of the state could be tolerated by the epistemic criterion. Why? Because David’s condition is a degenerative one that leads to death. The possibility that his suffering does not serve his personal growth (or any good at all) can be “objectively tolerated”. So it is all up to David to determine whether or not the state he is in meshes with how he thinks his personhood can be served. It may be possible to reason with David and attempt to make him see how his suffering may have a positive instrumental value. But should he conclude that it is not the case, we have little room to reject his evaluation from the epistemic criterion standpoint. In this sense, David’s negative valuing of his situation cannot be “rejected”. We then see how Bob’s suffering can be distinguished from David’s through the valuing process restricted by an epistemic criterion.
One important aspect of the valuing process that we so far developed is that it makes it very difficult for a suffering state to be valued as instrumentally negative. Even though it makes room for suffering to be instrumentally negative under specific circumstances, the restrictions on such a value are such that only a small portion of the possible suffering states could qualify. In other words, our framework implies that suffering may have a negative instrumental value if and only if it translates into a degenerative process or a permanent situation, which concretely affects or threatens the sufferer's personhood with no hope for personal growth and/or a risk of complete annihilation.

In addition, it is also important to stress the fact that a negative instrumental value cannot and should not be imposed on the sufferer. The objective tolerance criterion is a passive shield against mistaken subjective evaluations of suffering's negative instrumental value. It is not an active component that could tell someone that her positive evaluation of her suffering is mistaken and should be negative. Contrariwise, it is only a discretionary precaution to being able to challenge and resist a negative evaluation that would be deemed erroneous (e.g. baseball fan). So the most sensitive part of our analysis is the room it makes for suffering to have a significant negative instrumental value. For this reason, we equipped ourselves with a criterion that can validate or reject one's subjective negative valuing of one's suffering state. If the sufferer's valuing of the suffering state meets the criterion, then we are faced with a degenerative suffering condition, which threatens the sufferer's personhood in a way that requires to be taken seriously. This may significantly affect the determination of what "ought to be done" in such situation.

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Of course, this leaves very little room for suffering to qualify as instrumentally negative since most experiences, though sometimes challenging and difficult, may contribute to personal growth one way or another. F. Nietzsche's well-known aphorism "what does not kill one makes one stronger" may be particularly relevant here. In fact, only the suffering that is associated with severe, chronic or terminal situations appear to have the potential to have a negative instrumental value. But far from being a problem, the restrictions on suffering's negative instrumental value may even reinforce the point that when the valuing process results in such a value, suffering may become a pivotal point around which an ethical reflection on voluntary death can be articulated. The ethics of its relief could thereby generate interesting findings, which could feed into an interpretation of the current provisions made by Canadian Law.

The importance of the negative instrumental value that may accompany suffering is therefore a key element of our analysis of suffering. It will be especially central for our reflection to come on the acceptability of euthanasia and assisted suicide. By exploring the ethical ramifications of suffering's negative instrumental value, we may revisit important issues that are at the heart of the current debate on euthanasia and assisted suicide and thereby make a contribution to the debate surrounding what ought to be done. But before addressing the issues that may be revisited with our analysis of suffering in hand, we still have to determine what type of ethical framework would be most appropriate to synthesize our analysis of suffering and to guide our reflection on euthanasia and assisted suicide.

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3 Milder types of suffering are here accounted for as “unpleasant experiences”. Only the unpleasant experiences that cross the “overwhelming” threshold qualify as suffering as such. See ch.2, “Suffering as Overwhelming Unpleasant Experience”.
7 The most recent account of suffering is to be found in Mayerfeld’s work (1999) in which he groups a wide variety of unpleasant experiences under the concept of suffering and defines degrees of suffering to sort them out. Even though Mayerfeld’s effort mainly aims at contributing to our understanding of how suffering may be evaluated and responded to according to such an evaluation, his approach to suffering is representative of the broad framing of suffering that usually underlies discussions on the phenomenon. The interest of our approach is to reflect on the ethical implications that a narrowed focus on suffering may have for specific issues such as euthanasia and assisted suicide.
11 It may be here argued that other accounts of suffering reveal both intrinsic and instrumental values. Even though this may be true, we will see that our specific understanding stresses suffering’s negative instrumental value in a way that makes it particularly idiosyncratic when faced with end-of-life issues such as euthanasia and assisted-suicide. In this sense, the fact that other accounts of suffering yield similar possibilities does not affect the relevance of our analysis since the main difference will reside in the respective ethical weight of the resulting values.
14 See section called “Suffering’s Assertiveness”, p.82.
16 See chapter 2.
17 It may here be argued that a hedonist viewpoint is not necessarily incompatible with the attribution of a positive instrumental value to suffering. The argument would be that having some suffering in our lives may lead to a greater appreciation and enjoyment of the good things in life, which we could otherwise take for granted. This is why an emphasis is put on the word “probably”. That being said, it may still be appropriate to differentiate the hedonist reference point to evaluate suffering’s instrumental value from the one we put forth in our analysis.
18 We already established that our analysis is incompatible with a “pleasurable” suffering since to reach the threshold at which suffering is triggered, an experience must 1) be deemed unpleasant and 2) be overwhelming.

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22 The determination of “what ought to be done” and therefore the question of how we should determine the normative and prescriptive force of a suffering state will be discussed in next chapter.
24 Ibid., p.5.
25 Ibid., p.4.
26 Ibid., p.118.
27 Ibid., p.130.
28 We established in Chapter 2 that the threshold at which suffering may be triggered can vary according to intra-subjective and inter-subjective fluctuations. Intra-subjective refers to personal or individual differences whereas inter-subjective refers to external influences such as a cultural environment.
29 This comes across the possible “inter-personal” fluctuations we discussed earlier. See “Theoretical Background” in chapter 2.
30 There would be no point in forcing a negative interpretation of suffering onto a positive one. A positive instrumental valuing of a suffering state may only help the sufferer in coping with her condition. It is hard to think of a rationale that would support increasing the difficulty of the state and undermining the possible positive impact that it may have on the sufferer’s personhood (or life in general). Therefore, the focus of the epistemic criterion is the valuing process when it results in a negative instrumental value.

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CHAPTER 4

A Consequentialist Approach to Suffering
We now have developed a specific understanding of the suffering phenomenon and of how it may be valued. We narrowed suffering's definition to an "overwhelming unpleasant experience", which reaches the suffering stage according to a vertical framework. We also determined that suffering can be valued in two different ways, which in turn may translate into three different values. Suffering can either have a positive or a negative instrumental value and it has a necessary negative intrinsic value. Therefore, suffering's instrumental value may vary according to circumstances and associated outcomes whereas its intrinsic value is invariable and unilaterally negative. The aim of this chapter is to assess and articulate the ethical implications of our findings on suffering. A related goal will be to discuss some of the issues associated with the ethical framework that may be best suited to conduct such an analysis. For reasons that will become clearer as the discussion unfolds, a consequentialist approach may be best suited to serve our purpose and to reveal the specific relevance of our reflection on suffering when revisiting the debate on euthanasia and assisted suicide.

Theoretical Background

Ethical theories or systems may be divided into two groups, depending on how they define the relation between right action and intrinsic value. If the rightness of an act is entirely determined by the intrinsic value of its consequences or of the rule, which it falls under, the ethical theory is called "teleological". The denomination "teleological" derives from the Greek word telos, which means "goal". So all theories that rely on a goal-setting strategy to distinguish what is right from what is wrong fall under this category. For instance, consequentialism¹ upholds that the determination

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of what is right or wrong derives from whether or not the "good" (or goods) is served by the consequences resulting from the event, action or deed undergoing evaluation. So the basic norm of a teleological system is a standard of intrinsic goodness, while rights, duties, and obligations are all subordinate norms. Thus, from a teleological viewpoint, we cannot know whether a given conduct is right or wrong unless we know whether or not the results brought about will be (or are) good or bad.

The other type of ethical system holds that the rightness of an act (and our duty to perform it) is either not entirely determined by the intrinsic value of its consequences or is not at all determined by such value. Theories of this kind are called "deontological". The basic principle of deontological ethics is that the right (what we ought to do) does not entirely depend on the good (what we deem intrinsically valuable), and this is the exact contradictory of the basic principle of teleological ethics. For example, E. Kant's theory2 upholds that the rightness of an act does not depend at all on the value of its consequences. According to Kant, in order to know whether an act is right or wrong we need only see whether it is in accordance with a valid ethical rule, and the test for a valid ethical rule is a purely formal one. For this reason Kant's ethical system is usually labeled as being "formalist"3.

There are also non-purely formalistic types of deontological theories that allow consequences to affect the ethics of the related action / situation to a certain extent. A good example of this can be found in W.D. Ross' work4. He claims that the rightness of an act may in part be determined by the goodness of its consequences, but it is never "wholly" determined by such goodness. Ross' deontological approach

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relies on *prima facie* duties, which create a barrier against an exclusively *telos*-based evaluation of the right and the wrong.

Even though discrepancies may be found between formalistic and non-formalistic approaches, all types of deontological theories share one fundamental principle that makes them essentially similar. This principle is that the determination of what *is right is prior to the evaluation of the good*. In this sense, deontological and teleological frameworks are fundamentally opposed.

This irreconcilable cleavage\(^5\) between deontological and teleological ethics enables us to rule out a number of theories with which we could articulate our analysis of suffering since our findings on suffering have more affinities with a teleological approach than with a deontological one. We may reasonably assume that the latter claim is accurate since we established in chapter 3 that the importance of suffering's instrumental value outweighs its intrinsic value. This may be an indicator that a "goal-oriented" ethical framework may be more suitable to articulate the ethical implications of our analysis. Suffering's instrumental value emphasizes the relevance of taking how it affects a pre-defined *telos* seriously when reflecting on the experience from an ethical standpoint. As we suggested in the last chapter, a suffering state will either serve or undermine one important aspect of human life: the sufferer's personhood. So from the standpoint of our analysis, suffering's ethical relevance will significantly stem from an assessment of what it brings about in terms of personhood modification or personal growth. The determination of what "ought to be done" or what is "right" will therefore be derivative; that is, it will be subordinated to

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an assessment of how the good to be served\textsuperscript{6} may be affected by a given state of suffering.

Thus, it may be safe to assume that the ethical implications of our analysis of suffering may be best articulated in a teleological framework since they are intimately tied to a \textit{telos} that may either be served or undermined by a suffering state. In this sense, we presuppose that the ethical implications that our analysis of suffering may have will subordinate the determination of what is \textit{right} (i.e. what ought to be done) to the evaluation of what is \textit{good} (i.e. personhood modification).

The nature of the "good" that may either be served or undermined by our concept of suffering may be used to further reduce the number of potentially suitable ethical frameworks for our reflection. We established that "personhood modification" or "personal growth" represents a good against which suffering states may be valued. There are two teleological frameworks that stand out as potentially well suited to serve the emphasis we wish to put on the relation between the ethics of suffering states and human development: Virtue Ethics and Consequentialism. At first glance, the former theory may seem more appropriate and less problematic than the latter given the specific focus of our analysis. But further discussion of both theories will reveal that the contrary may be more accurate as far as the theoretical needs of our reflection are concerned.

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Virtue Ethics

Virtue ethics has a long tradition that goes back to Aristotle. Roughly, the theory upholds that the actualization or development of "human potential" (or virtue-related potential) is the means by which one leads a good life, which is one of *eudaimonia*. So in such a framework, the rightness of actions is weighed against how they serve the development or expression of virtues and thereby contribute to leading a good life. In this sense, virtue ethics could present itself as a potential fit for our ethical analysis of suffering since it is similarly tied to a "human development" standpoint as our use of "personhood modification" is. However, some of the fundamental features of virtue ethics may not be compatible with the basic premises of our reflection. To demonstrate this incompatibility, it will suffice to discuss one of the touchstones of the theory, namely the *objectivity* of the good.

One common feature that comes with virtue ethics theories is a commitment to the objectivity of the good. This commitment is also increasingly present, if not dominant, in the contemporary literature on ethics and the recent revival of virtue ethics may have been served by this trend. But such a commitment is problematic within our reflection. This is so because an "objective good" inevitably limits, if not annihilates, the relevance of allowing subjective criteria (e.g. attitudes, preferences) to bear on the determination of the good and thereby on the distinction between right and wrong. Thomas Hurka's words are unequivocal on the matter when he discusses the basic principles underpinning his "perfectionism":

…perfectionism, either broadly or narrowly understood, has an objective theory of the good. It holds that certain states and

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activities are good, not because of any connection with desire, but in themselves.\(^9\)

This commitment to an objective good pervades virtue ethics theories in general. The problem for us is that it clashes with important elements of our reflection on suffering. Even though our analysis revealed a certain compatibility with - and a need for - a standard of objectivity in the determination of the good, it also clearly relies on subjective criteria. In other words, our analysis of suffering requires that the ethical framework to be used at least provide for *individual discretion* in the determination of the good and thereby the distinction between right and wrong. What is meant by “individual discretion” is that within our concept of suffering, the sufferer plays a non-negligible role in the assessment of the suffering state, the evaluation of its value and the assessment of the related good that the state could either serve or undermine. A strict objectivism with respect to the determination of the good could therefore not sufficiently account for this role to be played by the sufferer; or at least not to the extent intended in our analysis. This, in itself, could be sufficient ground to discard virtue ethics as a suitable framework for our reflection. But a less restrictive type of objectivity can be found in the recent virtue ethics literature and more qualification of our reason to discard virtue ethics is therefore required.

With a neo-Aristotelian approach to virtue ethics\(^10\), Rosalind Hursthouse introduces a certain flexibility regarding the objectivity with which the good is to be established. Hursthouse's account of the objectivity of the good is as follows:

> The sort of facts it [objectivity] appeals to are not all "empirical" and accessible from "a neutral point of view". The long-term naturalistic project of validating the standard list of the virtues is Neurathian, and proceeds from within our ethical outlook. It is

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not a matter of reading the standard list off the book of nature as if human nature and our characteristic ways of going on were brute givens. But neither is it a matter of deciding in advance that our standard list is the correct one. Whether it is correct will be discovered when we discover the extent to which we can give a coherent account of the roles the character traits on the list play in our lives, an account that coheres not merely with our ethical outlook but with all the empirical and other facts that we bring into play. This seems to me to be enough to count as objectivity — not a priori or scientific objectivity — but a kind of objectivity appropriate to the subject matter.¹¹

Hursthouse’s viewpoint on the objectivity of the good is built on the premise that we should rely on a reflective scrutiny proceeding from within our “ethical outlook” rather than from a “neutral point of view” to ground the validity (i.e. objectivity) of ethical beliefs. As a result, the type of objectivity she suggests appears to come with some flexibility that could make room for individual discretion to bear on the determination of the good and thereby on the distinction between right and wrong. But Hursthouse’s objectivity may only be flexible in appearance since her reflection on the objectivity of the good stems from her hope to adequately answer the following question: “Can we hope to achieve a justified conviction that certain views about which character traits are the virtues (and which not) are objectively correct?”¹². To this question she wishes to answer “yes” but she stresses the need for this answer to be “highly qualified”.¹³ An important part of this qualification is to be found precisely in her discussion of the process leading to ethical objectivity.

So it is important to keep in mind that Hursthouse’s theoretical agenda is still to ground the determination of the good in objective certainty. It is the process by which she develops such a certainty that appears to allow for individual discretion and not the end result itself. In other words, the process by which the virtues are established

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as such may have some flexibility in that it does not solely rely on objective criteria such as empirical facts. Nevertheless, this process aims at defining the good with objective certainty. So the apparent compatibility between individual discretion and the determination of the good could prove to be evanescent since, at a certain given point, objective certainty has to be freed from any subjective influence to qualify as such. So how does she allow for individual discretion while ensuring objective certainty at the end of the process? Her viewpoint on the "Neurathian" approach is informative in this respect.

The Neurathian approach compares a philosophy or conceptual scheme to a boat at sea that needs to be rebuilt. Since the boat is at sea, it would be impossible for the mariner to replace it completely at once. Only plank by plank will the mariner be able to rebuild his boat since he depends on it for support. Similarly, the philosopher will only be able to progressively modify his conceptual scheme, philosophy or ethics. Numerous small steps are required to reflect on an ethical outlook and determine what needs to be modified. This is why Hursthouse denies that we could "...either find this [whether or not there is something with our ethical outlook] out or fix up a new correct one quickly". So the point is that our ethical outlook can (and should if it needs to) be modified, but such a change can only happen step by step, over a significant period of time. It is through this process that one's *individual discretion* can bear on the reflective scrutiny with which the planks of one's conceptual boat is modified or replaced. But nevertheless, any modification of one's ethical outlook will ultimately serve a unique and objective good and this is

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where the flexibility of Hursthouse’s theory could prove to be evanescent. So how does she establish objective certainty?

Hursthouse maintains that the virtues make their possessor a good human being; that they benefit their possessor; and that these two claims are interrelated. It is in this interrelation that the virtuous human being naturally develops and lives well; that is, lives a eudaimonic life. The key here is that ultimately, only those who can enter this interrelation and develop their virtues will live well. This means that there is a point of convergence or of equilibrium at which the good acquires its full objectivity and defines the eudaimonistic life. But this endpoint is precisely what it is: an objective good. The flexibility with which it could be modified is minimal since it is only through a process similar to the Neurathian approach that the ethical outlook from which it stems may be rebuilt. This means that individual discretion is confined to the conceptual level at which the ethical outlook is defined and its influence could only be felt over a significant period of time. The objectivity of the good, even more flexibly established as in Hursthouse’s framework, still bears on situational ethical deliberations in the same way other “types” of objectivity do; that is, in a binding and prescriptive way. Our theoretical needs require that individual discretion could affect ethical deliberations at the situational level and not just at the conceptual level. So even Hursthouse’s theory does not provide enough flexibility to sufficiently accommodate this aspect of our reflection. This strengthens our position that a virtue ethics framework may not be suitable to articulate our ethical reflection and should therefore be discarded. But more can be said on the implications that a commitment to the objectivity of the good could have within a virtue ethics framework.

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One implication of particular relevance is that the "virtuous" objective good creates a duty to promote the development of human potential that is also resistant to being influenced or changed by circumstantial considerations; including subjective ones that may be directly related to the person whose development it is (e.g., pleasure, desire-fulfillment, suffering, and so on). We can find direct allusions to such a "virtuous duty" in Hursthouse's words: "...acting from virtue...sets the standard for acting from duty." This means that an objective determination of the good (in this case, the virtuous good) implicates that the possession of objectively recognized human potential for any or all virtues translates into a duty to act according to the precepts of this or that virtue. The nature of this "virtuous duty" is consequently as objectively determined as the virtue itself.

So it is reasonable to assume that the virtuous duty cannot avoid being, by nature, unalterable and thereby is resistant to circumstantial fluctuations based on individual discretion. In this sense, we could say that a virtuous duty is "objectively imposed" on the moral agent as opposed to "self-imposed" or even a mix of the two. In a virtue ethics framework, the human potential that ought to be developed is framed as an objective feature and the ethical requirement for its development is therefore imposed de facto on the individual whose potential it is. This is because only through virtues can we promote the objective good or eudaimonia: "A virtue is a character trait a human being needs for eudaimonia, to flourish or live well." The virtues and the good they promote are objective and it is for this reason that the correlative virtuous duty reveals itself as objectively imposed.

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So from the virtue ethics commitment to the objectivity of the good follows an objective duty to promote it. In other words, from the virtuous good derives an unalterable duty to develop virtues and act accordingly. The rightness of actions is therefore a function of how this duty is fulfilled. This leaves little flexibility, if any, for individual discretion to bear on the determination of what ought to be done. If anyone has the potential to develop any given virtue (which constitutes an objective good), then this person ought to develop it regardless of circumstantial and/or personal considerations (e.g. context, preferences, desires, and so on). So this means that virtue ethics can safely be framed as resistant to being formulated in terms of personal well-being and that its main components appear to be independent of subjective influences such as preferences, interests and welfare. Even Hursthouse’s theory, though apparently more flexible, does not defuse this implication. Hursthouse does not directly refer to what we described as an “objective duty”, but we may still reasonably interpret her frequent allusions to the prescriptive nature of virtues along these lines: Each virtue generates an instruction...and each vice a prohibition\(^{118}\).

Thus, one important implication of the virtue ethics commitment to the objectivity of the good is that the correlative ethical duty does not sufficiently accommodate for individual discretion to bear on the determination of what ought to be done. The relevance of circumstantial / individual considerations is thereby denied. With a virtue ethics framework, there is what we called an “objective duty” to develop one’s human potential and this, regardless of whether or not the person whose development it is wishes to do so; benefits from doing so; or agrees that any pre-determined feature to be developed fits into his/her scheme of valued things. This

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is one implication of committing to the objectivity of the good, which clearly departs from our findings on suffering. In this sense, virtue ethics clearly is incompatible with our basic theoretical needs. So we need not further explore virtue ethics since the problems associated with its commitment to the objectivity of the good we so far discussed are sufficiently important to assume that we are best advised to discard the framework.

A consequentialist framework, however, could be much more accommodating for our theoretical needs. The nature of our analysis of suffering has strong affinities with the basic principle of consequentialism, which is that the right depends on the "overall" goodness of the outcome. This means that we may know whether or not an act is ethically right only by evaluating its potential consequences and then determining the intrinsic goodness (or badness) of those consequences.

This rationale for rightness and goodness is in line with our views on suffering and constitutes a preliminary reason supporting the choice of a consequentialist framework to conduct our ethical analysis. But before we develop our reflection on how our concept of suffering plays out in a consequentialist framework, it may be relevant to elaborate on the theory itself as well as on some of the problems that come with it in order to qualify our claim that consequentialism may be the best framework to account for the abovementioned link between the ethics of suffering states and human development.

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Consequentialism

Consequentialism is an ethical theory in which what is right is distinguished from what is wrong through an assessment of the consequences related to the action, event or deed undergoing ethical evaluation. This evaluation consists in determining whether or not the maximization of the overall good has been, is, or would be promoted by the consequences in question. A right action is therefore an action that will maximize the bringing about of the overall good through its consequences. One way of expressing the pivotal point of the theory is that its ethical concern is focused on the “overall net difference” that is brought about in the world; the goal being the maximization of a positive net difference. Consequently, a right action is an action that represents the best option available to promote the maximization of the overall good. In this sense, if one is faced with different possible lines of action in a given situation, one ought to choose the one that will bring about the greatest positive net difference in the world. Alternatively, if the maximization of the overall good is not directly possible, then one would at least be required to choose the line of action that would best support the minimization of its counterpart.

Several difficulties have been associated with a consequentialist approach to morality. For instance, questions may be raised as to whether or not it is possible to determine what the consequences of all actions available will be, to assess them in a reliable way and to foresee how they will play out in the promotion of the overall good. In order to better situate how some of these theory-related problems could affect our reflection on suffering and on the ethics of euthanasia and assisted suicide, we will review three issues that have been associated with the logical development of

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a consequentialist system of ethics and with the application of such a system to cases in practical life. However, this is not intended to be a full review of all problems that a consequentialist framework could face. The analysis of the three issues will only serve to better situate how pervasive the theory-related problems can be in the specific context of our present reflection.

Two Versions

At the outset, it may be important to note that there are two main versions of consequentialism: act-consequentialism and rule-consequentialism. According to act-consequentialism an act is right if doing it in a certain set of circumstances will bring about a better balance of intrinsic value over intrinsic disvalue. The act is the right one if it serves the latter goal better than doing any alternative act in the given circumstances. In this sense, act-consequentialism is concerned with the ethical evaluation of individual actions.

According to rule-consequentialism an act is right if it conforms to a valid rule of conduct, wrong if it violates such a rule; and what makes a rule of conduct valid is its conformity with the maximization of the overall good. If a better balance of intrinsic value over intrinsic disvalue would be served by everyone's following a certain rule rather than everyone's following an alternative rule, then the rule in question is valid. The whole system of rules that makes up the ethical code of a society is thus seen as a vast instrument for regulating the conduct of everyone in such a way that overall, the good will be maximized and its counterpart minimized. So rule-consequentialism is concerned with the ethical evaluation of rules of conduct as opposed to individual

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actions, which is the pivotal point of an act-consequentialist framework. This is the main difference between the two versions of consequentialism.

Act-consequentialism is the oldest version. Rule-consequentialism was designed to address fundamental problems associated with the former framework. However, the success of the development of rule-consequentialism was not as complete as intended. With its development came not only solutions for act-consequentialist problems, but also old and new theoretical challenges. As a result, both versions still struggle with problems and criticisms that are either version-specific or shared by both sub-theories. With time, the two versions established themselves as distinguishable and equally valid (or invalid) options. Consequently, the use of a consequentialist framework usually necessitates the clarification of whether it is act-consequentialism or rule-consequentialism, which may raise different questions and problems depending on the choice.

For reasons that will become obvious as the discussion unfolds, an act-consequentialist framework may be best suited to serve our theoretical needs. To support this claim we will first discuss three basic consequentialist issues that are mainly of concern for an act-consequentialist approach. But again, it may be relevant to further stress that our intention is not to exhaustively address all problems associated with consequentialism. We only wish to discuss two basic problems that the framework may generate (especially for act-consequentialism) in order to show how the practical considerations of our reflection on suffering reinforce the relevance of using such a framework. After addressing these two problems, we will then

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develop the rationale for discarding the possibility of using a rule-consequentialist framework. By taking the above two steps, we will see that an act-consequentialist framework may be our best choice to articulate our ethical reflection.

Consequentialist Issues

One problem that is particularly acute for act-consequentialism concerns the difficulty of knowing what is right and wrong. If we must find out which of all the alternatives open to us will lead to the best consequences in each situation of choice, we can never know what we ought to do with certainty, and in many cases the obtaining of such knowledge will take so much time and effort that we will not be able to discover what we ought to do within the limits set by the decision-situation. We will refer to this difficulty as the "decision-making" problem.

For instance, if someone has been hurt in an automobile accident and we are confronted with the choice between stopping our car and helping him or continuing on our way to the airport where we have to take a plane on a business trip, we must first predict what will probably happen if we were to do each of the alternatives before we can know what we ought to do. But by the time we carry out such a calculation (if at all capable of doing so) we might either miss the plane or, if we finally decide to turn back and help the person, her condition might have become so bad in the meantime that she is now beyond the point of benefiting from our help.

But regardless of the alternative we would finally choose, it may further be argued that we could never fully know that what we did was right or wrong. For

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example, suppose we stopped in time to help the person and by so doing we saved her life. We would not even then know that we had done the right thing unless we knew more about the situation, say, about what kind of a person she was. If it turns out that she was a vicious and sadistic person who constantly made others suffer, it might have been better for the world not to have saved her life; or at least the choice of helping her might have been worse than the choice of catching the plane and successfully accomplishing the purpose of the business trip.

So we can see that the decision-making problem challenges the validity of a consequentialist approach to morality by putting into question our capacity to conduct an evaluation of the consequences in a satisfactory manner for two reasons: epistemic and time constraint.

An act-consequentialist reply to the first part of the decision-making problem may be as follows. With respect to our never knowing what is right and wrong because the consequences of human actions are never certain, the answer would be that we usually can make a reasonable prediction of the probable consequences, and that is all that we can ethically be held responsible for. In the given example, unless we had some special evidence about the viciousness of the person's character (and even then), the probable consequences of saving her life would be better than letting her die. So in this sense, it may be said that we can be held responsible only for what any reasonable person would be expected to know in the given situation.
The other aspect of the decision-making problem is the issue of time constraint. When faced with a dilemma like the one above, taking the time to reflect on the possible outcomes and making calculations as to what would maximize the good may very well end up being the worst strategy to maximize the good. So one possible solution to this problem is to consider the right and wrong of the act of calculation itself as well as the right and wrong of the alternatives whose consequences are being calculated. In the given situation of our example, there are three alternatives open to our choice, not just two: 1) Stopping immediately to help the injured person; 2) Driving on to catch the plane; 3) Hesitating while calculating the probable consequences of doing either (1) or (2). If the consequences of doing (3) were worse than the consequences of doing (1) or (2), then it would be our duty not to make careful calculation in that kind of situation. We would have to decide quickly since the window of opportunity to act appropriately could be closing rapidly for both options (1) and (2). If it then turns out that we decided in the wrong way, we cannot be blamed for what we did because any reasonable person in such a situation would have predicted that to hesitate in order to make a careful calculation would probably result in worse consequences than not to hesitate.

This act-consequentialist response to both parts of the decision-making problem may not be fully satisfying for critics of consequentialism assessing the theory from a theoretical standpoint. However, it may nevertheless be enough to reasonably deal with decision-making issues that could arise within the limited scope of our reflection on suffering and on its ethical implications for the euthanasia and assisted suicide debate (the concerns of which are more practical than theoretical).

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The main reason for this is that, on the one hand, it is unlikely that the time-constraint issue will apply and, on the other hand, it is safe to assume that sufficient knowledge for evaluating a given situation will be available. In other words, and given the specific context of our reflection, most cases (though there may be exceptions) in which our analysis may be relevant are likely to involve enough time and knowledge to appropriately conduct an evaluation of the suffering state and to determine what the ethically right thing to do may be. So it may be safe to assume that the decision-making problem that could come with our choice of ethical framework should not unduly complicate or undermine the results of our reflection.

The decision-making difficulties associated with an act-consequentialist framework raise the issue of responsibility, which constitutes a second problem, which may be of concern to act-consequentialism (even though it may represent a theoretical challenge to both versions of consequentialism). Critics of consequentialism claim that the theory's focus on states of affairs makes it vulnerable to an exceedingly wide notion of responsibility. The argument is that from a consequentialist viewpoint, it seems that not only are we held responsible for what we bring about, but also for what we either fail to prevent from happening or allow to be brought about. This is known as the "negative responsibility" issue. In Bernard Williams' words, the problem with a consequentialist notion of responsibility is the following:

It is because consequentialism attaches value ultimately to states of affairs, and its concern is with what states of affairs the world contains, that it essentially involves the notion of negative responsibility: that if I am ever responsible for anything, then I must be just as much responsible for things that I allow or fail to
prevent, as I am for things that I myself, in the more everyday restricted sense, bring about.  

So it seems that the implications of negative responsibility for a consequentialist theory are such that there appears to be almost no limit to the extent of responsibility that could come with it. But again, no matter how difficult this issue may be for a consequentialist framework in theory, it may lose some of its force within the limited scope of our analysis. This is so because within our reflection, the idea of negative responsibility can be reduced to a normative claim that is significantly, if not totally, captured by suffering's normativity. In chapter 3, we established that suffering is, in itself, normative and that under certain conditions, our "allowing or failing to prevent" suffering may have ethical consequences. This could open the door for a "negative responsibility" criticism if these consequences were not clearly limited in scope. But they are. Thus, our analysis of suffering recognizes and restricts our negative responsibility at the same time. In this sense, we can reasonably claim that the idea of negative responsibility is accounted for in our reflection in a way that keeps it manageable. The problems associated with an unrestricted negative responsibility are thereby largely avoided. Consequently, it may be safe to assume that the idea of negative responsibility does not undermine the validity of using a consequentialist framework in the specific context of our reflection. It may be worth further supporting this point.

The scope of our responsibility to either maximize intrinsic value or minimize disvalue is restricted by the specific good around which our analysis is articulated. We established that "personhood modification" is the pivotal point of the instrumental

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evaluation of suffering states. In this sense, the responsibility for what is or what is not brought about (whether we are directly involved by maximizing or minimizing it ourselves or indirectly involved by failing to prevent it from happening or allowing it to be brought about) is thereby limited to what may or may not happen to the sufferer's personhood. This is where we can limit the scope of our negative responsibility within the context of our analysis.

In theory, negative responsibility could include (according to critics of the theory) responsibilities of second and third order (and even more). This means that in theory, consequentialism may be criticized for holding one responsible for the entire chain of possible action-related consequences that may result from one's action. For instance, if one does not tell his neighbor that her car is parked in a forbidden zone, one's share of responsibility may extend to all possible consequences of allowing the situation to unfold. So this could translate into the car being towed, the neighbor missing an important job interview in the morning because of that, and so on. This chain of consequences may be far-fetched but it nevertheless is a theoretical possibility that may translate into a theoretical challenge for consequentialism.

Within the limited scope of our reflection, however, the chain of consequences may be stopped as soon as it reaches the limits of the possible ethical considerations we can make regarding the specific type of suffering that is here at stake and the specific circumstances in which it would not be unreasonable for the sufferer to contemplate an early termination of life. It is important to note here that we do not claim that the only thing that is of ethical relevance in general is the sufferer's

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personhood and that the situation-related chain of consequences that may be ethically relevant stops there. We only stress the fact that our particular reflection is developed within a pre-defined scope with a specific focus and that these elements restrict the applicability of the negative responsibility argument to the point where such considerations should not unduly complicate or undermine the results of our reflection. In this sense, the issue of negative responsibility can safely be put aside.

Even though the decision-making and the negative responsibility issues that are associated with consequentialism would require much more analysis and discussion to either completely solve them or establish them as grounds to discard consequentialism as a plausible ethical theory, there is no need for us to further reflect on them since it may be safe to assume that we have established that (at least) they may not play a significant role within the limited scope of our reflection. The fact that the two fundamental issues discussed above lose force within the context of our reflection may be an indicator that the practical considerations stemming from our analysis of suffering may be significant enough to defuse problems that could still be intractable at the theoretical level. This may further support the relevance of our choosing an act-consequentialist framework to articulate our ethical reflection on euthanasia and assisted suicide. We may take another step in this direction by discussing the main reason why we may not want to use a rule-consequentialist framework.

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Discarding Rule-Consequentialism

Rule-consequentialism has been developed in the 20th century as a reply to some of the objections made against earlier forms of consequentialism (especially against its main representative: act-utilitarianism). The main idea underpinning the approach is that by using a set of rules of conduct to determine most of the ethically appropriate actions (instead of individual calculation for every individual actions), the framework is in a better position to address some of the problems associated with consequentialism than act-consequentialism is. This is why, for instance, contemporary rule-consequentialists argue that their theory can account for the obligations and prima facie duties which philosophers like W.D. Ross have claimed to be incompatible with consequentialism.

Regardless of the theoretical validity and historical importance of rule-consequentialism, we do not need to discuss all the elements of the theory to serve the needs of our reflection. This is so because a rule-based framework may not be as convenient as an act-based one to develop a case-by-case approach, which is exactly what is required when dealing with euthanasia and assisted-suicide. So we will limit our discussion on rule-consequentialism to the concept of “rule” and to the question of whether or not this concept can be useful for our reflection.

An old but still insightful explanation of the concept of “rule” can be found in John Rawls’ article “Two Concepts of Rules.” Rawls makes a distinction between a social practice and the particular acts that fall under it, and then points out how the justification of a social practice as a whole, which is based on its utility, differs from the justification of particular acts, which is based on conformity to the rules defining

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the social practice. Although Rawls does not claim that this distinction is sufficient to establish rule-consequentialism\textsuperscript{30} as an adequate ethical theory, he does show how the distinction can be used to defend the theory against those critics who appeal to the obligation to keep a promise and the obligation not to punish an innocent man as cases which cannot be accounted for by consequentialism. Even though his claims are fairly outdated, it is worthwhile following his reasoning for his views on the concept of "rule", which will help us make our point on why we are best advised not to use a rule-consequentialist framework to articulate our ethical reflection on suffering.

Rawls says that a distinction is to be made between two ways of conceiving rules of conduct. He distinguishes the "summary" concept of rules from the "practice" concept. A rule is a universal prescription: it tells us what anyone ought or ought not to do in a certain set of circumstances. Thus all rules are generalized guides to the conduct of everyone, not particular commands to this or that individual. How is this generalized or universal aspect of a rule to be conceived? There are two possible answers. The first, which is the summary concept, is that a rule is a summary of a large number of particular cases of acts done and of acts not done whenever a given set of circumstances occurred in the past. If in each case a person's doing the act tended to bring about better consequences than her not doing it, the rule emerges that, in circumstances of the kind in question, that kind of act ought to be done. If in each case a person's refraining from doing the act resulted in better consequences (or less bad consequences) than his doing it, the rule becomes: In circumstances of this kind, an act of this kind ought not to be done. Thus both positive rules and

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negative rules are understood as summaries of particular acts. The acts come first, the rules follow.

The "practice" concept of rules looks at rules in a very different way. Rules are seen as defining social practices, so that we cannot even describe an act as being of a certain kind (say, as an act of promising or as an act of punishing) without referring to a set of rules. Here the rules must first be given in order for the particular act to be done, in the sense that a person must conform to the rules if her act is to be described in a certain way. For example, we cannot describe the action of a man who is running from one point to another in an open field as "stealing base" unless we know the rules of baseball and conceive of his action as part of that game. The same would apply to a person's act of saying the words "I promise", or to a judge's sentencing someone to a prison term. In neither case can we describe these acts as promising or punishing unless we know the rules that govern the moral and legal "games" of promising and punishing.

The practice concept of rules, combined with the distinction between justifying a social practice as a whole and justifying a particular act falling under it, may be regarded by rule-consequentialists as a sufficient reason to deny act-consequentialism. At the same time this approach help them develop a reply to the fundamental objections raised by deontologists and other critics of consequentialism such as the three problems we examined earlier (if and when they apply). So according to a rule-consequentialist approach, act-consequentialism may be denied because the nature of certain acts is such that the person who performs them must

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not calculate the utility of the consequences of her performing them, and must not weigh this utility with the utility of the rules that define such acts.

As Rawls points out, a person does not understand what a promise is if she thinks that she is obligated to keep her promise only if the consequences of doing so are better than the consequences of her breaking it. Similarly, a judge who asks himself whether his sending a duly tried and convicted criminal to jail would have better or worse consequences than letting him go would neither be functioning in the role of a judge nor be understanding what the practice of legal punishment means. On the other hand, the justification of the whole social practices of promising and legal punishment would seem to be consequentialist, since the benefits of civilized life in society would not be possible without such practices and therefore no one's interests would be served by their abolition.

Whether this constitutes an adequate defense of rule-consequentialism against act-consequentialism on the one hand and against deontological ethics on the other is a question of serious concern on the part of contemporary moral philosophers. But we need not enter the debate at a deeper level since we may have all the theoretical elements needed to draw some definitive conclusions within the specific context of our reflection. Using Rawls' analysis of the two possible types of rules that can be defined, we may be in a position to more compellingly explain why rule-consequentialism could not serve the needs of our reflection.
The main and fundamental reason for not using rule-consequentialism is that our analysis of suffering and its ethical implications for the euthanasia and assisted suicide debate cannot (and should not) generate rules of conduct per se. Rawls' analysis of rules enables us to show that even different types of rules could not change the validity of this claim. The claim is universally valid because the limited context of our reflection necessitates that the determination of what ought to be done be rooted in a case-by-case approach. So this eliminates de facto the first type of rules that Rawls describes, the "practice" ones, since the decision-making process that comes with our analysis of suffering relies on case-specific information that can modify the determination of what is right (or wrong). In this sense, what ought to be done could not be "pre-determined" by a practice concept of rule within the scope of our reflection.

Furthermore, Rawls' "summary" rules would have to be discarded as well. As we just said, the requirement for a case-by-case approach in the determination of what is right and wrong that comes with our analysis significantly limits the possible generation of rules. In fact, even if a great number of cases would turn out to be similar in nature and outcome, the only conclusion that could be drawn is that there is a similarity between the cases. However, we could not go as far as formulating a rule that could then be applied to future similar cases. In other words, our approach is not compatible with a casuistic-like approach to the establishment of rules. So the "summary" concept of rule could therefore not be used to generate a rule-consequentialist framework that would be suitable for our reflection. In fact, we could even say that the creation and/or application of a general rule to determine what

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ought to be done in the type of cases our analysis is dealing with could easily
generate unwanted and serious consequences. It may be preferable to maintain a
high level of flexibility with respect to the evaluation of cases and the determination of
what ought to be done. In this sense, it may be safe to assume that the theoretical
needs of our reflection may not be best served by a rule-based ethical framework.

Taking stock of what has been said so far, we can now reasonably claim that
the basic ethical framework that could serve best our theoretical needs is an act-
consequentialist one. It may be relevant to further support this claim by addressing
one more problem that has proven to be one of the most resistant criticisms of a
consequentialist framework (and especially act-consequentialism). By doing so, not
only will we further specify the type of framework that may serve best our reflection,
but also we will have the opportunity of circumscribing and discussing the main
reason why act-consequentialism is of particular interest for the development of our
ethical analysis.

_Railton's Sophisticated Consequentialism_

One issue that has proven to be one of the greatest theoretical challenges to
consequentialism concerns the demands that such an ethical framework is said to
impose on moral agents. Consequentialism has been criticized for requiring too great
a commitment on the part of the moral agent; that is for requiring that moral agents
be (or almost) “moral saints”\(^32\). The problem is that it seems that in order to lead a
consequentialist life (that is act-consequentialist), one has to evaluate each and every
action and always choose the one that would maximize the overall good. In other

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words, to lead a consequentialist life, one is required to subordinate one's personal life to the promotion of the overall good, and this, at all times. As a result, one may end up disengaged or estranged from one's life. Personal matters then appear to only count if they serve the maximization of the greater good. As a consequence, one may not benefit from or enjoy important dimensions of a human life such as relationships or accomplishments to their fullest. The demands of consequentialism are therefore seen as too stringent, especially when one would be inclined to choose otherwise.

One consequence of the above criticism has been coined by P. Railton as the "alienation" problem. He says that it is true that the classical requirement for the maximization of the good may translate into a lack of depth, richness and/or enjoyment in the moral agent's life; that leading such a demanding moral life could estrange the moral agent from important dimensions of human life. This rightly opens the door for consequentialism to be criticized. But Railton further argues that this does not necessarily translate into sufficient grounds to reject consequentialism as a plausible ethical theory since the solution may be in the problem:

If to be more perfectly moral is to ascend even higher toward *sub species aeternitatis* abstraction, perhaps we made a mistake in boarding the moral escalator in the first place. Some of the very "weaknesses" that prevent us from achieving this moral ideal — strong attachments to persons and projects — seem to be part of a considerably more compelling human ideal.

Taking into account the importance of the moral agent's personal life, Railton argues that a consequentialist framework may still be compatible with the richness and depth of human life through a refinement of the maximizing strategy. In this sense, the basic problem is not that consequentialism may result in the alienation of
the moral agent but rather that the sophistication of the maximizing strategy is still in need of further qualification. To support this claim, Railton develops a sophisticated version of consequentialism in which an “indirect” strategy is articulated.

Railton’s view may be summarized as follows: The best maximizing strategy is not necessarily an act-maximizing one. This means that in order to maximize the overall good, one may occasionally be best advised to choose an action that is not the best one to immediately maximize the promotion of the good, but rather the potentially best one to maximize the long-term and/or greater promotion of the overall good. This is where (and why) the “indirect” strategy gets its name. Railton says that this distinction between what may be called “immediate gratification” with respect to the promotion of the greater good and the evaluation of what would best promote the greater good overall (and over time) defines two types of consequentialism:

Subjective consequentialism is the view that whenever one faces a choice of actions, one should attempt to determine which act of those available would most promote the good, and should then try to act accordingly. (...) Objective consequentialism is the view that the criterion of the rightness of an act or course of action is whether it in fact would most promote the good of those acts available to the agent.36

The key words in the above excerpts are “in fact”. They underline the importance of taking a more objective stance when evaluating whether or not this or that action is the best one available to yield the best consequences. Consequently, they stress the relevance of discarding a line of action that would best promote the good according to a punctual evaluation with limited scope when there is another line of action available that would yield better results overall (and over time). This is true, Railton argues, even if the former line of action has more “immediate gratification”

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than the latter one. Using this distinction between an objective and a subjective consequentialist calculation, he suggests a renewed form of consequentialism, which is referred to as “sophisticated”:

...a sophisticated consequentialist is someone who has a standing commitment to leading an objectively consequentialist life, but who need not set special stock in any particular form of decision making and therefore does not necessarily seek to lead a subjectively consequentialist life.³⁷

So a sophisticated framework still contains the basic consequentialist requirement to promote the greater good through a maximizing strategy, but the strategy suggested to attain such a goal is no longer an act-maximizing or direct one but rather a goal-maximizing or indirect strategy. By using such an approach, there is more room to account for other considerations to bear on the calculation of what would best serve the overall good. One crucial element of this renewed consequentialism is that it allows for individual discretion in leading a moral life. In this sense, personal matters may receive more attention and value if they are to indirectly promote the overall good. For instance, a sophisticated consequentialist calculation is not incompatible with the recognition of the value that, say, friendship (that is, a true and profound friendship as opposed to a merely instrumental one) may have in the overall promotion of the greater good. In other words, the sophisticated strategy enables a consequentialist calculation to precisely account for the important dimensions that were potentially denied in the classical form of consequentialism and constituted an “alienation” threat. Furthermore, Railton not only clearly states that a sophisticated framework is compatible with the importance we wish to put on human and personal dimensions, but also and most importantly he recognizes their importance as a fundamental element of the sophisticated framework:

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A sophisticated act-consequentialist should realize that certain goods are reliably attainable — or attainable at all — only if have well-developed characters; that the human psyche is capable of only so much self-regulation and refinement; and that human perception and reasoning are liable to a host of biases and errors. Therefore individuals may be more likely to act rightly if they possess certain enduring motivational patterns, character traits, or prima-facie commitments to rules in addition to whatever commitment they have to act for the best.38

So this means that not only what constituted the root of the alienation problem is now clearly compatible with consequentialism, but also that its promotion ought to be taken into account when calculating the promotion of the overall good. In this sense, we may safely assume that the human and personal dimensions that shape one's personhood will be constitutive of the greater good and should therefore be promoted accordingly; that is that “who we are” and “who we become” have to be reckoned with when determining how the greater good may be best served. The standards of a consequentialist morality are thereby not threatening to alienate moral agents since the depth, richness and significance of their own personal lives matter and affect how we ought to determine what is right and what is wrong:

But this standard plainly does not require that most people lead intolerable lives for the sake of some greater good: the greater good is empirically equivalent to the best possible lives for the largest possible number of people. Objective consequentialism gives full expression to this root intuition by setting as the criterion of rightness actual contribution to the realization of human value, allowing practices and forms of reasoning to take whatever shape this requires [our emphasis].39

Railton’s sophisticated consequentialism and the indirect maximizing strategy that comes with it are particularly suitable for our present reflection on suffering and on its implications for the euthanasia and assisted suicide debate. There are two main reasons supporting this. On the one hand, sophisticated consequentialism is

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compatible with the promotion of human value, which could be used to articulate our reflection on personhood. On the other hand, sophisticated consequentialism clearly allows for individual discretion in determining what personal dimensions count and in deciding whether or not, given the circumstances of one's life, they should be promoted. This framework is therefore compatible with the specifics of our reflection on suffering and could appropriately serve our theoretical needs to further reflect on the ethical implications our analysis may have within the scope of the euthanasia and assisted suicide debate.

In addition, the above excerpt is revealing in that not only does it set as the "criterion of rightness actual contribution to the realization of human value", but also because the promotion of such an approach to morality may be achieved by "allowing practices and forms of reasoning to take whatever shape this requires". In this sense, our reflection on suffering may be articulated within a sophisticated framework as one form of reasoning that may contribute to the realization of human value within the specific context of our discussion. One way of interpreting the premises of sophisticated consequentialism would be to stress the relevance of who we are as persons in the promotion of the greater good. This means that one important dimension of an indirect maximizing strategy may be that the elements that amalgamate to generate what is referred to as "personhood" ought to be taken seriously.

Taken as whole, the "personhood" dimension can therefore become a legitimate focal point within a consequentialist framework. Railton's analysis enables

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us to stress the relevance of who we are and who we become as a genuine and important consequentialist concern. In the same line of thought, we could further stretch the argument and claim that this means that our respective “personhood” is one of the most prominent means by which we can promote the greater good; that our “personhood” is a consequence of what we do and build over time and that this “human” consequence will play a significant role in the ethics of what we individually are capable of bringing about. In this sense, who we are and who we become remains a personal matter but clearly extends to objective consequences for the promotion of the greater good.

The above reasoning comes across some virtue ethics ideas that we earlier discussed; that is, that the ethical thing to do is to promote and develop our human perfection. However, it is significantly different since individual discretion is allowed in the determination of what ought to be promoted. Furthermore, there is no duty to promote this or that particular human dimension that is “imposed” on the moral agent. The only requirement is that the promotion of human value be part of the moral agent’s life as a significant part of the promotion of the greater good. This in turn may account for individual preferences and choices that fall within the limits of a certain “objective accountability” such as the objective tolerance criterion that we discussed in chapter 340.

It is important to note here that our specific focus on “personhood” within a sophisticated consequentialist framework does not restrict the possibility of defining what constitutes the “greater good”. It does not represent a claim that there is one

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and only one "greater good", which would be "personhood" (broadly understood). Our focus on personhood could be compatible with a framework that would promote a diversity of goods (e.g. happiness and human perfection). The limited scope of our analysis enables us to posit our reflection within a sophisticated consequentialist framework without having to enter the theoretical debate as to whether there is one and only one greater good or whether there is a diversity of goods to be promoted. This is because the relevance of taking the promotion of one's personhood seriously may be compatible with different definitions of the overall good(s). But for our reflection's sake, our theoretical concern may be limited to showing that the "personhood" dimension of a human life matters from a consequentialist ethical viewpoint, which is a concern that was addressed in this section. So with this specific understanding of the ethical framework that may serve best our theoretical needs and with the qualification of our limited use of such a framework, we may now turn to a reflection on how the ethical implications of our analysis may be articulated with a sophisticated act-consequentialist approach.

**A Consequentialist Approach to Suffering**

So the ethical framework we will be using to reflect on the ethical implications of our analysis of suffering is a sophisticated act-consequentialist one. Within this basic framework, the nature of our reflection stresses the ethical relevance of one's personhood as a good against which the right and the wrong may be distinguished. (address the issue of the plurality of the good here...) So what does this mean for the ethics of our notion of suffering?

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At first glance, we could be inclined to think that using such a consequentialist framework will translate into an ethical duty to maximize the promotion (or growth) of one's personhood through sustaining suffering when it turns out to be instrumentally positive and/or to minimize one's personhood degeneration by alleviating suffering when it reveals an instrumentally negative nature. This requires further qualification since this assumption is both true and false. It is true because under certain conditions, suffering may be necessary or unavoidable to serve one's personal growth. For instance, adolescence may trigger and sustain a significant amount of suffering, which will translate into one's becoming a more mature and full-grown human being. In this sense, the ethically right thing to do is not to overprotect the adolescent or to completely alleviate all suffering (if at all possible), but rather to support the adolescent in her journey through an instrumentally positive suffering. Also, one may voluntarily decide to go through a certain amount of suffering to nurture one's personal growth. For example, a marathon runner may (and will likely) go through periods of suffering while training and during the marathon itself. But the end result is likely to promote her personal growth in many ways and the suffering may then be seen as promoting her “personhood”. So the promotion of personal growth may come from an involuntary (e.g. adolescence) or voluntary instrumentally positive suffering. In both instances, we may see one's ethical duty to cope with the suffering experience in order to promote a positive personhood modification (or personal growth). A related duty would be for those in the sufferer's life to encourage, support and help the sufferer in coping with the instrumentally positive suffering.

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In such cases, the "objective tolerance" criterion discussed in chapter 3 could be used as a sounding board with respect to the determination of whether or not this or that suffering is indeed instrumentally positive. We will remember that the criterion of objective tolerance is roughly a standard of "reasonableness" with which we simply evaluate whether or not something (e.g. belief) could be rejected by an objective mind. This type of objectivity is much more accommodating than the strict criterion of objectivity, which aims at establishing whether or not an objective truth could be asserted. In this sense, we can use a criterion of "reasonableness" to moderate both the voluntary and involuntary instances of instrumentally positive suffering.

If the suffering one seeks goes beyond a certain level of reasonableness with respect to making one suffer in the name of growth and achievements, then the evaluation of the suffering may not be "objectively tolerated". In this case, its instrumental value could be outweighed by the instrumental disvalue resulting from this "unreasonableness" or, when pushed to the limit, suffering's value could completely shift to an instrumentally negative one. Similarly, involuntary suffering may very well be instrumentally positive under certain conditions such as during the learning experience of adolescence. But again, reasonableness will dictate the possible limit at which the experience becomes instrumentally negative. For instance, if an adolescent's father believes that his child should learn the "hard way", we may foresee that at some point, the suffering state that is imposed on the adolescent will no longer be "objectively tolerated".

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So both voluntary and involuntary suffering may be instrumentally positive within the limits of reasonableness, which is somewhat guarded by the "objective tolerance" criterion. Finally, it is also worth mentioning that even though there is significant room within the theory for individual discretion in the determination of what will be promoted and in the evaluation of suffering states, this should not mean that promoting personal growth is totally optional. On the contrary, there is a clear ethical duty for one to nurture one's personhood and growth in order to bring about, as a "human" consequence, an ameliorated human being who is better through the human dimensions that are developed in the process (whatever they may be). In other words, there is a difference between allowing for individual discretion in deciding what will be prioritized and nurtured and condoning a non-progressive attitude that does not yield any good consequences in terms of personhood modification. More concretely, if one prefers to nurture one's natural talent to play the piano instead of one's natural talent for jogging, then one is entitled to do so as long as the suffering that may be involved in the development of a musical talent does not deter the person to the point where neither talents are promoted. In this restricted sense, we may say that the ethical framework requires a certain amount of "willingness to suffer" in order to lead a moral life according to the principles developed here.

An instrumentally negative suffering may also be either voluntary or involuntary. An example of an instrumentally negative suffering that could be seen as voluntary could stem from a self-destructive behavior that is based on dubious premises such as in the case of anorexic people (e.g. I am fat – which is objectively false – therefore I should starve myself – which is the wrong approach to losing

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weight). It may here be argued that this example is problematic since it refers to a medical condition, which may not be voluntary per se. This is true. However, the point is only meant to demonstrate that some forms of instrumentally negative suffering may be voluntary to a certain extent; that is, that the reasons why this or that person suffers are rooted in the sufferer's beliefs, obsessions, misinformation, and so on. In such cases, the ethical thing to do is to err on the side of relief and to do everything possible to help the sufferer acquire the means by which the instrumentally negative suffering could be alleviated. The sufferer's ethical duty should therefore aim at a similar goal.

Alternatively, instrumentally negative suffering may be involuntary. Examples of this type of suffering are numerous and especially present in the medical setting. For instance, when (and if) a person who is HIV positive starts developing the acquired immunodeficiency syndrome (AIDS), a degenerative process ensues and the suffering involved may be deemed instrumentally negative. So when a person is suffering from an instrumentally negative and involuntary form of suffering, the ethically right thing to do is to attempt to alleviate it as much as possible or, in other words, to minimize its negative impact on the sufferer's personhood.

The latter form of suffering may be the most important one for our reflection since the ethics of its relief, though clearly on the side of relief, may still be in need of further reflection to determine how far we can go. This is where our reflection on suffering and on its ethical implications comes across the issue of whether or not the

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voluntary termination of human life may be an ethically justifiable action that should be legalized. This will be the key question of the final chapter of this thesis.
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5 A recent effort has been made to bridge the gap between consequentialism and kantianism. See Cummiskey, D., (1996), Kantian Consequentialism, New York: Oxford University Press.

6 It may be appropriate to remind the reader that our analysis of suffering and its articulation within a consequentialist framework may be compatible with a pluralistic view of the good. In fact, we must bear in mind that even though our focus is on one important type of good, namely "personhood", there are other goods that could play a role depending on the circumstances in which the evaluation takes place. For instance, someone might have a good reason for enduring considerable suffering so as to complete an important project or to see a child graduate from university. There is no need to develop this aspect since the validity of our reflection is not really affected by the number of goods to be served. See “Suffering’s Instrumental Value”, chapter 3, p.108.

7 See Aristotle, Nicomachean Ethics.

8 Obviously, a commitment to the objectivity of the good can also be problematic per se. But our goal here is merely to determine whether or not virtue ethics could serve our theoretical needs. We will therefore limit our efforts to establishing whether or not the use of a virtue ethics framework should be ruled out given the specific context of our reflection.

9 See Hurka, T., (1993), Perfectionism, New York: Oxford University Press, p.5. It may be relevant to note that Hurka’s perfectionism uses a consequentialist framework to revisit the virtue ethics tradition and defines the "maximization of human perfection" as the fundamental ethical principle with which we may evaluate actions. Even though Hurka’s perfectionism constitutes an interesting merger between consequentialism and virtue ethics principles, we will not discuss this theory any further since, on the one hand, its strong commitment to the objectivity of the good makes it incompatible with the type of influence individual discretion has in our reflection and, on the other hand, its mixed theoretical allegiance limits its being an adequate representative of the mainstream virtue ethics tradition, which we wish to discard.

The relevance of quoting Hurka’s work is therefore limited to its commitment to the objectivity of the good, the implications of which enable us to immediately discard perfectionism and to further discuss whether or not we should rule out virtue ethics in general.


11 Ibid., p.240.

12 Ibid., p.164.

13 Idem.

14 Ibid., p.166

15 It is important to note here that, in the specific context of our discussion of virtue ethics, one's duty to develop one's potential should be understood generically; that is, one's duty to develop all appropriate virtues and not just one's specific duty to, say, develop one's talent to play the piano. This is an important distinction because for Hursthouse, any specific duty to develop one's potential will be just one duty among many. This generic use of one's duty to develop one's potential (or virtues) is, in a sense, intended to be the “duty of all duties”. This

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facilitates the discussion while remaining faithful to a general point Hursthouse makes: “Acting from virtue is sufficient for acting from duty”.

16 Ibid., p.19.
17 Ibid., p.166.
18 Ibid., p.17.
20 The act / rule distinction is usually used to distinguish two forms of utilitarianism; see Smart, J.J.C., (1990) “Act-Utilitarianism and Rule-Utilitarianism” in Utilitarianism and Its Critics, J. Glover ed., New York: McMillan, pp.199-202. But since consequentialism is one of the four elements one needs to endorse in order to be a utilitarian (the other elements being the validity of ethical theories – as opposed to nihilism, aggregation and welfareism), the distinction can and has been used to separate two forms of consequentialism; see Railton, P., (1984), “Alienation, Consequentialism, and the Demands of Morality”, reprinted in Scheffler, S., ed., (1988), pp.93-133.
23 Critics may claim that other elements are problematic regarding the process by which one evaluates whether this or that action is the best option available to promote the maximization of the overall good and whether or not the resulting evaluation is the right one. For instance, it may be argued that one’s evaluation of the best option available may not yield the same results as an external assessment. Consider B. Williams’ words on the matter: “…the assessment by others of whether the agent did do the right thing is not bounded by the agent’s state of knowledge at the time, and the claim that he did the wrong thing is compatible with recognizing that he did as well as anyone in his state of knowledge could have done.”. Williams, B., (1973), “Consequentialism and Integrity”, reprinted in Scheffler, S., ed., (1988), Consequentialism and Its Critics, Oxford Readings in Philosophy, New York: Oxford University Press, p.23.
24 Ibid., pp.20-50.
25 Ibid., p.31.
26 See “Suffering’s normative essence”, Chapter 3, p.93.
27 Again, see footnote 6 above.
28 There is a debate amongst scholars as to whether or not the basic principles of the approach may be traced back to J.S. Mill (1806-73). See his On Liberty and Other Essays, (1991).
30 One of the most influential defence of rule-consequentialism is to be found in Richard Brandt’s work. See his classic A Theory of the Good and the Right, Oxford: Clarendon Press, 1979.

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36 Ibid., p.113.
37 Ibid., p.114.
38 Ibid., p.120.
39 Ibid., p.125.
42 We use the conditional word “may” since it is also possible that the person would deem the suffering instrumentally positive for personal reasons that cannot be contested. See our discussion on the matter in ch.3, “Suffering’s Instrumental Value”, pp.107-17.
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Against all the injuries of life I have the refuge of death. If I can choose between a death of torture and one that is simple and easy, why should I not select the latter? As I choose the ship in which I sail and the house which I shall inhabit, so I will choose the death by which I leave life. The wise man will live as long as he ought, but not as long as he can.

- Seneca

It is now time to take stock of what has been said so far and to put together the findings of the first four chapters in order to establish how our reflection on suffering could make a contribution when revisiting the debate on euthanasia and assisted suicide. It may be of interest, at the outset, to historically situate the issue of voluntary death. The debate on euthanasia and assisted suicide is not a recent one. In 1516, Sir Thomas More, in Utopia, first raised the issue of voluntary euthanasia, or suicide, for people who had incurable and painful diseases. A century later, Francis Bacon suggested that it was a physician's duty to help a patient "make a fair passage". The following centuries brought increasingly probing discussion of euthanasia, both pro and con, by numerous philosophers and writers; Montaigne, Voltaire, Rousseau, Montesquieu, Hume, and Bentham wrote in favor of suicide, while Kant, Schopenhauer, Nietzsche, and William James opposed it.

So we can see that the issue of whether or not the voluntary termination of a human life is acceptable is an old topic that interested prominent thinkers whose opinions on the matter were as divided centuries ago as the current opinions are. But taking a look further back in the history of our civilization, J. Fletcher brings to our attention the possibility that we may currently be in the final moment of a historical cycle that started in antiquity:

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The full circle is being drawn. In classical time, suicide was a tragic option, for human dignity's sake. Then for centuries it was a sin. Then it became a crime. Then a sickness. Soon it will become a choice again.3

The fact that the debate has increasingly been translated into the contemporary language of rights may be seen as a sign that the above remark could have some truth in it. The framing of the issue as the "right to die" enabled advocates of the pro-side to take it before the courts of law, which could represent, as we pointed out in chapter 1, the final stage of the debate. In addition, we also saw in chapter 1 that the front line reality is already showing signs of the pervasive effect of the pro-side claim that there is a legitimate place for a "right to die" in our society. Evidence seems to suggest that there is growing acceptance of and even support for the establishment of a legal right to die within the health care professionals community (even though clear and strong opposition is also present). This trend may be witnessed in different settings including public forums.

A Toronto newspaper recently reported that the possibility of framing euthanasia and assisted suicide into a strictly controlled legal option in Canada appears to find growing support within the medical community:

"...attitudes within the medical community itself show signs of tending toward, if not overt support for euthanasia, an acquiescence to administering euthanasia, if the law should change."4

This could be a sign that the abovementioned circle is indeed closing into a resolution that could support the legalization of euthanasia and assisted suicide, which would only be legalized to a certain extent and safeguarded by clear and strict guidelines.

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But there is still a lot of hesitation and resistance regarding this idea and only more effort put into showing why and how it could be appropriate in general and in Canada may bridge the gap between idea and reality. This is where our reflection on suffering may prove to be of interest.

Our analysis of suffering and its ethical implications may contribute to the effort put into understanding why such an option may be acceptable and how it could fit into the Canadian legal context. Even though the debate on euthanasia and assisted suicide is a historically old one, some of the main issues at the heart of the discussion are still under-explored and in need of more attention. The issue of suffering is one of them. It has continuously been put forth as a central concern but, surprisingly, the nature of the issue itself and its implications have been somewhat overlooked, or at least not refined enough to have a more specific and convincing impact.

Alongside the history of the debate, the contemporary stage of the discussion on euthanasia and assisted suicide (rightly) situates suffering as an important factor to take into consideration. But the inclusion of the issue of suffering in the debate is usually done in general terms rather than specific ones. We refer to “suffering” in general terms only to pinpoint the need to alleviate it but we seldom, if ever, dig deeper into the issue to possibly establish types and levels of suffering as well as discrepancies between their respective specific impact on the sufferer's life and death. The depth of the issue is thereby somewhat overlooked. This is where our reflection on suffering finds its relevance and hopefully will enrich our understanding.

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of how suffering could play a more specific role in the debate on euthanasia and assisted suicide.

Our present expectations must remain humble, however. The issue of suffering is a complex one that covers a broad theoretical territory. Only a collective effort will, over time, yield a comprehensive understanding of the issue and of its possible implications for the legalization of euthanasia and assisted suicide. The present contribution is therefore limited in scope and does not aim at providing a comprehensive solution. The issue of suffering may require further investigation to completely unveil the richness of what it has to offer. In addition, even a comprehensive understanding of the issue of suffering may only be part of a more complete solution to voluntary death, which is still to be developed in order to address the full range of challenges we face when reflecting on its legalization. Our discussion does not aim at being exhaustive or comprehensive on the matter.

However, the limited expectations we should have regarding our reflection on suffering do not undermine the importance of our findings. By framing the suffering phenomenon in a way enabling us to isolate what was coined in chapter 2 as an "overwhelming unpleasant experience", we have opened the door to refine our analysis and understanding of what is commonly referred to as "excruciating" or "unbearable" suffering. This is an important type of suffering, which is usually a factor when voluntary death is being contemplated. The way we framed it may prove to have interesting ramifications for the debate on euthanasia and assisted suicide,

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especially when revisiting core elements of the legal context. This is where the heart of the theoretical usefulness of the present reflection is.

Bearing in mind that our findings do not pretend to be comprehensive, they could nevertheless be convincing, if not compelling, on a number of issues that still stand in the way of an appropriate legalization of euthanasia and assisted suicide. In this last chapter, we will revisit areas on which our findings on suffering could shed an interesting light. In addition to expanding our ethical reflection by addressing certain implications of the ethical analysis suggested in chapter 4, we will revisit three core areas of the debate: the rationality of suicide, life’s worth, and the Canadian Charter of Rights and Freedoms. By revisiting these three areas with our analysis of suffering, we might yield piecemeal answers that could help define clearer grounds to support the legalization of euthanasia and assisted suicide in Canada. But before doing so, it would be appropriate to clarify the central issue that is here at stake, namely the voluntary termination of a human life.

**Voluntary Death**

There are several different types of death that could qualify as “voluntary” as well as different sets of issues associated with each of them. To avoid any confusion, it is preferable to review these “types” of voluntary death to clearly establish what exactly we wish to affect through our revisiting the voluntary termination of a human life with our concept of suffering. First, it is important to limit the scope of our discussion to a death that is “voluntary”. There are three types of relations between one’s will and one’s death: involuntary, nonvoluntary and voluntary. The former type

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means that the person whose death is to be brought about is aware of the forthcoming consequence and does not agree. Murders and genocides are good examples of this category, which is unilaterally unacceptable and is not included in the scope of our reflection.

The second type of relation between one's will and one's death relates to a situation in which there is no clear knowledge of one's wishes; that is, the person whose death is to be brought about is not in a position to express her wishes and these wishes are unknown or uncertain. The case of permanent vegetative state (PVS) patients is a good example of such a situation. When death is considered an option under such circumstances, the decision cannot be based on a clear, persistent and voluntary request made by the patient (unless in an advance directive). The PVS patient's wishes can only be inferred by a surrogate decision-maker; usually the close family. A nonvoluntary death raises several issues, such as those related to surrogate decision-making, which we need not address here. So the scope of what we wish to affect through our reflection on suffering does not include nonvoluntary death.

The last type of relation between one's will and one's death is the one that is voluntary. This means that the person whose death is to be brought about is aware, competent\(^5\) and persistently and voluntarily expresses a clear wish to die. Acting on such a wish would then qualify as a "voluntary death". The act itself can be performed either by a first party or a third party. In the case of a first party performing, we have a suicide. Assisted suicide also qualifies as a first party performing but involves some help by a third party, which is, as we saw in chapter 1, illegal under Canadian law.

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Finally, in the case of a third party performing, we have voluntary euthanasia. The decriminalization of attempted suicide in 1972 separated the issue of suicide from those of assisted suicide and voluntary euthanasia by drawing a line between first party performing and third party assisting and/or performing. The relevance of drawing such a line is precisely at the heart of the current debate on whether or not we should reform the Canadian law. Acknowledging that the heart of the problem is third party assisting / performing, we will work under the assumption that if grounds can be established in support of such practices, the rationale will naturally extend to first party performing. So we will not distinguish these practices according to who brings about one's death and refer to suicide, assisted suicide and voluntary euthanasia as “voluntary death” (VD). With this definition in hand, we may now turn to the first problematic area: the rationality of VD.

**Rationality of Voluntary Death**

The question as to whether or not it may be “rational” for a human being to ever prefer death over life; to believe that one's present state of life and/or one's possible future states of life could be deemed worse than one's death may be informed by our reflection on suffering. Historically, the idea that it is irrational for a human being to terminate her own life has proven to be very resistant to accommodating nuances. It is usually assumed that when someone wishes to die, this person expresses an irrational wish and is probably either incompetent or under the influence of a particularly powerful emotional state such as depression⁶. This assumption is especially interesting for our reflection since it could (and frequently does) stem from the belief that rational thinking may be impaired by intense suffering

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and that such a state can coerce the sufferer into wanting to die. It is commonly argued that pain and suffering should not be considered as reinforcing the rationality of VD. This argument meshes the rationality of the act (VD) with the broader problem of “competence”. For instance, it has been argued that pain and the side effects of narcotics are very apt to render a patient incompetent⁷. In such cases, the relevance of discussing the rationality of VD may be masked by the prominence of other issues and thereby overlooked. We will here focus our discussion on the rationality of VD by addressing the presumption of irrationality that has traditionally been associated with the specific act of suicide.

The resistance of the presumption of irrationality associated with suicide is echoed in the Canadian law reform of 1972. As we saw in chapter 1, the act of attempting suicide was a criminal offence under Canadian criminal law until 1972. In the course of that year, attempted suicide was decriminalized for humanitarian reasons. The rationale was that people who attempt suicide are more in need of support and treatment than prosecution. The presumption here was precisely that suicide is irrational and that this warrants treatment and support rather than prosecution. So in this sense, the law reform may be seen as an official recognition that suicide could not constitute a reasonable and competent choice. Clearly, this was not an endorsement of suicide as a rational act. To further stress that point, it is important to remember that anyone who would counsel, encourage or help someone to commit suicide (or attempt to do so) remained subject to prosecution under Canadian law. In other words, only failed attempts to commit suicide found new

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clemency in 1972 whereas any form of assisted suicide remained criminal offences (under Canadian Criminal Code, Section 241a – b).

However, the idea that suicide is necessarily irrational has increasingly been challenged over the past years. Different arguments have been suggested to reverse the suicide-irrationality presumption and support the possibility of a rational suicide⁸. In the early eighties, H. Hendin went even further in suggesting that even the very concept of “suicide” may be misplaced when one has rational reasons to end one’s life. If Hendin is right, then suicide may always be irrational, but one’s voluntary termination of one’s life may not always qualify as a “suicide” per se:

The person facing imminent death who is in intolerable pain and arranges to end his life may be a suicide in the dictionary definition of the term, but not in the psychological sense.⁹

Hendin’s argument points in the direction of a common trend that has developed amongst those in favor of the legalization of assisted suicide and euthanasia. This trend basically consists in believing that should appropriate criteria be met, suicide may very well be the best option available and therefore that “it is rationally justified to kill oneself when a reasonable appraisal of the situation reveals that one is really better off dead.”¹⁰ Some authors go even further in implying that not only suicide may be a rational option but also that as soon as it is established that suicide represents the rationally best option, the “rationality” argument could / should extend to an immediate management of the situation. Consider R.B. Brandt’s viewpoint on the matter:

As soon as it is clear, beyond reasonable doubt, not only that death is now preferable to life but also that it will be every day

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from now until the end, the rational thing to do is to act promptly. 11

Another way of framing the issue could also be to say that “suicide” and “being suicidal” are two different things. The claim that suicide could be a rational option opposes the abovementioned approach that subordinates the rationality issue to the question of competence in that it puts forth the idea that certain criteria can be defined to distinguish a rational suicide from the emotional or involuntary state of “being suicidal”. This means that one’s contemplation of suicide does not necessarily translate into one’s “being suicidal” in the emotional sense. In other words, the decision-making process with which one chooses to end one’s life may be emotion-free (or at least to a significant extent) and therefore rational 12. From this perspective, it may be important to distinguish the emotional state of “being suicidal” from the rational decision-making process that could result in one’s voluntary termination of one’s life (or “rational suicide”). This may be one of the reasons why E.S. Scheindman very wittingly suggested as a rule that you should “…never kill yourself when you are suicidal.” 3

This reflection on the rationality of suicide is equally valid for what we defined as VD. One’s wish to die as well as one’s request for one’s death to be brought about is equally rational (or irrational) regardless of the means by which the wish is fulfilled (i.e. first or third party). In this sense, the withdrawing and withholding of treatment, suicide, assisted suicide and voluntary euthanasia fall under the same category (VD) and unified criteria can therefore be developed to determine the rationality of the act. For those supporting the rationality of VD, the question then becomes: Under what

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circumstances is VD rational? What are the criteria? This is one question the solution of which can partly be developed with our reflection on suffering. The criteria that we can extract from our reflection on suffering could then be added to a more complete list of other important elements such as one's competence. The elements stemming from our reflection on suffering that could help assess the rationality of VD are:

1) The patient's suffering should meet the requirements of an overwhelming unpleasant experience (i.e. suffering as we defined it).
2) The suffering state should be deemed instrumentally negative according to the criteria defined in chapter 3.

These criteria would certainly enrich a more complete list that could both support and restrict the attribution of rationality to VD and thereby pinpoint the relevance of considering the possibility that VD be rational. In other words, the above two criteria constitute reasons to believe that VD may be rational and therefore should be treated as such when appropriate. This could help defuse the issue of irrationality that has contributed, to a certain extent, to the rejection of VD as a sound option that should be legalized. In addition, our proposed criteria can also help us establish firmer ethical grounds.

**Ethics of Voluntary Death**

We suggested in chapter 4 that an ethical justification of VD could be articulated within a sophisticated consequentialist framework, which may be one of the most promising ways to ethically assess the issue of suffering (as we defined it). One general criterion that can be extracted from our ethical analysis of suffering could help ensure that the abovementioned rationality of certain types of VD (those
meeting the criteria) be reinforced by the application of a restrictive but still flexible ethical standard\textsuperscript{15}. The implications of our ethical reflection on suffering may be summarized in what would constitute a third criterion to take into consideration when assessing a request for a voluntary death:

3) To be ethically sound, VD must represent the best option to promote a positive net difference of the overall good, which is rooted in the idea that who we are as persons and who we may become is one of the greatest consequences that individuals may bring about in this world.

Given the limits of our individual capacity to make an overall net difference in this world, the assessment of who we are and who we may become could / should play an important role in determining whether or not VD proves to be ethically sound. The type of suffering we analyzed may have an important impact on this dimension.

One fundamental objection to the above criterion could be that \textit{all} elements involved in such a situation have to be taken into consideration when determining the “overall good” and this, especially from a consequentialist standpoint. This, it could be argued, may very well result in an ethical argument \textit{against} VD rather than \textit{for}. From a consequentialist viewpoint (and possibly others), there are three main considerations that appear to underpin this objection: alternatives to VD; impact of VD on others; and possible abuse. If not appropriately considered, these three concerns could very well translate into an overall net difference in terms of consequences that would be worse with VD than without. But far from undermining our development of a rationale supporting VD, these concerns will help us circumscribe important implications of our reflection on suffering.

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The distinction we made in chapter 3 between an instrumentally negative suffering and an instrumentally positive one, which resulted in criterion #2 (above) for assessing the rationality of VD, is crucial to understanding how the above concerns can be defused. This distinction basically means that only those whose suffering is instrumentally negative could claim that their suffering warrants / supports VD. We saw that to qualify as negative, a suffering state must be unmanageable, hopeless and degenerative for the person whose suffering it is\textsuperscript{16}. In other words, only under strict and very specific conditions will a suffering state qualify as instrumentally negative. Keeping this in mind, let us reflect on the first consequentialist concern, namely the possible alternatives to VD.

The main (and the most significant) alternative that is usually flagged to oppose the legalization of VD is palliative care. It is argued that palliative care is both under-used and under-developed. This argument mainly revolves around the claim that people contemplating VD as a means to alleviate their suffering should be provided with palliative care rather than terminal help. The relevance of palliative care is also rooted in the fact that this type of care is only beginning to get its rightly deserved recognition and is therefore still to be fully developed. This, according to palliative care advocates, means that efforts should be put into improving this important type of care and not into the legalization of terminal practices. As a result, palliative care could be seen as more promising in terms of promoting the overall good than the legalization of VD.
The palliative care argument is a valid one. It surely points in a direction that would be hard to criticize: help and support rather than kill. However, it is important to recognize that our analysis of suffering circumscribes a narrow situation in which the suffering is beyond control. We clearly established in chapter 3 that the type of suffering we defined is past the stage of manageability; this is why it qualifies as suffering within our framework. This has implications for the palliative care argument since the suffering we here consider is not manageable. Even if the level of efficiency of palliative care augments considerably in the years to come, it may be safe to assume that it will never reach the stage where all suffering will be manageable. There will always be a possibly small but still recognizable area in which unbearable and unmanageable suffering will slowly destroy the sufferers. It is this type of suffering that we circumscribed and analyzed and its very nature excludes the possibility that palliative care could represent an adequate solution. By definition, the suffering that is here at stake is beyond the reach of the means by which we can manage other types of suffering.

The second concern that could undermine a positive consequentialist evaluation of VD is the impact it may have on others. This concern mainly signals that VD could very well trigger more suffering (in others such as the close family or the health care team) that would, ultimately, outweigh the suffering alleviated by the act. This argument is also sound and hard to criticize: better less than more suffering overall. However, the distinction between instrumentally negative and positive suffering that stems from our analysis could not generate such a consequentialist evaluation of VD. It is important to underline, once again, the fact that our framework

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only allows for a very specific type of suffering to qualify as instrumentally negative. The rest necessarily falls under the instrumentally positive category, if not merely neutral. This basically means that the qualitative difference between negative and positive suffering affects the consequentialist evaluation in a way that precludes the suffering triggered by VD outweighing the suffering alleviated by the act. If one's situation meets the criteria underpinning the soundness of VD as an option, the voluntary alleviation of the suffering involved can (and probably will) trigger suffering in those surrounding the person whose death is brought about. But the suffering triggered by VD is very unlikely to qualify as negative. It will mainly consist of types of suffering that can and will, within our framework, qualify as positive.

For instance, one of the most probable forms of suffering that will be triggered by VD is mourning. According to our analysis, the suffering involved in the mourning experience is likely to be manageable and will probably contribute to one's growth; to enrich one's personhood and humanness. Mourning is part of life and contributes to human growth. Even though it is not pleasant and is not necessarily sought for growth purposes, it is safe to assume that it is inevitable and may (or will) enrich the life of those suffering from a loss. The suffering that can be triggered by VD would therefore fall under the instrumentally positive type. In this sense, the sufferer's suffering supersedes the suffering VD may trigger in that it also has a qualitative importance in our framework and not just an quantitative one. So even the greatest amount of instrumentally positive suffering that could be triggered by VD could not outweigh, in our consequentialist evaluation, the instrumentally negative suffering at stake and the related relevance for VD.

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The third and last consequentialist concern is the fear of possible abuse and its related impact on the evaluation of the overall good. This argument is especially important since it is also one of the core concerns the legal authorities express when ruling on a request for lawful VD (e.g. the Rodriguez case). This issue directly cuts across the tension between public and private interests we discussed in chapter 1. Again, it may be possible for us to defuse this problem to a significant extent by using the strict criterion we can derive from our distinction between instrumentally negative and positive suffering. This criterion enables us to significantly restrict the pool of individuals who could qualify for VD. This would facilitate the establishment of appropriate safeguards that could efficiently contain the possibility of abuse and therefore reduce the fear associated with it (or so we hope).

As we demonstrated in chapter 3, the evaluation of the type of suffering involved in any given situation requires a clear acknowledgement of “reasonableness” at the “inter-personal” level, which provides an accountability framework that could ensure due (and safe) process in establishing the validity of a request for VD. If we were to limit VD to only those cases involving instrumentally negative suffering, the possibility of abuse would be reduced to a minimum, if not eliminated. At the very least, the possibility of abusing such a framework would be sufficiently reduced to shift the consequentialist evaluation of granting lawful VD to the pro side. We saw in chapter 1 that the balancing of pros and cons by the Supreme Court clearly reveals that the side against the legalization of VD only slightly outweighs the pro side. This was particularly made obvious by the tight vote in the Rodriguez case (five against four). Our arguments stemming from the distinction we

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make between instrumentally negative and positive suffering could therefore help tip the balance on the other side. The criteria that were suggested above as well as the discussion that followed on specific issues may provide sufficient proof that it is reasonable to entertain this thought. The limited focus of our reflection on suffering may therefore be seen as a prudent approach to taking a step in the direction of legalizing such practices it considerably restricts the eligibility for VD.

Our framework may be criticized for being too restrictive, though. Some cases in which VD could otherwise seem justified may very well be left out. Even though this may represent an unfortunate consequence of our approach, it is important to stress that this may be the price we have to pay in order to ensure that enough caution is put into such a progress. So it may be more acceptable to slowly progress toward a more encompassing approach and leave out cases that could otherwise be included than to attempt to generate a broader rationale at the risk of including cases that would otherwise be excluded. In this sense, our reflection may constitute one cautious step in a direction that could require many more. The specific state of suffering on which we focused our reflection nevertheless suggests arguments that support the possibility of associating VD with criteria of rationality and of morality, which in turn may be used to defuse core concerns that are currently at the heart of the debate.

However, even though compelling arguments may be developed to support the rationality and morality of VD under certain circumstances, there could still be significant resistance to seeing them as sufficient to support the legalization of

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euthanasia and assisted suicide. The reason for this, it could be argued, is that even though death may represent a more appealing (and rational / ethical) option than certain states of life, the fundamental value of life and the value one's life may have for others supersede all other arguments. The issue of the intrinsic value of life is at the root of well-known arguments against VD such as the sanctity of life argument. Most arguments of that sort stem from the question asking whether or not life is worth living at any price. One side argues that life's worth warrants respecting it through living its full (and sometimes prolonged) length whereas the other side believes that life's worth may be best respected by assuring a dignified death according to circumstantial considerations and the wishes of the person whose life it is. So the above discussion on the rationality and the ethics of VD naturally needs to be complemented by an analysis of the "life's worth" argument.

**Life's Worth**

Whether or not the "life's worth" argument could be used as grounds to further support (alongside the rationality and morality arguments) or decline one's right to VD is another important issue at the heart of the debate on VD. In turn, it translates into the assessment of whether or not the question "Is life worth living?" is a legitimate one. Those supporting the legalization of VD and claiming that these practices may be rationally and ethically justified uphold that there may be circumstances in which life is not worth living anymore. Support of this kind goes back a fairly long way in time. Consider M.R. Barrington's 1969 reflection on the matter:

People who insist that life must always be better than death often sound as if they are choosing eternal life in contrast to eternal death, when the fact is that they have no choice in the

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matter; it is death now, or death later. Once this fact is fully grasped it is possible for the question to arise as to whether death now would not be preferable. Death taken in one’s own time, and with a sense of purpose, may in fact be far more bearable than the process of waiting to be arbitrarily extinguished.23

Those against VD have seen the “life’s worth” argument in a very different light, however. They opposed the above individualistic approach to life’s worth that claims that life may not be worth living for this or that person by stressing the view that life’s worth is not an individual matter but rather a general one; that is that life has worth beyond the worth it may have for the individual whose life it is. One compelling reflection that upholds a similar viewpoint can be found in J.D. Velleman’s article entitled “A Right to Self-Termination?” 24. His basic argument is that life’s worth should be recognized as a value that extends beyond the individual and that this precludes the possibility of deriving a right to die from the already recognized right to self-determination. However and interestingly, Velleman is not totally against the possibility of defining certain conditions under which death could be preferred over life. But he believes that the main issue is misplaced since a rationale supporting VD should not stem from the individual right to self-determination. According to him, the pivotal point is the dignity of life, which extends beyond the individual whose life it is. His main idea is that the whole debate is mistaken when it focuses on whether or not one’s death should be “dignified” since it is whether or not one’s life is “undignified” that should matter:

...the phrase “dying with dignity” is potentially misleading. We don’t think that a person’s death is morally acceptable so long as he can carry it off with dignity. Rather, we think that a person’s death is acceptable if he can no longer live with dignity. The operative concept is undignified life, not dignified death. When a

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person cannot sustain both life and dignity, his death may indeed be morally justified.\textsuperscript{25}

Velleman’s analysis is particularly interesting and insightful since it constitutes a mix of arguments for and against VD. It may be of interest to briefly review his arguments against deriving a right to VD from the right to self-determination, which is a rationale compatible with our reflection.

Velleman suggests that two principles underpin the claim that a right to die may be derived from the right to self-determination, which is a claim commonly put forth by those supporting the legalization of VD. The first principle is that:

\ldots a person has the right to make his own life shorter in order to make it better – to make it shorter, that is, if doing so is a necessary means or consequence of making it a better life on the whole for him. (...) The second principle is that there is a presumption in favor of deferring to a person’s judgment on the subject of his own good. Together [first and second principles], these principles imply that a person has the right to live and die, in particular, by his own convictions about which life would be better for him.\textsuperscript{46}

According to Velleman, these principles are flatly wrong since they overlook an important point about the value of life; that is that life’s worth extends beyond the individual whose life it is. So even though our lives are inevitably individually defined, constituted and nurtured, who we are and who we become as persons is something that extends beyond the individual reality. In this sense, the value of our personhood cannot solely rely on individual assessments since it outgrows the individual in whom the “person” is rooted. In other words, the ownership of the value we have as persons is a collective one rather than an individual one. This is why Velleman argues that:

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Challenging a person's judgment about his good is objectionable because it undermines his role as the agent of his own affairs; but his value as a person is not just his affair. Although his good is a value that accrues to him alone, in the first instance, his value as a person inheres in him among other persons. It's a value that he possesses by virtue of being one of us, and the value of being one of us is not his alone to assess or defend. The value of being a person is therefore something larger than any particular person who embodies it.²⁷

If Velleman is right, then we can see why he claims that a right to die cannot be derived from the right to self-determination. If one's life would be voluntarily terminated on the grounds that this person believes that the value of her death is (now) irremediably greater than the value of her (present and future) life without taking into consideration that this person's value is a collective one, then we would be undermining the fundamental principle that a person's value is collectively defined and possesses important ramifications that extend beyond the individual's viewpoint on her value as a person. For this reason, Velleman upholds that focusing on trying to extend the right to self-determination to a right to die is a mistake since the latter right cannot be derived from the former.

The problem with this viewpoint touches on the reasons we used to discard a virtue ethics framework in chapter 4. We then upheld that individual discretion in deciding whether or not this or that state of life has value should be accommodated. Velleman's viewpoint may not be compatible with allowing individuals to have a say in determining the value of their respective life since it clearly stipulates that life's worth is collectively determined and falls outside the jurisdiction of the right to self-determination. So the key point is that Velleman denies that life's worth is a value that

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exists for individuals. In this sense, he rejects the idea that would frame the value of life as a prudential one:

But the dignity of a person isn't something that he can accept or decline, since it isn't a value for him; it's a value in him, which he can only violate or respect. (...) value for a person stands to value in the person roughly as the value of means stands to that of the end: in each case, the former merits concern only on the basis of concern for the latter.28

Even though Velleman's viewpoint is intuitively appealing and may very well partially reflect reality, the sharp disconnection that his stance invokes between one's personal views on the value of one's life and the "objective" value of life has an important implication that may be questionable. If one's personal assessment of the value of one's life directly opposes the collective (or objective) value that Velleman claims to be the most important one (or the only binding one), then the collective valuation of this person's life will translate into an imposed duty to live. So if Velleman is right, the gift of life that we all receive at birth and the right to life that protects our living it are rooted in a shared interest in any life and its value naturally extends to a duty to live, which may only be lifted by a collective agreement that it has become "undignified". For the reasons that we explained in chapter 3 and 4, the rejection of individual discretion in determining the value of one's life is questionable. The hidden duty to live that may stem from a purely objective valuing of individual lives may constitute a weak point of Velleman's analysis that we may not be prepared to endorse.

However, Velleman's arguments do not have to be all rejected. Our framework and valuing process may account for some important points that Velleman made.

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idea that life's worth is something that extends beyond an individual's viewpoint is intuitively sound and may be accommodated by our approach. The "objective tolerance" criterion that we discussed in chapter 3 recognizes that we may have a collective interest in the value of life in general and in particular. But our clear recognition of the importance of one's individual discretion in determining the value of one's life enables us to also restrict the duty to live that may naturally be derived from a collective interest. We saw that an instrumentally negative suffering may supersede the otherwise reasonable duty to live and provides the sufferer with individual discretion in deciding what ought to be done. In this sense, the right to self-determination may have some importance for VD.

So the main argument against Velleman's point of view (which is rooted in the value life has in itself and to others) is that it creates a duty to live, which does not allow for one's individual discretion in determining the value of one's life and this may be particularly problematic when dealing with an instrumentally negative suffering. So the main problem with Velleman's analysis is that it contains an unrestricted duty to live.

This reflection on Velleman's views comes across the core issue of the Rodriguez case that we analyzed in chapter 1. The Supreme Court of Canada turned down her request for lawful assistance in dying mainly because it was deemed (with, we should repeat, a narrow majority of five against four) that the public interest in not granting Ms. Rodriguez' request should be given priority over Ms. Rodriguez' private interest in VD. This literally translated into a questionable duty to live for Ms.

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Rodriguez, which was challenged on a number of fronts by the minority judgment. The opposing reasons given by the majority judgment may be informed by the results of our analysis and could be defused to the point where it could be possible to think that the Supreme Court’s majority opinion could shift sides in the future. If such a shift is possible, it will likely be rooted in an interpretation of the Charter of Rights and Freedoms. So it may be relevant, in conclusion, to revisit the three sections of the Charter that could mainly be affected by our findings, namely sections 1, 7 and 12.

Revisiting the Canadian Charter of Rights and Freedoms:

Section 1 of the Charter “...guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” The “reasonableness” of the limits prescribed by law may be informed by our analysis. We saw that the right to life that we all have and support can turn into a “duty to live” when someone suffering from an instrumentally negative suffering wishes to die. Forcing someone to live a full degenerative process that leads to death is likely not to be the intent of the law. However, in certain cases, we demonstrated that this could be the direct consequence of refusing lawful VD. In such a situation, the rationale we developed may help establish that the duty to live imposed on the sufferer does not fall under the “reasonable limits prescribed by law”. Pushed to its limit, what we defined as a “duty to live” could then qualify as “cruel and unusual treatment or punishment”, which falls under section 12 of the Charter.
Section 12 stipulates that “everyone has the right not to be subjected to any cruel and unusual treatment or punishment”. From the perspective of our analysis, it is clear that there is a state of suffering in which the sufferer is subjected to some form of (unintended) cruelty should this person be denied the right to die. Our reflection provides sufficient details to circumscribe an area particularly plagued with the possibility of (unintended) cruelty and to develop an appropriate response. In this sense, the concept of suffering we developed sheds an interesting light on a combination of section 1 and 12 of the Charter; it makes a fundamental problem more obvious and provides for the development of an appropriate solution.

This problem and that solution may be summarized in Section 7, which states that everyone has a right to “life, liberty and security”. Again, we saw that this right to life may translate into a duty to live that may be unacceptable (or cruel) under certain specific circumstances. This is the problem. The solution could be to embed a right to die within the right to life to avoid such a situation; a right to die that would be strictly safeguarded by criteria such as the ones we derived from our analysis. By doing so, we would enhance the already high standards promoted by the Charter in providing for situations in which the unwanted cruel consequences of our duty to live warrant expanding the one’s right to self-determination to one’s right to die or lawful VD.

The rationale that stems from our reflection on suffering may therefore be used to “demonstrably justify” that within our free and democratic society, the right to self-determination warrants restricting the duty to live that may possibly stem from the right to life. It is in this perspective that the present contribution attempted to provide

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some elements that support the establishment of a restricted right to die. To fully respect the principles embedded in the Canadian Charter of Rights and Freedoms, it is reasonable to assume that we have to develop an approach that will appropriately limit our duty to live. The rationale that stems from our analysis of suffering could constitute a cautious but still significant step in this direction. More steps may be required, but it is also possible that this rationale could be enough to shift the majority in favor of lawful VD should another request for VD be brought before the Supreme Court of Canada.

**Conclusion:**

In conclusion, it may be relevant to further stress the implication our analysis has for the slippery slope argument. This argument has proven to be a core obstacle to the legalization of VD, which seems to lose some of its force, if not all, as a result of our reflection on suffering. The fear of a slippery slope has traditionally made governments and courts of law err on the side of caution. This was done to the detriment of those whose request for VD was otherwise legitimate and well supported by facts. This was the case of Sue Rodriguez in 1993. Even though the Supreme Court of Canada recognized that in her case the rationale supporting her request for VD was reasonable, her request was turned down on the grounds that it was in the interest of the people of Canada to be protected against possible abuse. By using the stringent restrictions to qualify for VD that were suggested in this thesis, it may be possible to see how we could grant VD to the few who would qualify while maintaining adequate safeguards against potential abuse at the same time. If it is so, then the slippery slope argument is no longer compelling.

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Furthermore, the right to die that is here supported could not only be accommodated by the Canadian Charter of Rights and Freedoms but also could enhance its very *raison d'être*, which is to promote and protect individual rights and freedoms such as the right to life and the right to self-determination. In doing so, we would thereby help resolve the tension between the right to life and the right to self-determination when the former translates into a "duty to live" as the latter is used to request VD. The resolution of such a tension may be an important step to be taken in order to better respect the spirit of the Canadian Charter of Rights and Freedoms, which never was meant to include a "duty to live". In doing so, we would also take a step in the direction of legalizing VD. But we must be reminded that this could only be one step in need of many more before we could safely advance, as a society, toward a modification of the Canadian legal framework that would truly represent an enhancement of our standards of living... and dying.

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Even though the voluntary termination of human life is an issue that goes further back in time, the contemporary debate on the matter and the modern arguments for and against are historically separated from the ancient discussion on the matter by the influence of religions (and particularly Christianity) in terms of morality, which pervaded all aspects of the occidental life for centuries. It is only with the rise of rational inquiry and the early modern thought that the contemporary debate on euthanasia and assisted suicide started to take its current shape.


Fletcher, J., (1990), "Attitudes Towards Suicide" in Suicide, Right or Wrong?, ed. J. Donnelly, Buffalo: Prometheus.


The issue of competence generated an enormous literature and still is a problematic that is intensely debated. Questions like What is competence? How can it be assessed? By whom and under what circumstances? are all difficult and not fully resolved, yet. To give justice to the complexity of the topic, we would need a lot more space than we have. In addition, we do not have to enter this debate since we can work under the assumption that we reflect within the "scope of competence" and leave the determination of what it is exactly to those devoting their efforts to resolving this issue. As we said earlier, our contribution cannot provide a comprehensive solution to the debate on euthanasia and assisted suicide and should be considered as one (important) piece of the puzzle. The issue of competence is likely to be another one.


For an interesting historical perspective on the concept of "euthanasia", see Emmanuel, E.J., (1994), "Euthanasia – Historical, Ethical, and Empiric Perspectives" in Archives of Internal Medicine, Sep., 154, pp.1890-1901.


Graber, G.C., (1990), "Mastering the Concept of Suicide" in Suicide, Right or Wrong?, ed. J. Donnelly, Buffalo: Prometheus.


This cleavage between rationality and emotions has been challenged. Some authors claim that emotions do not necessarily impair rational thinking and according to a few, emotions may very well be rational in essence. See De Sousa, R., (1987), The Rationality of Emotion, Cambridge, Mass.: MIT Press. If this is true, then the argument rejecting the rationality of suicide for "emotional duress" reasons is further undermined. So either way, emotions may not be as significant a challenge as it was argued for the possibility that suicide qualifies as rational.


Again, it is important to stress here that our goal is only to show how our reflection of suffering can make a contribution to the debate on euthanasia and assisted suicide and not

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to actually demonstrate how it embraces all the issues and merge them into a final solution. The issue of competence, for one, represents another piece of the puzzle that is also important to an overall solution and should therefore be seen as complementary and possibly interrelated but nevertheless distinct.

15 We shall refer the reader to the discussion that unfolds in chapter 4 to fully grasp what is meant by "strict and flexible" ethical standards. One important component of our ethical analysis is the articulation of Nagel's "objective tolerance" within a sophisticated consequentialist framework, which provides clear guidelines to reflect on the ethical implications of a suffering state. These guidelines are strict in essence but still flexible enough in practice to take stock of circumstantial considerations. See pp.131-73.

16 See "Valuing Suffering", Chapter 3, p.123.

17 This comes across the well-debated "slippery slope" issue. It has been argued, against the legalization of assisted suicide and euthanasia, that making room for any practice of the sort within the law could very well trigger an inescapable chain reaction, the result of which being potential for abuse. For a thorough discussion of the slippery slope issue, see Frey, R.G., "The Fear of the Slippery Slope" in Dworkin, G., Frey, R.G. & Bok, S., eds., (1998), Euthanasia and Physician-Assisted Suicide, New York: Cambridge University Press, pp.43-63. Another compelling discussion on the matter can be found in Van der Burg, W., (1992), "The Slippery Slope Argument" in Journal of Clinical Ethics, 3(4), pp.256-68.

18 It is worth mentioning here that as we pointed out in chapter 1, the ethics of euthanasia and assisted is very unlikely to generate a consensus. The aim of our ethical analysis is twofold. On the one hand, it provides one way of framing the ethics of suffering within the context of euthanasia and assisted suicide, which establishes one way of articulating the ethical relevance of considering extending our control over life to our control over death. On the other hand, even though the latter ethical relevance may not be agreeable to all (and most likely will not be agreeable to all), it may at least further contribute (alongside other arguments and approaches) to the view that a voluntary death may be rationally sound.


20 For a discussion on the sanctity of life and the physicians' duty to respect it, see Pellegrino, E.D., (1992), "Doctors Must Not Kill" in Journal of Clinical Ethics, Summer, 3(2), pp.95-102.


26 Ibid., p.607.

27 Ibid., p.612.

28 Ibid., p.613.

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