

CHAPTER 1

Grounding Moral Worth in Suffering: A Review

One of the most basic questions in ethics is the question of what makes us have ethical concerns about some living as well as about some inanimate things while other things seem unimportant from an ethical point of view. Having asked that, one needs to ask further why it is that some things are of less and others of more ethical importance. It is the sort of question which comes up when we feel that punching a punching bag is exercise while punching a child or hitting a dog is brutality and, therefore, immoral. The difference between the punching bag and the child or dog must rest on some prior notion of what the morally relevant differences between the punching bag, the child, and the dog are. Likewise, we would consider splitting logs to be a form of exercise but would consider slashing another's tires to be immoral. Again, something makes logs of little and tires of considerable moral concern. Beyond this, however, there is the question of why, when we must choose between competing interests and values, some seem ethically less, others more, and still others critically important. Thinking about any ethical question ultimately requires us to give an answer to such questions of actual and relative moral worth.

Historically this question of moral worth is not formally or explicitly addressed until Kant.¹ Plato and Aristotle presupposed but did not argue for the status quo in their society: free male individuals were of moral concern; slaves or women existed to serve them. Being a free male is what changes one from object to subject.^{2,3} For Aquinas, on the other hand, moral worth resided in an ensouled entity of the right substance. The soul is what made humans matter and what changed them from objects to subjects.⁴ Kant, on the other hand, examines the problem for-

mally and explicitly. For him, what gives an entity moral worth and, therefore, morally speaking, standing (what differentiates those who are themselves of direct moral concern from those who are not) is the capacity to self-legislate.¹ The capacity to self-legislate was what characterized those who were of direct moral concern and what changed them from objects into subjects. Other things that were of moral concern, things like property or symbols had either affective (aesthetic) or market value: they were of moral concern because acting towards such objects would affect those who, as self-legislating entities, were owed respect. Brutality towards animals was in a somewhat different category: it was wrong to be brutal to animals not because of the impact being brutal had upon animals themselves but being brutal to animals was wrong because brutality towards animals might foster, almost in a Humean sense, a sentiment of brutality which ultimately would affect humans.⁵ Early utilitarians, Mill among them, generally assume moral worth without specifically arguing for it. Maximizing happiness is the issue and all those who have the capacity to experience happiness, including animals, would count. In speaking of ethical behavior towards animals, it was Bentham who first proposed that what was morally relevant was not a being's capacity to reason but a being's capacity to suffer.⁶ Human happiness, for reasons that are not made explicit, however, seems to count more than the happiness of any other creature.⁷ Then and today, while not the only defenders of the rights of animals, modern utilitarians are often the staunchest defenders of the ethical status of non-humans.^{8,9}

In a previous work I have argued that it is the present or future capacity to suffer which changes objects to subjects. It is this capacity to suffer which gives a prima-facie protection against being made to suffer and which confers an obligation on all of us not to cause, and where possible to alleviate, suffering. Furthermore, when we have ethical concerns relative to entities incapable of suffering we have these concerns because of the way in which our actions towards such entities would affect those who do have the capacity to suffer. This concern for the suffering of others, whatever these others might be, is what causes us to make what we, almost intuitively, consider to be ethically relevant distinctions between rocks who are not capable of suffering and sentient beings who are.¹⁰

When it comes to suffering, several questions come up: (1) What is suffering and what are the conditions necessary for bringing it about? (2) How does one go about judging the presence of that capacity? (3) Why should the capacity to suffer be ethically important? (4) Even if we grant the ethical importance of suffering and since we cannot conduct our lives without in some sense causing suffering, how does one deal with the obvious conflict which inevitably must arise between and among various kinds of suffering and various entities among whom one must choose? (5) Granted that suffering should matter, how can one justify making the obligation not to cause and where possible to alleviate suffering a grounding principle? In this chapter, I will try to supply some answers to the first three of these questions, begin to discuss but not develop extensively the difficult question of hierarchies, and only touch the problem of justification (which I will discuss more extensively in the third as well as in later chapters).

WHAT IS SUFFERING?

Except for the theological literature, amazingly little has been written about suffering. The philosophical as well as, surprisingly, the medical literature reveals only a very few entries under such a rubric. Fiction is, of course, full of the notion, but in fiction the evil of suffering is taken as a background evil and is rarely further developed. Suffering, however defined, has a universally negative connotation. As defined here, suffering, whatever else it is, is a disagreeable experience and one which all who have the capacity to suffer would wish to avoid.¹⁰ Even when, as is the case in some religious views, suffering is redemptive, it is redemptive precisely because it is a negative experience and because it is an experience ordinary persons under ordinary conditions would seek to avoid. No one wishes to suffer and when they do so willingly they do so for an ultimately higher end. When sado-masochists inflict pain on themselves (pain which might in others give rise to suffering) it is a different matter: in a pathological way, sado-masochists derive enjoyment from this and cannot, therefore, be said to be truly suffering. In what is to follow and in the way that we shall use the term, the redemptive value and the other supposedly positive aspects of “suffering”

will be largely ignored. Suffering, to be suffering as here defined, is suffering precisely because it has, at least in the eyes of the sufferer, few if any positive aspects.

Suffering and pain are not identical concepts.^{11,12} One can have physical pain without necessarily suffering (hitting one's shin on a chair or having one's ear lobes pierced) and one can suffer and suffer intensely without having any physical pain (a mother seeing her child dying or a person seeing her work trivialized suffers without having physical pain). In the medical setting, for example, patients dying of cancer, even when kept relatively pain-free may suffer and suffer intensely. The sick suffer in ways which may be quite distinct from their pain. Suffering, as Cassell points out so well, is an existential experience, subjective and peculiar to the particular individual suffering.¹² Suffering, furthermore, happens at a given time and in a given context: a stimulus may provoke suffering at one but not at another time. We bring to our suffering a whole baggage of past experiences and integrate them into our present experience as well as into our perception of the future.¹⁰

Frankl has pointed out that we suffer when the experience provoking suffering has no wider meaning for us.¹³ "Meaning" here can be used in a double sense. To have meaning, in the one sense, something must be remembered (however briefly), integrated and understood: without this, it remains a single, fleeting stimulus. In the other sense, meaning can be used to indicate purpose or goal: noxious stimuli which serve an understood or accepted purpose continue to be noxious but they are not necessarily or usually thought of as suffering. The first sense of "meaning" is the necessary condition of the second: unless a stimulus is recognized (almost in the Kantian sense of re-recognized: known again) as a stimulus by us, it can have no wider meaning.

According to Freud, suffering can come to us in three ways: (1) "from our own body which is doomed to decay and dissolution...;" (2) by external threats "raging against us...;" and (3) (and to Freud most importantly) "from our relations to (with) other men" (p. 24).¹⁴ Freud feels that the suffering that is brought about by and in our relationship to others is the worst kind of suffering because it is "gratuitous" and brought about by another's volition instead of being brought about by forces beyond human control. One would presume that, in a sense, the

first two ways in which suffering can come to us are due to forces of nature whereas the other, broadly speaking, are not only suffering brought about by our intimate personal relations with others but likewise suffering brought about by easily controllable but callously ignored social circumstances.

This concept of “meaning” as well as Freud’s three ways in which suffering can originate are sometimes thought to apply only to human animals. Many have argued that since lower species allegedly lack a history, they can find no meaning. If, as is most likely the case, most lower species do indeed lack a history it is a lack of history in the sense of a species or clan history rather than in the sense of a personal history that is lacking. Since suffering is an existential experience peculiar to the sufferer and occurring at a given time and in a given context, it is the personal far more than the species history that matters. Anyone who has ever owned a dog, a cat or a parrot is fully aware that such animals have and are aware of having a personal history: they differentiate other animals from each other and relate to specific ones in different ways, know and relate to their owner, remember where their food bowl is, and often and obviously remember and remember well places they have visited sometimes long before. Furthermore, if it were indeed true that lower animals cannot “grasp the problem of meaning” then the pain of animals would far more easily turn into suffering than would the pain of higher forms. Pain that is not understood, events which are perceived as a threat because they lack explanation must be especially troublesome.¹⁰ It is for this very reason that we must have special concern when dealing with the mentally retarded or impaired.¹⁵

Clearly, furthermore, lower species are capable of meeting Freud’s three criteria. Their body is most certainly as prone to “decay and dissolution” as is the human body, and lower animals are certainly aware of that process in themselves. Lower animals are most certainly threatened by forces of the external world and are aware of these forces; animals, moreover, have relations with other animals including humans which can cause them pain, grief, and evident and undoubted suffering.¹⁰

The claim that animals lower on the evolutionary scale than man cannot reason and that, therefore, they cannot suffer is a secular expression of the religious argument that animals have

no soul. Therefore, if one follows the argument to its inevitable conclusion, what we do to animals does not matter. The conclusion, that because one does not have a soul what happens to one is irrelevant, does not follow: the religious argument can, of course, be easily turned about. If one accepts the fact that animals have no soul (and if there is such a thing as a soul is, of course, something we can neither prove nor disprove) then their standing is indeed different: persons, who have souls, will have a brief span on earth followed by eternal life; animals have only their brief time on earth. Therefore, it would seem that what happens to human animals who will live in eternity should be of lesser importance (an argument by means of which religion over the years has helped keep the masses enslaved) than what happens to lower animals on earth since what happens on earth is the only life animals have. But while the argument that animals have no soul can be neither proven nor disproven, the argument that animals cannot reason is patently ridiculous. Anyone who has watched animals solving problems cannot seriously maintain such a position. To argue that such reasoning is, in a sense, purely algorithmic and that such algorithms are simply biological or conditioned reflexes is specious: if the reasoning of animals can be simply shrugged away by reducing reasoning to biological or conditioned reflex, there is no reason why the thought processes of humans should be of a different kind; if animals, furthermore, cannot reason, their capacity to solve quite new problems and individually (as distinct from species) adapt to new conditions cannot be readily explained. Furthermore, reasoning is a biological function, one which like all other biological functions evolves over time and over species rather than emerging full-blown in one species and at one time.¹⁶ To maintain that reason sprung forth in the human species and was entirely unanticipated in lower forms is to flee into a rather crass form of creationism. Reasoning better, just like the ability to see, hear or run better, in general has survival value. And reasoning "better" must have antecedents in prior reasoning.¹⁰

Suffering, however, is not merely an existential experience peculiar to the one suffering, but is an existential experience occurring in, shaped by, and often even brought about by the community.¹⁰ The nature of suffering (not only our behavior while suffering but those things which cause us to suffer) is con-

ditioned, defined, in a sense determined, and then played out by and in community. A person suffering severely in a given time, place, and culture may not do so or may do so far less under other circumstances. The hospice movement is, among other things, based on that assumption. Furthermore, what is a stigma in one culture (and what, therefore, causes the stigmatized to suffer) may well be a positive attribute in another. Epilepsy, to take but one example, has been variously regarded as insanity, sin, or as an expression of holiness.

Hopelessness and despair are factors strongly associated with suffering.¹⁰ It is, therefore, especially important not to dash a person's hope. In medicine this pretext has often been used as an excuse for lying to patients. I am far from suggesting that lying to patients is a proper thing to do: hope does not necessarily solely depend upon a belief in survival but may well be enlisted in other causes. Despair, in a sense, goes beyond this: it is a more global concept which makes it impossible for the sufferer to find satisfaction in anything. It is hopelessness generalized. To be hopeless is to be alienated and withdrawn, beyond protest or tears. It is, as Elizabeth Barrett Browning has pointed out, "passionless."¹⁷ That may be the reason why in some religions despair is the most desparate sin: when one despairs, one believes in and hopes for nothing, not even in the ultimate goodness of God or in His infinite mercy.

When I have options, my suffering is greatly reduced or ameliorated. To have options means, in some sense, to have at least some control over one's own destiny. Having no options, or believing that one has no options, being impotent to do anything about one's condition, aggravates suffering and can sometimes convert otherwise endurable pain into profound suffering. My situation or my pain has lasted a long time, is interminable, and there is nothing I or anyone else can do to lessen it or to escape from it. The knowledge that some options, however dismal (even the option of suicide), exist is preferable to none. Patients riddled with cancer have been known to take comfort in having the means of suicide at hand even when, as is usually the case, they do not use them. It is a question of at least some power over one's desiny.

Fear is often part of suffering as is lack of understanding (lack of meaning in the first sense in which the term can be employed).

We often fear what we do not understand far more than we fear what we do understand. The human species' ongoing attempt to find explanations, often even explanations that are evidently false or even patently absurd, has been used throughout history as a hedge against fear.¹⁰ Religions, especially the so-called "mystery religions," have gained influence and power in this very way.

If we are to perceive anything, a perceptive organ is necessary. This, by no means, is to reduce perception to the perceptive organ but it is to claim that the perceptive organ is a necessary condition for perception to occur. Suffering requires perception, be it the perception of an external stimulus, or the realization of an internal one. Such a stimulus, of course, need not be material but can just as well be a perceived or even an imagined event or a memory. The perceptive organ for stimuli of all kinds, globally speaking, is, of course, the central nervous system or brain. Without the central nervous system no perception of any kind as we understand it is possible. Most of our perceptions occur in specific areas of the brain and are integrated and finally brought to consciousness in others. To perceive the stimulus we call pain (whether the pain is brought to us from "our own body which is doomed to decay and dissolution" or from external forces "ragging against us"), to translate it into a perception of that pain and finally to convert the pain into suffering requires a series of well-established neural structures and pathways.

Pain, the provoking stimulus for suffering we most frequently think about when the term is used, constitutes a warning. It is a biological alarm counseling us that something is wrong and that it would be to our advantage to find out and perhaps remedy the situation. When lower forms of life (be it plants exhibiting tropism or amoebae reacting to the prick of a tiny probe) move to escape a "noxious" stimulus, they do so reflexively. Reflexes, likewise, are maintained in higher organisms: a knee jerk in response to a reflex hammer is sensed by the person whose knee responds but sensing the tap is by no means necessary for the response to occur. A person whose spinal cord is severed and whose knee is tapped responds (and responds vigorously) but is entirely unaware of either stimulus or response. His higher centers are dissociated from the organ sensing (stretch receptors in the tendon) and the organ responding (the leg). Becoming aware of such a stimulus requires a functioning neo-

cortex connected to the organs of reception by intact pathways. When either neocortex or pathways are absent, awareness cannot occur. Momentary perception is, however, not enough. To change a simple instance of sensation to pain requires, however primitively and briefly, the capacity to remember so as to connect one momentary stimulus with early and later ones.

Pain is neither a necessary nor a sufficient condition for suffering.^{11,12,18} This is true anatomically as well as psychologically. For pain to be converted to suffering several psychological as well as anatomical conditions must be met. Pain, when it is the cause of suffering, must extend over time, although prolonged pain in itself does not necessarily become suffering. Anatomically, frontal lobes and elaborate connections of the frontal lobes to other centers are necessary. But even frontal lobes are not sufficient for pain to become suffering. We know that patients who undergo a frontal lobotomy (in which the frontal lobes are, as it were, disconnected) for severe pain, will continue to state that they have pain but, even though their pain caused suffering before, will now state that, while they are experiencing pain, they no longer suffer. Their pain, they will say, no longer bothers them.¹⁹

More than frontal lobes are involved. Suffering, in addition to pain or some other threat being perceived, has necessary emotional overtones. It has been shown that neural structures sometimes called the limbic system and consisting of a variety of structures including amygdala, thalamus, and hypothalamus are intimately involved with emotion. These diencephalic structures sit beneath the neocortex and above the brain stem. Evolution, as Darwin has shown, is as much involved in the evolution of emotions as it is in the evolution of physical traits.²⁰ Indeed, to make physical as well as emotional or intellectual traits possible, a physical substrate is necessary. The limbic system "sets the emotional background on which man functions intellectually."²¹ Beyond these physical structures a complicated system of chemical neurotransmitters is involved in the functioning and integration of the whole. Suffering can no more be reduced to its physical or chemical substrate than walking can be reduced to legs or digestion to gut: but suffering, walking, or digestion, to be possible or even thinkable, presuppose the presence of the necessary physical apparatus and substrate.¹⁰

When we ask whether a creature has the capacity to suffer,

we need to examine its underlying neural structures as well as its behavior in the face of noxious stimuli. Movement, such as withdrawal, alone is not sufficient proof that suffering or even pain are present: after all, the knee of the paraplegic jerks in response to the hammer even though no sensation is present, amoeba withdraw from a sharp probe, and dead fish jump. Apparently intact neural structures, in themselves, do not allow us to conclude that suffering is present: merely that it is possible. But when the structures underwriting the capacity to suffer are present and when the behavior exhibited by an organism suggests that it is suffering, the burden of proof is on the person claiming that suffering does not occur. Those familiar with higher animals (animals which have, in whatever more primitive form, the necessary structures enabling the capacity to suffer) know that these creatures exhibit behavior associated with suffering in response to a variety of stimuli. They appear to suffer, just as do humans, in response to Freud's criteria. They suffer as a result of (1) illness coming from their own body; (2) injury from external forces; and (3) causes brought about by their relationship with others.¹⁴ Anyone who has seen a dog in pain from either a degenerative illness or an injury or who has seen an animal mourning the death of a mate or the loss of an owner can attest to that. Furthermore, animals may often allow one to cause pain when it obviously seems to serve a purpose: dogs hold up a paw to allow their owner to remove a splinter even though this increases their momentary pain. In addition, I well remember a large old dog owned by one of my uncles who would occasionally go into pulmonary oedema and to whom my father would give an injection to relieve it. Not only did the dog hold still, he soon appeared to understand and would lick my father's hand in gratitude long before the drug could take effect. Anyone who claims that higher animals (those that have the necessary neurological substrate and exhibit appropriate behavior) do not have a memory, cannot think, or lack the capacity to suffer assumes the burden of proof.

JUDGING SUFFERING

I have suggested that the capacity to suffer is the necessary but insufficient condition for suffering. There are, as has been suggested, many factors which can cause suffering and which, under

some circumstances may and under others may not, cause suffering. If we are to have an ethic based on the capacity to suffer and if that ethic would impose a prima-facie obligation not to cause and where possible to ameliorate suffering we need to have a clearer understanding of those things entailed.

All creatures have at least two types of needs: biological and, in a broad sense, social. Likewise their capacity to be hurt (using that term in its broadest sense) boils down to these two factors. We can be injured physically, can become ill, can be in pain, or can be hungry, thirsty or cold and, therefore, suffer. On the other hand, we may be deprived of opportunities, unjustly treated, thwarted in our affection, or see our work trivialized and, in consequence, suffer. The two factors, the social and the biological, are by no means entirely separable: social mistreatment can have biological results, just as biological factors can deprive one of social opportunities.

In judging what actions must be avoided if the suffering of another is not to be caused, these two factors must be considered. The evidence for judging that certain actions bring about suffering and that, therefore, such actions must be avoided is historically empirical: we judge that bringing about certain circumstances will cause another's suffering and we judge this from past experience in similar situations and with similar creatures. When it comes to ameliorating suffering, the evidence is both historical (we can anticipate that certain circumstances will elicit suffering) and directly empirical: we judge that others are actually suffering because they exhibit behavior we generally associate with suffering. There are certain commonalities in this: in many ways all higher animals display similar behavior when suffering. On the other hand, there are many individual as well as social differences among those who suffer, not only in what brings about suffering but in the way the sufferer responds or acts.

One may ask whether the ability to reason or to elaborate formal concepts is really relevant to the question of a non-human animal's moral standing.^{22,23} I have claimed and will continue to claim that non-human animals most certainly can reason even if they are not capable of elaborating (or, at any rate, of verbalizing) formal concepts. That certainly makes them different from human animals. But merely being different does not in and of itself change anyone's moral stature or place. It is the particular

differences examined in the relevant context which can provide a reasonable support for treating things or persons differently.²³ In his superb book on the subject, Rachels makes this point in a very simply and beautifully crafted series of analogies: one person having a broken arm and another an infection entitles the physician to “treat” the persons differently; having an infection or a broken arm (while certainly a difference) is not relevant to, say, admission to law school.

The fact that animals do have moral standing and that such standing grounds itself not on their capacity to talk or even to reason but on their capacity to suffer was already pointed out by Bentham.⁶ Since suffering is an existential experience occurring in a given individual at a given time and in a given social setting, we must rely heavily on subjective factors. This makes judging difficult. Often it is the reason why some have claimed that animals do not suffer (or think). Animals cannot communicate with us verbally and, therefore, cannot “tell us about it.”²⁴⁻²⁶ Unless one speaks French, French persons (unless they also speak English) cannot directly tell an American that they are suffering when they are: when we judge that they are suffering, we base this judgment on knowing that they indeed have the necessary substrate and are exhibiting a set of behaviors we associate with suffering. We do not conclude that French persons, because we cannot personally communicate with them in words, do not suffer. Beyond this, however, many have claimed that “animals lack a language” and that, therefore, what they do when they appear to think or suffer cannot be equated with what humans experience. While a given French person cannot tell someone who does not speak French that they are suffering, a translator can be obtained (although some struggling to do so may deny it, French can be learned!). But merely because animals cannot communicate in a word language with humans does not mean that they cannot communicate. Animals communicate with their masters and with each other in many ways. They express concrete desires or emotions as well as far more abstract ideas. Language, after all, is merely the use of socially understood and accepted symbols. The concept “blue,” the concept “automobile,” or the more elaborate concept that I want to eat is communicated by humans in words; when words fail (as when we are stranded in a country whose language we do not understand) symbolic communication by other means (much

like the symbolic communication animals may use) is used. Language is the manipulation of symbols to convey a meaning to others (and often but not necessarily to ourselves). Private language (the symbols we use consciously or subconsciously when we communicate strictly with ourselves) does not necessarily entail words and is, nevertheless, certainly and to many of us quite obviously a language. From Darwin (who saw evolutionary forces developing the emotions as well as the more obviously physical traits) on, many have argued that animals think, feel pain, and can elaborate and understand symbols and concepts.^{23,27} The fact that in general a non-human animal's capacity to think, i.e., to deal with symbols or understand concepts, is less than is that ability in most humans merely points to the evolution of substrate as well as of function. As the brain evolves, so does the complexity of its function.

The subjective factors we rely upon when we judge another to be suffering are both verbal and non-verbal ones. Subjectivity here is twofold: it is the subjectivity of the one suffering as well as the subjectivity of the one observing and judging. That, of course, makes judging quite difficult. It is a common experience that persons in one social (and sometimes in one physical) situation are quite incapable (or perhaps unwilling?) to judge the emotions and feelings of others who are in a different social (or physical) situation than themselves. The statement that "one ought not to feel such and such a way" is often heard. Here the subjective situation and/or the prejudice and attitude of the judge makes it impossible to judge what does and what does not constitute suffering in another. In and of itself the statement that "one ought not to feel" certain ways or "ought not" to like or dislike certain things makes no sense. Feelings, as well as likes and dislikes, are not under our rational control even though reason may, especially over time, change the way we feel. To say that I ought not to feel sad or to say that I ought to like peanut butter (or the music of Hindemith) is to say that whoever makes such a statement thinks it appropriate for me to feel another way than the way I in fact do feel. Appropriateness, in this regard however, is appropriate to a social or physical setting. Emotions can, from the observers point of view, seem inappropriate (as if I were to express extreme grief over the loss of a glove) but being inappropriate does not make the feeling itself any more or less real. Moreover, persons may claim to feel one way when, in fact,

they do not. This may occur either for self-serving reasons (I may pretend an emotion in order to get something I want, say sympathy or help) or because, although it is not really felt, it seems appropriate to the social context (my friend's loss may leave me cold but I dare not admit it). Judging suffering, therefore, is difficult. We may not understand the social or individual situation, we may be misled by our own past experience or by our present social setting, or we may be deliberately misled by the person pretending to be suffering.

Such considerations, however, while they make judging suffering more difficult do not imply that we cannot judge at all. Certain experiences are so universal (even if the way that they play themselves out may be socially and personally different) that we can assume that they entail suffering. Persons who would deny that the homeless, the hungry, those riddled with cancer, or those losing a loved one suffer would be thought callous and unfeeling rather than being felt to be making a rationally supportable argument. When neurological structures believed with good cause to be necessary exist, when stimuli universally felt to generally cause suffering are present, and when behavior generally and reasonably associated with suffering is exhibited, the burden of proof is on those who would claim that creatures so endowed and behaving in such a way are not suffering.

Suffering may be brought about by different factors in different societies: what usually causes persons in one society to suffer may do so to a greater or lesser extent or may not do so at all in another society. Nevertheless, while the causes of suffering within a given society may differ from the causes of suffering in another in certain ways, they will still be acknowledged as valid within a particular society. The neural substrate, the emotive feeling, and in many primitive ways the way in which these emotions are expressed are much the same even when the stimulus may be somewhat different.

I have claimed that the fact of the capacity to suffer or to make others who have the capacity to suffer suffer is, if not the sole at any rate one of the critical characteristics which gives an entity moral standing. Ethically the *prima-facie* rule to refrain from doing those things which may cause suffering is unaffected by what it is that causes such suffering; what is affected are the specifics as to what is to be refrained from. When it comes to ame-

liorating suffering, it is again the rule that stands even though the kind of suffering to be ameliorated may differ.

ETHICAL IMPORTANCE OF THE CAPACITY TO SUFFER

Why should the capacity to suffer be ethically important? All persons recognize that the concept of obligation exists even when, as is so often the case, they may differ as to the nature of a specific obligation or to the way such an obligation is grounded. The formal concept of obligation is not in dispute even when the content cannot be agreed upon. Social life of even the most primitive sort is not possible without a recognition that all of us are in some way and for some reasons obligated to others.

When we say that *A* is obligated to do or not to do *b* we can mean one of two things: either we may mean that under a given set of physical circumstances *A* can do no other than to do *b* or we may mean that under a given set of socially agreed upon circumstances *A* must do *b* because to do otherwise would violate such socially agreed upon circumstances. (The very concept of agreement is, of course, itself parasitic upon a prior notion of obligation). The first meaning of the word (as when *A* is hanging from a window and must fall [do *b*] if he lets go) is ethically uninteresting; it is the second sense of obligation, a sense in which *A* could do (and, perhaps would like to do) otherwise which is of ethical concern. When we, therefore, say that *A* has an obligation to do or not to do something we are implying that making a choice is possible. This, of course, presupposes the existence of free choice at least when it comes to some, if perhaps not to other, things.³⁰ The proposition that free choice, at least in some areas, exists is a proposition I shall, like Kant, assume and not argue for.¹ Without such a presumption any work in ethics would be pointless.

When we further claim that something is a "prima-facie" obligation we claim that under some circumstances it would be acceptable for *A* to violate such an obligation. A concept of "prima facie" as contrasted to a concept of "absolute" obligation provides greater flexibility even when it fails to erase an existant obligation.³¹ We are, however, not saying that even when under some circumstances not doing what one is obligated to do is acceptable, not doing what one is supposed to do is in any way

meritorious. When a prima-facie obligation exists and reasons for not discharging it appear sufficient, the obligation does not as much vanish as it is suppressed by overwhelming reasons to the contrary. The obligation persists and not discharging one's obligation, albeit understandable, remains troublesome.^{32,33} When we say that a person did "the right thing" (even when doing "the right thing" violates one obligation in order to meet one felt, with good reason, to be greater) we mean that the person exercised good judgment and that, therefore, their choosing is meritorious or praiseworthy; we do not imply that violating an obligation was, in itself, meritorious.

When morally overriding considerations would necessitate causing suffering, such suffering must be held to the minimal amount of suffering necessary to achieve one's purpose. Any more than that would violate the original rule: causing more than the minimal amount of suffering necessary to achieve a goal seen as being of overriding importance, produces suffering for which no adequate argument can be made. The prima-facie condition permits overriding to achieve a given goal; it does not permit one to cause suffering beyond this. Restraining or arresting a dangerous person may cause them suffering but it is a suffering one may regretfully have to cause in pursuit of a higher claim; using means in excess of those needed such as beating them remains inexcusable.

When I have an obligation to repay my friend a sum of money by a given day and when on that day I find that my family and I are penniless and hungry, the obligation remains even though it can obviously not be discharged. In that sense, the obligation, while persistent, is practically moot. If I now find a ten dollar bill on the street my obligation to give it to my friend rather than to buy my family and myself something to eat becomes real. Nevertheless, if I choose to feed my family and myself rather than to pay back my friend, my failure to discharge my obligation is morally most understandable and my act of agonizing over the moral decision to buy food for my family, even if not perhaps the decision itself, may even be praiseworthy. But my obligation to repay my friend remains in force. It is a prima-facie obligation which can (and under certain circumstance sometimes must) be overruled.

Obligations exist in a community. If there would not be a

community and, therefore, others who are affected by our actions, obligations would make little sense. Acting in a way which has no effect and no potential effect on anyone (if such an acting could even be thinkable) is without ethical significance. Ignoring the whole question of duties towards one self, actions to be ethically significant must, in some way, impinge on contemporary or future others. Actions affecting others may be of benefit to them (they satisfy one of their desires or needs) or may harm them (they cause pain); or actions even when they affect others may neither harm nor benefit them in any way. The question, as I shall develop it here, concerns those actions (1) which affect others negatively (“hurt them” in some way) and refraining from which generally is a duty similar to the Kantian “perfect” or obligatory duties; as well as those actions (2) which affect others positively (prevent or ameliorate harm or, even more strongly, bring about actual good) and which, therefore, fall into the category of beneficent acts. These latter, in general, are the Kantian “imperfect” or optional duties.¹ I shall ground both in the capacity to suffer and, as we shall see in later chapters, in the way in which infants are nurtured and communities structured.

This grounding of obligation is in many respects another way of determining which objects are and which are not worthy of moral concern. We have obligations either to objects we consider to be of moral concern or to other objects which, while we do not consider them to be of moral concern in themselves, are of moral concern because of the value which others place in them. The one question asks: What is the basis (grounding) of obligation? The other asks: What are the properties of things to which we owe such obligations? I shall claim that it is the capacity to suffer as well as the way we envision community which are the main factors invoked when we answer either of these questions.

Basing obligations on utility suffers from the many and often-made criticisms of utilitarianism. It would or could, at least formally speaking and without another prior framework of “rightness” or “wrongness,” allow a number of actions we intuitively feel to be wrong. Sacrificing a very few persons for the overwhelming advantage of many others is often given as one of many examples. Respect for persons and for their “rights,” on the other hand, suffers from another set of equally serious and often-cited objections. When respecting a persons “rights” has

grave and perhaps devastating consequences for others or for the community, such consequences cannot be totally ignored. One can neither totally ignore consequences (they do matter and matter very much) nor can one entirely act upon what pure utility counsels. In a sense both points of view presuppose each other.¹⁰

We can answer both of the questions I posed (“What is the basis (grounding) of obligation?” and “What are the properties of things to which we owe such obligations?”) from a utilitarian or from a “respect for persons” or Kantian perspective. Neither of the two answers will leave one satisfied. Utility would provide an answer in which a person’s individual rights and standing may go begging (in which the respect we owe to persons is ignored); Kantianism may entirely sacrifice all public good to the overwhelming duty to respect individuals. An ethic based on the capacity for suffering and on a view of shared experience and community may provide a different basis and go a small way in overcoming such objections.

For Kant, respect for persons is located in their capacity for self-legislation. When one bases all individual “rights” merely on the capacity to self-legislate one leaves out entities one intuitively feels have moral standing. One would leave out infants, many of the mentally retarded or senile, many psychotics or those who have been totally brainwashed as well as (in the opinion of many who feel that animals are totally without the capacity to self-legislate) animals. But that is absurd: such beings very evidently have moral “rights,” at the very least negative ones. I shall claim that the capacity of such entities to be hurt (their capacity, in other words, to suffer) is a grounding which is a far deeper and more universal one. Since individuals develop and exist in a community, one cannot simply ignore the communal implications of one’s acts. Further, when one ignores the role of community in our understanding of obligation (to be discussed later on) and the role that community serves in producing, preventing, or ameliorating suffering or, beyond this, in enriching individual existence, one ends up with a necessarily narrow and distorted viewpoint of individual as well as communal obligation. Suffering, then, is central to our understanding of communal as well as of individual obligation.

The answer to the questions “what is the basis (grounding) of obligation?” and “what are the properties of things to which

we owe such obligations?" has been answered by others in terms of relative power and on the obligation which our common vulnerability presents us with. By virtue of this common vulnerability, the strong are necessarily obligated to the weak by virtue of such a difference of power.³⁴⁻³⁶ In speaking of community, I shall later use this concept of common vulnerability and differential power together with Rousseau's shared "primitive sense of pity" and link it with my notion of suffering. Suffice it to say at this time that the capacity to suffer likewise is linked with our common vulnerability and with this power differential. Basically, sufferers lose power and those with the capacity to prevent or ameliorate such suffering are in a position of strength. All who have the capacity to suffer are vulnerable and, therefore, all with that capacity share a common interest in the prevention and amelioration of suffering. Further, not only does suffering produce weakness but to be weak is, in a broad sense, to suffer. Suffering, as I have delineated it, is not merely or even mainly a function of mere pain. The vulnerability to suffering we all share together with the power differential which suffering necessarily imposes underwrites an ethic based on that capacity.

I have often been asked what impact new neurological discoveries would have on my basic theory. What if quite different neural structures were involved in the capacity to suffer, neural structures which showed that organisms heretofore thought capable of suffering could not suffer? The answer to this is that it would, of course, make no fundamental difference to the basic theory although it would have a profound impact on the way in which the theory is applied. I have argued that what gives an entity and its interests moral standing is its capacity to suffer. If it were to be shown that worms (who according to Darwin's work may have the capacity to engage in a primitive form of reasoning³⁷) had that capacity, worms and their interests would have moral standing. If, on the other hand, one could convincingly demonstrate that frogs could not, their standing would be lost.

The notion of giving moral standing to entities which can suffer (rather than to entities which can self-legislate or giving it to utility) has often been accused of committing the "naturalistic fallacy" of extracting an "ought" from an "is."³⁸ Suffering, at least the way I have painted it, is a natural, empirically verifiable trait and cannot serve as a basis for what we ought or ought not

to do. Just because something can be shown to have some particular empirical property does not permit us to extract a moral imperative from it. But if this is the case then basing moral standing on the capacity to self-legislate or on having utility commits the same fallacy: both self-legislation and utility can be shown to exist and are, therefore, at least in that sense, empirical. The notion of the “naturalistic fallacy” and of the rigid isought distinction rides piggyback on the alleged distinction between “facts” (supposedly empirical) and “values” (assumed to be metaphysically a priori). Such distinctions constitute a dualistic way of looking at things: “facts” can be understood only in the embrace of values and “values” are not isolated entities from the facts to which they must necessarily address themselves. Does giving moral standing to entities having the capacity to suffer “reduce philosophy to biology”? Can one, in fact, do philosophy in any meaningful sense outside the physical reality with which sooner or later even philosophy at its most abstract must deal? And above all, can humans (who are, whether we like it or not, biological beings: yes, animals) really reason outside the context of their own biology which of necessity forms that framework of reasoning? Accepting scientific findings (not “facts” in the immutable sense but “facts” which we use to manipulate our daily existence and which must, if they are to go anywhere, shape our thoughts) and acknowledging that we human animals are bound to reason within the framework set by our own biology (after all, it is our biological brain that reasons!) is hardly “reducing” our thoughts to their substrate or reducing the content to its form! It is merely to claim that biology necessarily forms the framework of our very thinking about all human endeavors (and that, therefore, it is best not to ignore its role) as well as to assert that function without substrate is an incoherent concept.

GRADATIONS OF VALUE AND SUFFERING

Even if one assumes suffering as a grounding principle, one must still deal with the obvious conflicts which inevitably arise between and among various kinds of suffering and various entities among whom one must choose. One can hardly assume that the capacity to suffer forbids another to cause or forces such