

## Norms and issues in the representation of living things

G rard Wormser

“What is new about cloning is not simply the technical feats performed, but the prospect of our being able to construct, step by step, a pluralistic universalism.” Thus

Henri Atlan and Mireille Delmas-Marty end a recent article<sup>1</sup> reporting a study in which cells were found to develop following the insertion of the nucleus of a human cell into the ovum of a rabbit: “It may be possible to produce embryonic stem-cells by nuclear transfer, without their being able to develop into a baby.” The authors thus defend a science capable of clarifying the ethical issues facing it by coupling scientific experimentation with a framework of strict legal control. Creation of a “pseudo-embryo”, once thought impossible, establishes that human reproductive cloning might well be feasible. That increases the need for legislation to ban it, but, by freeing researchers from having to use human ova, it perhaps also reduces the risk of cloning for reproductive purposes, and of confusion between pure research and commercial incentives; research that may lead to the production of biological materials to treat specific hereditary conditions, without babies being engineered to provide treatments is clearly useful. A recent publication by Bertrand Jordan takes the same approach, describing work showing that multipotent cells are found in adult tissue. Medical

research could be conducted largely without the use of embryonic cells.<sup>2</sup>

Legal discontinuities thus have the effect of creating separations at the point where biologists reveal continuities, and to enhance the protection of the person in the face of threats from aggressive science. In the case of embryonic stem-cells, prohibiting uterine implantation clearly delimits the right to carry out research, and the right to reproduce, and the authors express their wish that “every system should respect the totality of existing international instruments, including those relating to pure human

rights.”<sup>3</sup> In the context of the legal rules, of deontologies relating to practices and of moral judgements, ethical thinking frequently refers to the notion of the “decision-making context”, which takes into consideration the specific circumstances of a judgement deeply embedded in practices, in order to establish their implicit norms. The sphere of knowledges and practices applicable to human health is duty bound, by engaging in interdisciplinary debate, to avoid both utopianism and “worst-case scenarios”.

By giving action precedence over abstention (especially regarding the obligation to intervene enshrined in the ethos of the hospital), medicine (in a different way from research) demands constant evaluation of its own practices, which are at the centre of multiplicity of decisions, options and probabilities. Medical ethics is thus at the

interface of knowledges and beliefs within a framework of regulated practices. Debates about ethics involve conflicts over regulation within a discursive regulatory space: ethical thinking demands the detailed description of practices in order to address their legitimation in the face of potentially conflicting choices. It is not, therefore, a matter of an *a priori* position, but of a discourse in which the patient acts as the touchstone of signification; hence the frequent tensions between, on the one hand, the hope of finding cures, allied with the advancement of knowledge, and on the other, the search for the natural limits of licit actions. The notion of the “decision-making context” recognises this situation and admits that doctors’ responsibility has increased hand in hand with their scope for action.

### *The decision-making context and discursive analysis*

The question of ethics thus has two regulatory orientations. The first could be referred to a theory of justice which, by implication (as in Rawls) posits that all resources are not available to all; relative scarcity is a determining factor in a system for allocating care that makes explicit the principles of differential provision. In that respect it is an ethics of the desirable. This orientation of justice enables us to argue in “cartographic or logistical terms, setting the distribution of medical effort within a general economy of production and the legitimation of decisions. In debates about the authorisation of research, currently available care will be compared with alternatives in which the expected cost/benefit ratio at the end of an experiment is favourable. Like research projects, hospital management is subject to a similar approach, prevalent in debates on priorities in public spending. It is thus impossible to justify the priority given to pure research without at the same time developing a policy of access to care that would redress the most unjust social deprivation; it is not possible to put general medicine and professional medicine on one side, and genome science and basic biological research on the other. This point is illustrated by the obstacles encountered by research on tropical diseases. Philippe Kourilsky, of the Collège de France and the Institut Pasteur and Yves Champey and Bernard Pecoul, who head DNDI, a research foundation on tropical medicine, write:

“Less than 10% of medical research world-wide is focused on the diseases that are most prevalent in developing countries and affect almost 90% of the world’s population. Barely 1% of the 1400 new medicines put on the market in the past twenty-five years are designed to treat these diseases. Compassion apart (it may act on consciences but seldom on the laws of the market), how are we to apply our tremendous technological and scientific advances to discovering and developing effective remedies for these diseases? Is it possible to imagine mechanisms by which medicines could be developed for populations who lack the necessary resources? [...] Thus, organisations like Global Alliance (for tuberculosis), Medicine Malaria Venture, and the Drugs for Neglected Diseases Initiative (DNDI), for these so-called “orphan” diseases, raise significant funds in the effort to stimulate research and development on all these diseases. Furthermore, by working closely with countries in the developing world tha

are affected by them, such as Brazil, India, China and Kenya, these new networks will be able to call upon these countries' considerable research capacities while at the same time also drawing on their extraordinary wealth of natural substances. What we have to reconsider is the risk/benefit ratio, which varies from one disease to another, and according to their severity. Sleeping sickness, for example, has a 100% mortality rate. The goal of current studies is to find a substitute for the use of arsenic derivatives, which kill 5% of patients treated with them. The case of Aids is equally instructive: patients' organisations have joined forces with pharmaceutical companies in an effort to make the licensing process speedier and more flexible. This means that we have to rethink the ethical balance between individual and collective benefits, according to patients' actual needs. If we had applied the kind of precautionary "rules" prevailing in rich societies today, it is highly likely that the polio vaccine – a medical landmark – would not have been developed."

This position accords with Rawls, in saying that the universalisation of rules is unjust in situations that are agreed to be unacceptable; it is illogical to apply the same safety standards for health and the marketing of medicines where there is universal health

4

care and where suffering in the face of illness is the normal state of affairs.

The idea of fostering justice in health care allocation thus provides a framework that helps medical ethics to arbitrate between the conflicting demands made on doctors and on the health care system. In Rawls, concern for the socially equitable distribution of goods and services determines the rules for distributing scarce goods whose utility is universally acknowledged; once it is established that allocation to one person of a potential good does not in principle harm another, it remains to be seen (if that allocation cannot be equal for all) that the residual inequality is the result of the best possible distribution from the point of view of its collective effects: this criterion justifies inequalities of which it can be established that they encourage, in the domain in which they occur, consequences that are more favourable than those which a "stronger" equality would produce to the advantage of those who benefit least from the

5

same effects; relative inequality is acceptable only if it offers the benefit of an absolute improvement for all, and if it is compatible with basic freedoms. While it is easy in this way to justify specialisation in research by the benefits it offers the health system, it becomes extremely problematic to apply this rule when life itself is at stake. In the case of liver transplants, how are we to choose among patients who are critically ill? While every theory of justice clearly reaches its limits at the point at which life itself confronts the limits of available treatment, the fact remains that even in that extreme case, they all retain the awareness that everything possible has been done for the patient, who until has remained part of the human community until his final hour. The special interest of this theory is the way it attempts to construct a hierarchy of priorities for public health: with limited means, how are we to increase access to widely-used treatments and at the same time find remedies for various conditions that are rare, but carry a significant risk of death? Experimentation in one direction may suggest ways of generalising a technique that will have heavy costs (which may creat

a conflict between the risk of death, on which a price cannot be put for the individual and the priorities of a health-care system); in another, it may lead to a protocol that will alter the severity of a condition and reduce its direct and indirect costs. Thinking about justice can thus be a guide for public action as it relates to the authorisation of research, the grant of patents, and the cost of treatments. Health services depend largely on public funding (or on government-sponsored research backed by mixed funding). They fund investment for the entire health care system, and decisions in public health in turn bring us back to justice in the distribution of care throughout the population. We thus see an integrated economic system that may partly be regulated by a theory of justice, even though patents are a matter of private law.

This theory may clearly exhibit fundamental conflicts, such as that between the proponents and opponents of abortion in the United States, studied by Ronald

6

Dworkin. In reality, it seems that their conflict has manifested itself within the US Supreme Court in terms of the boundaries between fundamental civil liberties and governmental responsibilities. In fact, the conflict between the right of an embryo to be born, and a woman's right to control her body, is an internal one, at the boundaries of two legal spheres. Paradoxically, those who argue for the right to abortion appeal to an old tradition of non-intervention by the state; we need only recall that in Roman law, and since Aristotle, there is an explicit conflict between public law, which governs the affairs of state, and private or family law, which guarantees the free enjoyment of family and productive life. The rules of this private law make procreation, birth and family relationships private matters, in which liberty is the rule, unless their repercussions encroach upon the public sphere. Unless there is harm to another, nothing here justifies the involvement of a third party in this area of liberty. In order to oppose the right to abortion, we would thus have to establish that a third party is injured by it – hence the debates on the status of the embryo and the foetus. If the foetus does indeed have a status, its legal incompetence would compel a guardian – in this case, the state, under the clause in the Constitution guaranteeing equal protection before the law, enjoyed by individuals in the United States – to represent it. Expressed in terms of justice, the question of abortion helps to redraw the boundary between the private and public spheres, over and above the right of a child to be born or that of a woman not to give birth to it.

The second orientation relates to a theory of thresholds or qualitative leaps, and does not give risky experimentation the benefit of the doubt. Georges Canguilhem's thinking on norms refers practices to the need for personal meaning in physical existence. Research that had as its concomitant the increasingly instrumental use of the human body, or even the loss of dignity by individuals, would thus seem futile or harmful. We may nevertheless wonder whether this formalism in respect of norms does not in certain ways amount to an "essentialist" sacralisation of nature, which subjects research practices to *a priori* controls that are apparently at odds with the obligation to intervene. In this case, authorisation of research on human stem-cells may seem essential for progress in research involving practices that determine the future, without it being possible to seek the informed consent of the "end" subject. Many writers,

including Hare, have tried to clarify these discussions, central to the notion of the “potential human person”, which was employed in order to give the foetus legal existence by a route other than that suggested by Dworkin. Writers concerned with the nature of representation or animal rights are of necessity associated with thinking of

this type; they include Elisabeth de Fontenay,<sup>7</sup> and Jean-Yves Goffi, who has addressed different aspects of the status of animals in relation to human moral and

legal categories.<sup>8</sup> The ethical question thus has to be expressed in legal language; it is a matter of specifying what is within the law and what is outside it. Ethics no longer faces the question of what is desirable, and its conditions, but of what is permitted and what prohibited. The whole difficulty is then to neutralise the biases of a way of thinking that is constantly inclined to proceed from the possible to the desirable, or conversely, from the problematic to the taboo: how are we to address the question of the lawfulness of particular actions relative to general norms that have not envisaged them? Here, considerations that take into account *ab initio* the idea of generalising certain risks that are still only potential may clarify the ethical issues of a new practice. Everyday medical practice, like every other, gives rise to dilemmas that have to be resolved, but it is especially when two competing orders of justification tempt us to establish antagonistic practices that the question becomes genuinely ethical, because it is then that it addresses the establishment of general rules.

This is why ethical conflicts arise between these two logical approaches. One aspect of public health may be in conflict with a personal conviction – if it appears, for example, that aborted foetuses are indispensable for creating remedies. The conflict between norms and preferences would seem here to relate to arguments of the kind put forward

by Michael Walzer,<sup>9</sup> which address the various legitimate expressions of “public argumentation”. Many of these debates have enhanced the sacred status of the human person in terms of the notion of “dignity”, introduced in 1948 by the UN Universal Declaration of Human Rights, and have simultaneously strengthened our motives for

not obeying “spontaneous” natural norms. That is why, between secularisation<sup>10</sup> and fear for the other (as in Levinas), the question of responsibility has become central to rational practices in general, and no longer constitutes what lies “outside” scientific practices, which were long able to take advantage of scientific progress in order to dispense with other forms of justification. Henceforth, competences and knowledges fall within systems in which certain decisions are no longer simply local, but have irreversible consequences, and in a sense create law. The principal function of ethics is then not to admit personal scrupulousness at the moment of the practical decision, but to refer the decision to general frameworks, where scrupulousness is made a heuristic element: its maintenance, or its suspension, must be independent of convictions if it is to be integrated into an explicit set of justifications, and to find, beyond scientific certainties, something of the Socratic maieutic method. This provides, in fact, a mode for medical ethics, in the effort it makes to integrate practical cases into a dialectic that returns to the principles of a mode of thinking that interrogates law without blindly

submitting to it. (Aristotle develops this position in the *Nicomachean Ethics*, where he says of friendship that in it, there is no need for law, while the converse is not true: *philia* remains necessary in a law-based society). This perspective is central to the work of Hans Jonas, of whom it has not been emphasised strongly enough that he establishes

the “responsibility principle”<sup>11</sup> not so much in terms of the risks incurred, as on the basis of ideas about consent that are closely allied to the rules which emerged from the trial of the doctors at Nuremberg: individual consent becomes the intangible principle of medical action, *a fortiori* if clinical or biological research is involved. The precautionary principle thus means, first and foremost, invalidation of the calculation of probabilities as the justification for a decision. A decision that has implications for the future cannot restrict itself to probable benefits. There must be clear ways in which it may be reversible, and it must be weighed in terms of the risks to which it exposes those who are not party to the decision, following a rule of prudence: “all that is possible need not necessarily be done”, especially if the goal in view is not directly bound up with a recognised benefit for man’s humanity and the integrity of his being in-the-world.

### *Toward transindividuality*

This connection between norms and ethics is decisive in Gilbert Simondon’s seminal work, *L’individuel et sa genèse physico-biologique*,<sup>12</sup> whose conclusion is a superb defence of ethics. According to Simondon, the individual creates himself not by becoming autonomous vis-à-vis his environment, but by enriching his relations with it. Following a first section devoted to the transformations imposed by contemporary physics on the notion of the object, which disappears in favour of that of the “event” (about which our various sensors tell us the essence of what we wish to know, but by bringing its reality down to those facts that we can measure), the second section deals with biological individuation. The first statement is compatible with what has been established about the physical organism: the individual is externally characterised by being endowed with existence independently of its ability to reproduce its own structures. That it is an independent organism does not follow simply from the fact that its replication, or multiplication, presupposes a prolonged phase of internal development; it is its death, separated from the future of the species, that defines its individuality. “Individuality appears only with the death of beings”, writes

<sup>13</sup> Simondon. It is because it can die, and leave no remains, that the individual apprehends itself as ontologically separate from the species from which it comes. In this sense, the idea of a collective individual, which from the point of view of psycho-narrative identity may pose a problem, on the contrary, implies this: the conditions of individual existence are part of a heterogeneous and fluid whole that has its own dynamic of existence and replication, but at the same time offers it greater or lesser opportunities for expression and autonomy. Here, Simondon shares the tradition of

Gestalt-theory, which offers a model of existence in which the psychology of subjective interiority is a consequence rather than a cause. In Merleau-Ponty, to whom the work is dedicated, the Gestalt is linked with phenomenology, to reveal the philosophy which will lead to the new ontology of *Le Visible et l'invisible*, in which

transindividuality becomes the reality of the individual.<sup>14</sup> And it is precisely there that ethical questions matter to us: they do not mean subjecting the regulation of our activities to a single norm, but encouraging the integration of plurality of norms into field of human practices in which everyday decisions impinge on humanity's idea of itself. The notion of responsibility can here be returned to its philosophical rather than its technical source.

In his final chapter, "Individuation and information", Simondon shows how living individuality is defined specifically by its drawing on sources of information external to its structure: its unique form of individuation is restored to its true condition of a complex relationship with its environment. The various theories of adaptation and evolution in any case always ultimately refer to the idea of a homeostatic equilibrium between the individual and certain environmental variables: climatic, psychic, adaptive, etc.. This issue becomes more complex if we include parameters such as those relating to development (embryonic structures, neurological development, etc.), ultimately arriving at autonomous forms of behaviour:

"The obstacle, in lived experience, is the multiplicity of ways of being present in the world. [...] The *fluctuatio animi* that precedes deliberate action is not a hesitation between several objects, or even between several possible directions, but the fluid overlapping of incompatible groupings that are almost identical and yet disparate [...] It is not through the dominance of one of these groupings, constraining the others, that the action manifests itself as an organising force; action is contemporaneous with the individuation through which this conflict of levels is organised in space; the general plurality becomes a system. The schema of action is only the subjective symbol of this new dimension of signification, which has been discovered in active individuation. [...] The being that perceives is the same as the being that acts: action begins with a resolution of problems of perception; action is a solution of the problems of mutual consistency between worlds of perception. There must be a certain disparity between these worlds if action is to be possible; if the disparity is too great, action is impossible. Action is a form of individuation beyond perceptions, not a function disconnected from perception and independent of it in existence."<sup>15</sup>

These thoughts, in which Simondon refers to Goldstein, anticipate current forms of cognitive science on the topic of strategies for adaptation to the environment and for carrying out action, especially in cognitive ethology. Simondon then addresses the question of collectives, using a concept of death as the permanent destruction of

tissues and their regeneration within a schema of meta-stability.<sup>16</sup> Maturity represents this particular form, in which the individual, beyond taking on his own individuation

partially assumes that of the grouping of which he forms part.<sup>17</sup> The collective is thus

an integrated entity, oriented towards the resolution of the problems posed by integration: Simondon may use the word “transindividual” for this normal form of existence of the collective.

In his conclusions, Simondon justifies his decision to see individuation as a process of successive, diversified phases, the opposite of any form of substantialisation. His concept radically departs from Spinoza’s vital system of “perseverance in one’s being by asking whether “such a theory may reject the fundamentals of an ethical system”: “Norms are the lines of internal cohesion of each of these equilibria, and values are what makes it possible for the norms of one system to become those of another, through a change in structure. For the normativity of a system of norms to be complete, its own destruction as a system, and its transformation into another system by a process of transduction must be prefigured within the system itself.”<sup>18</sup>

That being the case, Simondon opposes the idea that we have to find immutable norms; even if we allow that the search for them would attest to a good understanding of how we pass from fluidity to fixity, it leads only to an ethic of good sense, and cannot prescribe the rules for action. This dichotomy takes account of the discrepancy so frequently observed between moral principles asserted as absolutes, which in fact resign themselves to acknowledging ordinary practices. “Values should not be above norms, but within them, like the internal resonance of the network they form, and their power of amplification.”<sup>19</sup>

Simondon thus invites us to remake ethics on the basis of norms that emerge in the course of the development of the various domains in which collectivities formulate the difficulties they have in acting:

“They are the future, instead of emerging in the future without forming part of the future; there is a historicity of the emergence of values, just as there is a historicity of the constitution of norms. We cannot remake ethics on the basis of norms or values, any more than we can remake the being on the basis of the forms and substances to which abstractive analysis reduces the conditions of ontogenesis: ethics is the demand for a meaningful correlation between norms and values. To grasp ethics in its entirety requires one to uphold the concept of ontogenesis: ethics is the meaning of individuation, the meaning of the synergy between successive individuations. It is the meaning of the transductivity of becoming, according to which the interiority of an act has a meaning in exteriority. [...] there is an ethics to the extent that there is information, that is, signification transcending the death of elements of beings, thus making what is interior also exterior. The value of an act is not its capacity to be universalised according to the norm entailed in it, but the actual reality of its belonging to the web of actions that is becoming. It is indeed a web and not a chain of acts.”<sup>20</sup>

“Ethics is that by which the subject remains a subject, refusing to become an absolute individual, a domain closed off from reality, a detached singularity; it is that by which the subject remains in an always tense internal and external dilemma, that is in a real present, living in the central zone of being, [...] through the individual, a process of expansion derived from Nature, societies become a World.”<sup>21</sup>

These words clearly state how individuation of itself leads to ethical responsibility, the other aspect of what is called “dignity” in declarations of rights. And here, more so than in the case of death, thinking may address the question of pain, of which the ethical aspect is called “suffering”, a wrenching out of the world of interrelations that are the basis of individuality itself; it is not by chance that in most languages, the vocabulary of anxiety, mental anguish and moral suffering is closely allied with that of bodily pain, physiological agony, and feelings of powerlessness in the face of illness. This strongly felt congruence is at the root of the empathy that links us with other living species.

*Being in suffering: the ethical dimension of pain*

The parallel between pain and suffering is very old; it is found in Plato, where many distinctions still made today were established. The *Symposium* is devoted to distinguishing erotic desire from physiological repletion, and it evaluates the sufferings of love on a scale that may be expressed in terms of Forms. But while a comparison is often made between philosophers and physicians, it is rejected by Plato except as word-play; philosophy studies not so much pain as peaceful states of consciousness, which it explores methodically (thereby competing with religion), and violent and painful crises concern it only as symptoms of mental dissatisfaction. Socrates is sometimes presented by Plato as analogous with a physician, in the sense that he treats souls where the physician treats bodies, but his philosophy is a philosophy of desire and its nature, its regulation and its being made fit to serve the highest purposes. If the philosopher is like a physician, says the *Republic*, it is in the sense that in the city-state he is the direct opposite of the demagogues, who may be compared with a cook who gives sick children treats and delicacies rather than medicine. The figure of Socrates is that of a “double” man, one who knows better than anyone else the subtle deviations of desire, human stratagems and ruses, but whose wisdom spares him the sufferings he diagnoses in others. Devoid of any desire to dominate, unless in the name of the dialectic of truth, he chooses to drink the hemlock; his poisoning and the progressive loss of sensation in his limbs are described at length in Plato’s *Apology*, and his thoughts on death and spiritual survival have been the subject of many interpretations since antiquity. Thus, in the face of physical pain, the figure of the philosopher inspires Epicurean ataraxy and the Stoic’s contempt for what is beyond our control. At its margins, the Cynic sees in our bodies a constant reminder of a mortal condition that transcends every other consideration; to respond to it was to require the slow formulation of a consolatory philosophy that anticipated the more substantial liberation offered by the Gospels.

So, while it is the religious context, rather than the philosophical tradition, that gives meaning to this association between thought and a consideration of pain (as do interpretations of the Book of Job), the new synthesis that emerged in the Renaissance could not be understood without recourse to the early anatomical and physiological accounts that marked the beginnings of modern medicine. Understanding of the

circulation of the blood, nerve tissues, cerebral connections, early systematic descriptions of paralyses and other pathologies of sensation and neuro-motor systems contributed to a new literature whose first intellectual outcomes were Cartesian mechanism in the seventeenth century and philosophical materialism in the eighteenth: Diderot describes, in his *Supplément au Voyage de Bougainville*, the throes into which thinking is plunged if one proposes that the senses may govern the mind, at a time when the concept of mind was based on coherent views and representations of worlds that could clearly not be “shared” by all human beings. Do blind and deaf people think in the same way as those with sight or hearing? And if the answer is “yes”, what place do we give to the senses and to reason respectively? What are the marks of a reality outside our perceptions of it? Are pain and suffering null? Is individual experience obliterated in the face of the generality of truth? It is thus not until the establishment of a “contemporary” configuration, within which individual destiny overrides not only collective destiny, represented by religion, but also the general nature of sensory impressions taken as instruments of knowledge and information about the world, that an entirely new outlook emerges, which owes its contemporary development to the cognitive sciences. (Here we should mention the interdisciplinary work carried out at the Institut des sciences cognitives, in Lyon, in the fields of both neurology and linguistic sciences, under the dynamic leadership of Marc Jeannerod.)

It is thus by rethinking theories of information – present since Descartes – that philosophy opens up a new space to theorise pain within the notion of “passivity”. Passivity in fact characterises my body insofar as it is not involved in meanings, but it affects and injures whose course it is powerless to alter: hallucinations and injuries have to do with this passivity, as do fatigue, sleep, hunger, anxiety and other states that it is beyond my power to control. This “non-control” describes the reality of suffering and constitutes the philosophical horizon of thinking about pain, which is closely allied with thinking about what is involuntary. This point is actually central to the famous Cartesian thesis that denies that animals suffer, on the ground that they could

22

not be cognitively aware of their own states. With this distinction between voluntary and involuntary, a confusion between pain and suffering surreptitiously creeps in: suffering (a mere headache aside) is the pain that one experiences, bears, and endures with a sense of its unpleasantness. Without touching on the “complaint” and its theological connotations, we easily move from the unpleasantness of pain to a metaphysics of the “world of pain”, at the furthest limit of which suffering attains an interpretation: pain must have meaning, it must have a justification, a motivation and not merely a cause; its existence must offer a basis for interpreting the meaning of life and so on.

Is it possible to give suffering a status without making interpretations that might almost be taken as indirect manifestations of that pain, a disturbance of thinking associated with assaults on the body? That was Montaigne’s view, at least: “A judge may leave home suffering from the gout, jealous, or incensed by a thieving valet: his entire soul is coloured and drunk with anger: we cannot doubt that his judgement is

biased towards wrath.”<sup>23</sup> The *Dictionnaire d'éthique et de philosophie morale*<sup>24</sup> does not have an entry simply for “Pain”, but a text headed “Illness, suffering, pain”. It is by an expert in medical ethics, and directly addresses bodily suffering and its philosophical implications: logically, the author attacks all justifications of pain derived from theology or metaphysics, as well as any view of natural pain as a sign of health; there are severe cancers that do not cause suffering, and pain has simply to be combated. On the other hand, as Jérôme Porée writes, the philosophical treatment of the question opens with a description of the psychological effects of pain on our ability to discriminate. He refuses to contrast pain and suffering, and insists on the all-encompassing nature of a vital, existential and psychological unity, whose integration is under threat. To be unable any longer to think, to control one’s behaviour, to pay attention to others, even to one’s own physiological needs, are all manifestations of suffering directly connected with pain. Porée concludes that pain does not motivate one to act in order to reduce suffering; in the absence of the power to cure all forms of pain “to prescribe is first and foremost to proscribe”, he says. And he ends with the human bond that is established in order to avoid the madness of revenge and loneliness by offering support for the pains and sufferings of others, which he sees as providing the true meaning of human empathy. In this way, Porée, without quoting him, sounds close to Schopenhauer, who makes pain the key to the meaning of human existence and to the power of moral and aesthetic creativity; he is returning to this source, which in the nineteenth century described the effort to transcend illness through poetry as a manifestation of the failure to act (art is supposed to give the suffering we experience a purer meaning) which, transposed to our times, makes the rejection of suffering an immanent justification of the process of medicine.

### *The presence of Montaigne*

The emphasis on empathy and the preservation of human capacities in illness has parallels in particular with some texts of Montaigne, who can surely be seen as a precursor of our way of thinking, refusing as he does to give pain ontological status, but making it one of the elements of the human condition that has to be tamed, and from which we may even learn the meaning of courage, empathy with others, and a sense of community with other living things. All this without pain’s having any sort of value in defining existence philosophically: neither redemption nor sin, the principal value of affliction is as an exercise into which one may “deliberately cast oneself”,<sup>25</sup> in order to test one’s mettle when faced with reverses of fortune. And it is therefore to taming death, even to essaying it, that the clear-minded philosopher will apply himself: “...and if we cannot drive right up to its stronghold we can at least glimpse it and explore the approaches to it”.<sup>26</sup> Describing a riding accident that left him unconscious and bleeding, and telling how long it took him to regain consciousness, Montaigne infers from the passive, emotionless state in which he found himself a pea

congruent with the moments of dying. This remarkable essay continues with Montaigne interweaving his account of how he regained consciousness with moral reflections on the mind: he appears to have spoken in a manner appropriate to the situation, but with no awareness of doing so: “My reactions were trivial ones, produced by my senses themselves, doubtless from habit”.<sup>27</sup> In this near-death situation, his sensations were almost trifling, whereas they became unbearable when he regained consciousness and felt the pain in his limbs. Montaigne concluded from this: “it is a thorny undertaking – more than it looks – to follow so roaming a course as that of our mind’s, to penetrate its dark depths and its inner recesses, to pick out and pin down the innumerable characteristics of its emotions. It is a new pastime, outside the common order; it withdraws us from the usual occupations of people – yes, even from the most commendable ones”.<sup>28</sup> Taking these near-death experiences and forms of mental automatism as a yardstick, it is impressive to realise that Montaigne forged, in Book II of his *Essays*, this extremely clever device by which he came, in the *Apologie de Raimond Sebond*, to extol the senses and the spontaneous activity of those faculties that we share with animals. After dealing with the love of children and of books, Montaigne comes to the essay entitled *On cruelty* (II, 11) in which he protests yet again against torture, which is far worse than death, by referring to his natural compassion: “Savages do not upset me so much by roasting and eating the bodies of the dead as those persecutors do who torture the bodies of the living”.<sup>29</sup> While it might be impossible to avoid the need to terrify human beings by means of public punishment, Montaigne proposed that such things should be done only to dead bodies: “Such inhuman excesses should be directed against the dead bark, not the living tree”.<sup>30</sup> He compares these horrific brutalities with the pain inflicted on animals: “Natures given to bloodshed where beasts are concerned bear witness to an inborn propensity to cruelty”.<sup>31</sup> and goes as far as to posit a “kind of respect and a duty in man as a genus which link us not merely to the beasts, which have life and feelings, but even to trees and plants. We owe justice to men: and to the other creatures who are able to receive them we owe gentleness and kindness. Between them and us there is some sort of intercourse and a degree of mutual obligation”.<sup>32</sup> The question of animal pain and suffering is thus a major test, found throughout *L’Apologie de Raimond Sebond* : after making “Man in isolation – Man with no outside help [...] as stripped of [that] grace and knowledge of God in which consist his dignity, his power and the very ground of his being.”<sup>33</sup> the subject of his study, Montaigne focuses his scrutiny on the sensory relationship with the world, and on the connections thus woven between mind and body: “I am pleased enough not to be ill, but, if I am ill, I want to know; if you cut me open or cauterize me, I want to feel it. Truly, anyone who could uproot all knowledge of pain would equally eradicate all knowledge of pleasure and finally destroy Man.[...] For Man, ill can be good at times; it is not always right t

chase after pleasure”.<sup>34</sup> The crucial criterion adopted by Montaigne is that of “sound judgement”, so easily disturbed by mental and physical afflictions, as demonstrated not only by sickness but also by the majority of subjective states that are after all the common condition of interior discourse.

Current ethical considerations must therefore broaden their aims if they are to shed casuistic considerations when taking into account ideas concerning the integral nature of life: what Simondon explains in detail, Montaigne straightforwardly asserts when he posits the fundamental bond between human obligations and the fragility of human judgement, and when he rejects presumption and feelings of superiority in favour of a deliberate humility, privileging the enrichment of the actual conditions of individual existence over any conceited separation between the essential nature of humanity and that of other species. The conditions governing the contemporary development of the representation of living things have thus clearly existed at the heart of European culture for centuries, and we have only to reformulate it in order to give it all its desirable scope.

*Neither naturalism nor teleology, but normativity*

Our analysis thus confirms a position that is essential if we are to theorise living things; it substitutes normativity both for naturalist representations and for teleological perspectives. This approach is all the more central since it transcends many disagreements about the limits of validity of explanatory models that vary in scale. Jean Gayon describes this discussion; contrary to what has long been said, the manifestations and structures of living things involve many interlocking systems that imply no *a priori* necessity. Their organisation reverts to an historical explanation that in no sense points to an initial probability; this is equally true at the level of the components of the organism as for evolution, which Jean Gayon states is a given of every living system, but without its being possible to show in advance the direction that it may take in all circumstances. The representation of the living thing as a system in no way makes it impossible to theorise the appearance (emergence) of elements that are not deductively implied in a previous state.

This situation amounts to saying that the person is a unique entity, defined by his capacities. It is the inhibition of these capacities that constitutes a handicap, a mutilation, an assault, a change in the person’s existential situation, as Sartre meant when he made liberty the crucial marker: an assault that alters natural behaviour reconfigures the whole person. Hence, rejection of naturalism and teleology gives way to the establishment of a relationship between an individual’s possible actions and their self-referential and normative dimension: the possibilities of an average individual become a statistical norm for measuring differences; variations in individual capacities allow us to treat each individual according to criteria related to his norms, but also to aspects of alterity dealt with by phenomenology; Sartre and Merleau-Ponty closely associate representations derived from behavioural psychology with historical experience, and question the opposition of the psychological and the

physical, with the result that pain, long denied or seen as a “collateral” effect of bodily life, becomes a social and political issue. *L’Être et le Néant* emphasises the link between “eyestrain” and mental perspectives that interfere with intellectual work in the same way as shame or inhibition. Pain and health belong to the domain of norms, although, as Canguilhem says, “we do not dictate to life its norms”.

### *Empathy and barbarism*

This helps us understand why recent years should have seen the development of empathy in many forms. This idea, despite its obscurity (it takes us into difficult areas in the consciousness of being and the natural or desirable capacities of others), to a great extent explains the rise of intellectual and political movements based on understanding others. They range from concern about well-being to demands that fundamental rights be respected, for instance, in the way that human dignity and consent are expressed in ethical rules on medical experimentation and international charters, such as the UN Universal Declaration of Human Rights, or the rulings of the

35

*Comité consultatif national d’éthique.*

According to this way of thinking, pain is invalidated as an indicator; it can only be seen as a handicap, brought about intentionally or unintentionally, through foolhardiness or negligence, etc.. This normative perspective goes hand in hand with a tendency to legalise the elements of the question. The question itself springs largely from the effects of two world wars. The Geneva Conventions on the treatment of civilian populations by combatants, and on prisoners of war, as well as the specific jurisdictions established after the Second World War, formed a basis for subsequent thinking. Pain is thus seen as a “deterioration” in natural capacities. The criterion of alterity is of prime importance here; every individual is considered “capable” of expressing different aspects of his individuality; behavioural manifestations related to constraints, of whatever nature, are seen as attacks on the fundamental liberty of the person. Raphaël and Catherine Larrere see the sociability manifested by animals in the wild as a trait that links us with them, and of which they cannot be deprived without injury to the integrity of their natural capacities. It is also common sense to say that a laboratory animal, even if it is the result of hybridisation and genetic modification not found in nature, is as sensitive as any other, something that is confirmed by those responsible for running animal laboratories. At a recent conference, Anne Morals emphasised the practical as well as the humanitarian necessity to reduce animals’ pain which is an obstacle to research. It is important to set the lowest possible limit, in spite of the difficulty of monitoring its application to small animals who require close

36

observation, given their individual differences.

This is how both pure research and therapeutic applications lead to individuation and variability being seen as determining features of living beings, which leads us to believe that contemporary issues in the unprecedented increase in knowledge in the fields of biological sciences present workers in these disciplines with a very particular

dilemma, since the results demanded of them have to be solid, and repeatable under experimental or therapeutic conditions whose general elements are subject to all kinds of variations. The results obtained are therefore inevitably statistical in nature, and all clinical treatment retains an aleatory aspect. This individual variability of course underlies the ruling by the *Comité consultatif national d'éthique pour les sciences de la vie* in which its president, Didier Sicard, supported the “exception of euthanasia”, which culminated in the law of 30 November 2004 on patients’ rights and the end of life, which allows the patient’s wishes to be respected in specific circumstances. This position, a stand against barbarism, highlights the empathy of such a one as Montaigne when, in his essay *De la cruauté*, he describes the gratitude to his jailers expressed by a condemned man on learning that his head was to be cut off, after he had attempted suicide “because he had feared a death more cruel and intolerable, having formed the opinion that the preparations which he had seen [...] meant that they wanted to torture him with some horrifying torment”.<sup>37</sup>

Gérard WORMSER

#### Notes

1. Atlan, Henri and Delmas-Marty, Mireille, “Cloning, où allons-nous”, in *Le Monde*, 30 June 2004
2. Jordan, Bertrand, *Les Marchands de clones*, Le Seuil, 2003.
3. Atlan, Henri and Delmas-Marty, Mireille, *op. cit.*
4. *Le Monde*, 3 December 2004.
5. But only on condition, adds Rawls, that these “fair inequalities” do not interfere with the fundamental liberties that make it possible clearly to envisage collective thinking about the distribution of “primary goods”. Then, certain inequalities will be accepted in advance as just, by virtue of the benefits associated with them, even by those least advantaged by the distribution: the concept of the “veil of ignorance”, analogous to Rousseau’s “general will”, dissociates the common decision from the presuppositions associated with individual interests. In Rawls, justice based on fostering “primary goods” refers to a society whose members acknowledge each others’ rights and agree to think that their places are, in theory, interchangeable. The formation of political groupings inherited from the past therefore takes precedence over all forms of humanitarian universalism. This real limitation explains the impotence described by Amartya Sen, winner of the Nobel prize for economics, and James D. Wolfensohn, president of the World Bank, in *Le Monde*, 3 December 2000 the evening of the “Telethon”: “The disabled are not only the most disadvantaged human beings in the developing world, but also the most neglected. Over 600 million people in the world live with some form of disability, over 400 million of them in developing countries, often in conditions of destitution, isolation and despair. Only a small proportion of that 600 million were born with their disability. For example, malnutrition and a lack of clean drinking-water can cause blindness. [...] Disabled people want the same things as the rest of us: the chance to go to school, find remunerative work, lead a worthwhile life and be a respected member of the community and the wider world. These desires must not remain empty dreams; many of them can be fulfilled if we are prepared to give this huge problem the attention and commitment it demands. We must find the will to do it.” I put this intention into practice (even by emphasising, like the authors, simple solutions ranging from spectacles for the partially-sighted to codes of practice on access to buildings and streets) requires concerted local action, supported by committed international bodies. Meanwhile, these resolutions are a matter of goodwill, not of justice, in the sense of the formulation and application of common rules to an integrated whole.

6. Dworkin, Ronald, *Life's Dominion, an argument about abortion, euthanasia and individual freedom*, Knopf, 1993.
7. De Fontenay, Elisabeth, *Le Silence des bêtes, la philosophie à l'épreuve de l'animalité*, Fayard, 1998.
8. See Goffi, Jean-Yves, *L'Animalité*, Vrin, 2004. Goffi recently led a conference in Grenoble, devoted to Hare.
9. Walzer, Michael, *Critique et sens commun*, translated by J. Roman, La Découverte, 1990.
10. Blumenberg, Hans, *La Légitimité des temps modernes*, Gallimard, 1999, translated by M. Sagnol, J.-L. Schlegel and D. Trierweiler.
11. Jonas, Hans, *Le Principe Responsabilité, une éthique pour la civilisation technologique*, trad. J. Greisch, Le Cerf, 1990
12. Simondon, Gilbert, *L'Individu et sa genèse physico-biologique*, Jérôme Millon, 1995.
13. *Ibid.*, p. 166.
14. As seen notably in Merleau-Ponty, Maurice, *L'Institution, la passivité. Notes de cours au Collège de France (1954-1955)*, Belin, 2003. See in particular the course on passivity.
15. Simondon, G., *op. cit.*, p. 209.
16. *Ibid.*, pp. 212, ff.
17. *Ibid.*, p. 215.
18. *Ibid.*, p. 243.
19. *Ibid.*, p. 244.
20. *Ibid.*, p. 245.
21. *Ibid.*, p. 247.
22. Voir Rey, Roselyne, *Histoire de la douleur*, La Découverte, 1992, p. 93.
23. Montaigne; Michel de; *The Essays of Michel de Montaigne*, trans. and ed. Screech, Allen Lane and Penguin Press, 1991, p. 636.
24. Canto, Monique, ed., *Dictionnaire d'éthique et de philosophie morale*, PUF, 1997.
25. Montaigne, *op. cit.*, p. 416.
26. Montaigne, *ibid.*, p. 417.
27. Montaigne, *ibid.*, p. 422.
28. Montaigne, *ibid.*, p. 424.
29. Montaigne, *ibid.*, p. 482.
30. Montaigne, *ibid.*, p. 484. The following paragraph should be quoted here: "I live in a season when unbelievable examples of this vice of cruelty flourish because of the licence of our civil wars; you can find nothing in ancient history more extreme than what we witness every day. But that has by no means broken me in. If I had not seen it I could hardly have made myself believe that you could find souls more monstrous that they would commit murder for the sheer fun of it; would hack at another man's limbs and lop them off and would cudgel their brains to invent unusual tortures and new forms of murder, not from hatred or for gain but for the one sole purpose of enjoying the pleasant spectacle of the pitiful gestures and twitchings of a man dying in agony, while hearing his screams and groans. For there you have the farthest point that cruelty can reach: '*Ut homo hominem non iratus, non timeus, tantum spectaturus, occidat*'. ("That man should kill man not in anger or in fear but merely for the spectacle"; Seneca, Letter 90)
31. Montaigne, *ibid.*, p. 485.
32. Montaigne, *ibid.*, p. 488.
33. Montaigne, *ibid.*, p. 502.
34. Montaigne, *ibid.*, p. 549.
35. Cf. Ambroselli, Claire and Wormser, Gérard (eds.), *Du corps humain à la dignité de la personne humaine. Genèse, débats et enjeux des lois d'éthique biomédicale*, CNDP, 1999.
36. (Comité régional d'éthique pour l'expérimentation animale, CNRS/Rhône-Alpes, 18 October 2004). As Stéphane Junot reported on that occasion, in the case of rodents, the difficulty lies in their size, which makes the experimenter less sensitive to their respiratory rhythm. Their normal and pathological behaviour is altered, as are their physiological rhythms, and observations such as cessation of play or activity are signs to be noted, especially since untreated pain (in both animals a

humans) produces an extreme and almost irreversible sensitisation even to minimal stimuli.  
37. Montaigne, *op. cit.*, p. 483.

## Revue des revues de l'adpf, sélection de décembre 2005

- Gérard WORMSER: «Normes et enjeux de la représentation du vivant»  
article publié initialement dans la revue *Les Temps modernes*, n°630-631, mars-juin 2005.

### Traducteurs:

Anglais: Imogen Forster  
Arabe: Anouar Hamed Ahmed Moghith  
Chinois: Zhu Xiangying  
Espagnol: Ofelia Arruti  
Russe: Nina Khotinskaïa

### Droits:

- © Gérard Wormser/*Les Temps modernes* pour la version française
- © Imogen Forster/Institut Français du Royaume Uni pour la version anglaise
- © Anouar Hamed Ahmed Moghith/Centre Français de Culture et de Coopération du Caire – Département de Traduction et d'Interprétation pour la version arabe
- © Zhu Xiangying/Centre Culturel et de Coopération Linguistique de Pékin pour la version chinoise
- © Ofelia Arruti/Centre Culturel et de Coopération de Mexico – Institut Français d'Amérique Latine pour la version espagnole
- © Nina Khotinskaïa/Centre Culturel Français de Moscou pour la version russe