

CHAPTER 3

THE MORAL STATUS OF ANIMALS AND THE ETHICS OF ANIMAL EXPERIMENTATION

Introduction

3.1 The scientific community put forward a number of arguments to justify the use of animals in experiments, few of which were philosophical in nature. Instead, the practical benefits of such experiments were heavily emphasised, as was the fact that animals are irreplaceable in some forms of experimentation. These arguments are discussed in later chapters dealing with specific areas of research.

3.2 Opponents of animal experimentation have criticised the actual practice of animal experimentation but have largely based their case against the use of animals in experiments on philosophical arguments about the moral status of animals.

3.3 In surveying the philosophical debate, the Committee noted that leading advocates of the animal welfare movement, such as Professor Tom Regan and Professor Peter Singer, offer different philosophical rationales for their views on the moral status of animals. Although their conclusions are similar, they argue their respective cases along different lines. In fact, there is no unanimity either in philosophical circles or in the animal welfare movement on the exact moral status of animals and the accompanying question of the use of animals in experiments.

3.4 This chapter will therefore be devoted to an outline of the main arguments that have been placed before the Committee concerning the moral status of animals, at the end of which the Committee draws its own conclusions.

Historical Perspective

3.5 Debate over the moral status of animals and the ethics of animal experimentation is not simply a contemporary philosophical fad. The issue was discussed by the earliest Greek physicians, while anatomical researchers during the Renaissance developed arguments to justify vivisection.¹

3.6 The 17th century French philosopher Descartes developed a position on the nature of animals and their ability to experience pain that was to be very influential. Animals were viewed as automata that could not experience real pain. It was believed they went through external motions which in humans are symptomatic of pain without experiencing its mental sensation. Descartes' arguments were used to justify undertaking physiological experiments on animals.²

3.7 The Cartesian position finds very little support in current debates over animal experimentation. There are, however, philosophical positions being put forward currently which deny any significant status to animals. The philosopher, R.G. Frey, for example, argued that animals have desires but not minds. They have no interests and no rights. They can therefore be legitimately used and exploited by humans.³

3.8 Others base the right of humans to use animals with minimal restriction on a variety of religious and scientific arguments. There is the evolutionary theory; humans are at the top of the evolutionary ladder and are therefore superior to animals. There are also fundamentalist interpretations of the Biblical story of man being given dominion over the animals.⁴

3.9 Much more common is the 'humane' interpretation of the right of humans to use animals. On this principle humans must not cause animals unnecessary pain and distress. However, animals do not have inherent rights and may be killed painlessly for legitimate purposes. As a test of necessity, the criterion of legitimate purposes, seems weak. Apart from outright cruelty or obviously pointless use, almost any purpose could be argued to be legitimate. No rigorous evidence or argument is required on this basis to justify animal experimentation.

As it is presently articulated, humane beneficence, fails to provide criteria for determining the legitimacy of those human purposes in whose service animals may be caused pain or distress. In practice, traditional adherents of beneficence tend to find virtually all animal research justifiable.⁵

Utilitarianism and Suffering

3.10 In recent years, the most common philosophical argument in the debate over the use of animals in experiments has been utilitarian in form. It can be used, however, to argue a case either for or against animal experimentation.

3.11 Utilitarianism involves the calculation of the consequences of action in terms of the total costs and benefits or, alternatively, pleasure and pain. The positive outcomes should outweigh the costs of any course of action or project.

3.12 Simply put, permissive utilitarianism justifies particular painful experiments on the grounds that the pain experienced by animals will be more than outweighed by the benefits resulting from the relief of suffering of humans or other animals, or other improvements in the quality of human life. Human pain in this calculation is regarded as intrinsically

worse and is therefore given a greater weighting in the calculation than animal pain. Conversely, human enjoyment, pleasure or benefit will carry a heavier weighting than similar animal experiences because it is assumed to be richer and much wider in its scope.

3.13 The calculation of pain and benefit can be developed to justify a quite different position on animal experimentation. In this view animal research causes more pain than benefit. This is based on the assumption that very little animal research produces significant benefits for humanity although many experimental techniques inflict significant pain and distress on the animals used. Dr Judith Hampson, who gave evidence on behalf of ANZFAS, argued that the vast majority of animal experimentation is not done to conquer life-threatening diseases.⁶

3.14 An essentially utilitarian argument that is critical of the use of animals in experiments need not take, however, the form just outlined.

3.15 An Australian philosopher Professor Peter Singer has made a significant contribution to the development of an alternative line of argument. The core of his argument is that the granting of moral consideration to a subject is grounded in the capacity to suffer pain or to experience pleasure:

... the principle of equal consideration of interests is sensitive to differences in the kind of interests different beings may have. But the fundamental common interests between humans and other animals remains the interest in not experiencing pain and suffering. The only acceptable limit to our moral concern is the point at which there is no awareness of pain or pleasure, and no preferences of any kind. That is why the principle of equal consideration of interests has implications for what we may do to rats, but not for what we may do to lettuces. Rats can feel pain, and pleasure. Lettuces can't.⁷

3.16 The key principle for Professor Singer in his calculation is equality of consideration. This does not imply that both humans and animals must be treated in the same way. The principle of equality does not require equal or identical treatment; it requires equal consideration which may lead to different treatment. If the demand for equality for animals was based on the actual equality of animals it could be refuted simply because it is not true. Animals vary greatly in their capacities and attributes. Equality here is a moral idea not an assertion of fact. The principle of equality is a prescription as to how we should treat animals. As this principle is stated in the ANZFAS submission:

... it is reasonable to regard the death of a fish as a smaller loss than the death of a normal human - smaller to the fish because the fish does not have hopes and plans for the future which are unable to be fulfilled, and smaller for others because there is not the same kind of grief and mourning that is likely to attend the death of a normal human. But in making such a distinction, we are not saying that the death of a fish matters less because the fish is not a human being. It is not the species of the human and the fish that matters, but their capacities. So, on the same grounds, if there were a human being so severely brain-damaged as to be on a par with the fish, and if there was no-one who cared in the least for this unfortunate human being, then the death of this human being would also be a smaller loss than the death of a normal human being.⁸

3.17 Professor Singer argued that if this principle of equality is violated with respect to animals, then this attitude of violation may be referred to as 'speciesism'. He posed the question: if possessing superior intelligence does not entitle one human to use another for his own ends, how can it entitle humans to exploit non-humans for the same purpose?

3.18 This then leads to the question: what characteristic is it that gives a being the right to equal consideration? Professor Singer's answer was: the ability to suffer. If a being suffers there can be no moral justification for refusing to take that suffering into consideration. The principle of equality requires that suffering to be counted equally with like suffering. If a being is not capable of suffering then there is nothing to be taken into account.⁹

Difficulties with Utilitarianism

3.19 There are problems with utilitarianism based simply on the calculation of benefits and costs as a practical moral theory. Within the context of animal experimentation these take a number of forms.

3.20 Although it is difficult to measure human pain and pleasure it is even more difficult to do so for animals. The issue of animal pain and distress and their measurement is discussed in Chapter 4.

3.21 Conceptually, it may not be possible to quantify animal pain and distress in the way that the utilitarian calculus requires. Although we may be able to make approximate comparative judgements about the level of pain inflicted on animals of the same species, accurate comparisons among different species is virtually impossible, especially as pain perception is influenced by psychological and environmental factors.

3.22 Pleasure, too, is impossible to quantify. What is pleasurable to one person may not be to another. Even if something gives pleasure to many people, the intensity and duration of pleasure varies among individuals. If it is impossible to quantify both pain and pleasure, how does one compare pain and pleasure to give effect to the utilitarian calculus?

3.23 Even assuming for the purposes of the argument that the calculations can be made, there is a further problem. Consider the situation in which a very few animals are each caused great pain to provide a huge number of people with a very small amount of additional pleasure, and that the total pleasure experienced exceeded the total amount of pain inflicted and hence is justifiable. Compare this with a situation in which a large number of animals are caused minimal pain which results in the saving of the life of just one person. The experiments in this case are not justified because the total amount of pain suffered by the animals is greater than the benefits to the human being over the remainder of his life.

3.24 Intuitively, people may take the view that the moral status of the animals in the first case has been undervalued and in the second case overvalued by the utilitarian calculus.

3.25 Utilitarian arguments, as noted earlier, can be used in defence of human interests at the expense of those of animals. Professor T. Regan, whose arguments for animal welfare are not based on utilitarian considerations, has commented that 'the animal industry is big business',¹⁰ that employs hundreds of thousands of people who in total have hundreds and thousands of dependents. Regan argues that a utilitarian must insist on the relevance of these people's interests and also the relevance of the interests of those additional people who might be affected by 'its sudden or gradual cessation',¹¹ to any calculation which attempts to maximise happiness or minimise suffering. A utilitarian argument must have the hard data to show that a humane alternative is not only possible but, judged on utilitarian grounds, desirable. It is not obviously true that on this basis the consequences for all involved would be better if,

for example, animal experimentation were terminated. The utilitarian approach would require that the interests of those employed who benefited from animal experimentation would in some way be traded off against the interests of the animals used in experiments.

3.26 By way of reply to this line of argument, Professor Singer stated in evidence:

I think there are significant costs to any desirable reform and we have to consider the importance of the reform and meet those costs ... the costs must also be borne in the field of animal welfare.¹²

3.27 Professor Singer's form of utilitarian argument offers an apparently clear and simple moral principle, which provides the basis for making decisions about a wide range of issues arising out of human - animal interactions. This line of argument, particularly its appeal to a single moral principle, was subjected to criticism by Dr Margaret Stone:

... there are no simple answers to be found here and there is no single guiding principle that will answer the questions that are raised about the problems of animal welfare and the use of animals in our society. There have been, I think, laudable attempts, which have had very many beneficial results, to provide such a principle but they have all failed. One reason why they have failed, it seems to me, is that, where ethical principles are concerned, there is no possibility of proving the validity of an ethical principle and that a single principle does not take account of what I would see as the competing interests of humans and animals. There is no doubt that those interests compete, and to try to resolve them with reference to a single principle is to ignore that competition or at least to talk at a level of generality which does not help us resolve individual problems.

If you take Professor Singer's point, not only is his principle in relation to equality no more logically valid than the exactly opposite principle, that animals and people should be treated unequally, but, even if we accept it as a working rule, it does not enable us without further ethical input to answer specific questions about what we do in any particular case. So it seems to me that we have to move on very quickly from that ill-fated search to find a single principle and get down to the nitty-gritty of trying to resolve problems that arise in particular instances.¹³

Animal Rights

3.28 The other major philosophical theory upon which attention has been focussed in recent years has been that of animal rights. The leading exponent of a theory of animal rights has been the philosopher, Professor Tom Regan.

3.29 Professor Regan has contended that it could be claimed that humans have certain natural rights that animals lack. He posed the question: on what grounds can rights be ascribed to humans but not to animals? His answer was that rights cannot be claimed on the grounds of reason, free choice or concept of identity because these cannot be attributed to some humans, namely infants and the mentally enfeebled. Moreover, even if all human beings possessed rights on these grounds it still would not follow that only human beings possessed them. He posed another question: on what grounds could it be claimed that no animals can reason, make free choices or form a concept of themselves? His answer was that the mere supposition that only humans have these capacities could not bear the moral weight placed upon it.

3.30 Returning to the issue of rights, if something is a right, it belongs equally to all humans because they are humans. Professor Regan argued that it cannot be a right if some humans can acquire it by doing something that other humans are unable to do. A right is something all humans have equally.

3.31 There is one argument according to Professor Regan that meets these requirements. Humans have natural rights because humans have interests, and these can be demonstrated wherever choices or preferences are in evidence.

3.32 Professor Regan developed his argument further by arguing:

- (a) that all humans are the kind of beings that have rights;
- (b) that to cause any human undeserved pain is to treat him unjustly; and
- (c) that any time we treat a human unjustly we violate one of his rights.¹⁴

3.33 From this it is inferred that to cause a human undeserved pain is to violate one of his natural rights - the right to be spared undeserved pain. This is then a right all humans have just because they are humans.

3.34 But, if the most plausible basis for attributing a natural right to be spared undeserved pain to all humans depends on the idea that it is unjust to cause pain to a human, then, given that it is unjust to do this to an innocent animal, it follows that animals equally have a natural right to be spared undeserved pain. The assumption as to the injustice of causing undeserved pain to animals is central to the argument.

3.35 In summary, autonomy expressed as an interest in being spared undeserved pain, commands respect and provides the grounds for the basic rights such as the right to life and the right not to be harmed. Moral status is therefore grounded in autonomy.

Animal Freedom and Other Moral Claims

3.36 There are other approaches to the concept of 'rights'. It can be argued, for example, that animals have a moral claim to freedom from interference. However, the claim to freedom from interference cannot be absolute. Even humans are constrained from doing something harmful to other humans. Interference with experimental animals, though, goes well beyond that necessary for their own self-protection or the protection of others. The arguments for human liberty need therefore to be examined to determine their applicability to animals.

3.37 Traditional liberal arguments have held that human individuality requires a suitable environment for its development in which a principal constituent is liberty; more particularly, unique human qualities are developed only through exercising choices. Dr Kleinig in evaluating this position stated:

Animals do not seem to possess a capacity for the kind of "individuality" on which Mill's argument depends. So great is the difference that the case for animals' freedom from interference is a considerably attenuated one. Animals do, of course, have a certain life of their own - which consists in eating, reproduction and certain limited kinds of social behaviour ...

There is often something very fine about animals in their native habitat, something which is all-too-often lost in confinement. But this, while it may warrant some claim to freedom from interference, does not come anywhere near the sort of claim to such freedom which a human being may assert. Most, if not all, of an animal's life-world can be accommodated within a relatively confined situation. The requirements that animals have for freedom are nowhere as demanding as those needed for human flourishing.¹⁵

3.38 Dr Kleinig argued in his submission that animals have interests 'whose frustration can be harmful to them'.¹⁶ He further argued that these interests do have some claim to moral consideration but not to the extent that they have equal standing with the interests of humans. The standing of human interests after all is determined by their amenability to rational evaluation. The claim of animals to moral consideration means at a minimum that their interests should not be needlessly restricted or overridden.

3.39 An Australian philosopher, Professor McCloskey, has written a critique of animal rights. He argued that a moral right is an entitlement that confers moral liberties on its possessor. It is also an entitlement which imposes moral constraints on others to abstain from interference with the rights' possessor. Professor McCloskey's position was that it is the capacity for moral autonomy, for moral self-direction and self-determination that is basic to the possibility of possessing a right. Other beings, whether angels, martians or mice could be ascribed rights if they possessed a capacity for moral autonomy.

3.40 Professor McCloskey concluded that if an animal has the relevant moral capacities, actual or potential, then it can be a bearer of rights. According to him, while empirical evidence does not provide support for the ascription of rights to animals he does not rule out the possibility in principle. While primate research has indicated that a degree of rationality exists among chimpanzees, in his view there is no evidence that they exercise moral judgement. He further argued that different beings may possess different rights because of possession of different attributes. This would create the problem of developing a hierarchy, or determining the priority, of rights of various species.

Would there be specifically animal rights, tiger rights, pelican rights, tape-worm rights, if animals were to be capable of possessing rights? I suggest that any specifically animal rights are likely only to arise from special needs of the different animals, where these are needs that ought to be respected. Thus carnivores, needing to kill other animals in order to live, might be claimed to have the right to kill these other animals, whereas their vegetarian victims may lack the right to kill other animals except in self-defence, but have the right to eat grass, leaves, or the like, provided they leave enough for other animals.¹⁷

3.41 Professor McCloskey in his critique of the concept of animal rights noted that apart from the possession of rights, there are other considerations:

Typically, the claim that animals possess rights is seen as adding to and strengthening other important considerations. Thus, even if it could be shown that animals do not possess rights and are incapable of possessing rights, many other kinds of considerations would need to be explored to determine what constitutes morally proper treatment of animals.¹⁸

Clearly, whether or not animals possess rights, ethically important conclusions concerning how they ought to be treated would follow if claims that life, sentient life, conscious life, self-conscious life, possessed intrinsic value, could be sustained ...

Thus just as it might be argued that it is intrinsically wrong to take innocent human life (whether or not it possesses intrinsic value), so it may be argued that it is intrinsically wrong to take innocent animal life.¹⁹

3.42 Even if some form of rights argument were in fact established, that, by itself, would not necessarily be the end of the matter.

3.43 Dr Margaret Stone, in response to a question as to what sort of rights animals should have, explained:

We already have accepted in this society that animals have interests that need to be protected and they have an interest in not being exposed to pain. That is something that has been in our society for a long time. There have been statutes preventing cruelty to animals for centuries. If you say to someone, 'Is it right to be cruel to animals?', it invites, as it should, the answer, 'No, it is not right'. That is the simple question. The hard question is when we balance the interests of these animals in not being hurt against the interests of humans in getting this information. To make the competition more even, let us suppose we have got a disease that affects only animals, that causes a great deal of pain and suffering to animals in the wild but never affects people. It does not affect animals that are economically useful to us, but it does affect these animals and it causes them a lot of pain and distress. You would then have the question, quite divorced from the question of species, of whether it is right to experiment on these animals in order to protect those animals from pain - the same species, if you like. There you have got competing interests and no amount of saying that animals have interests full stop will resolve that question for you. That is because the animals that are subject to the experiment have interests which conflict with the interests of the animals that are getting sick.²⁰

3.44 It is important in this context to clarify the relationship between moral rights and legal rights.

3.45 Originally, talk of rights was confined to the law. What one had a right to at law, one had a legal guarantee to and the force of law could be invoked to secure it. But in recent centuries, rights-talk has been taken over into the sphere of morality, and there has developed the notion of a moral right. The function of this move has been to justify the invocation of legal support for a moral claim. To claim a right is to claim to

be in a position to require the forbearance or contribution of others. Rights justify coercion. That is why they have a special political significance, and why it has become popular to cast the case for animals in terms of rights.

3.46 Given this development the logic behind the concept of ascribing rights to animals is clear. Dr Kleinig stated in his submission:

Those who wish to improve the lot of animals probably need to have their concern enshrined in law. The reason for this is fairly obvious. Certain kinds of mistreatment are deeply embedded in our social practices, and closely tied up with economic factors. Change is not likely to come about voluntarily, or simply as the result of moralizing. This is a case where morality requires some form of legal backing. But how to secure that backing in a democratic community? If it can be argued that animals have rights, and that these are being violated by current practices, then the battle is half won.²¹

3.47 There has been extensive debate over the derivation of rights; are they discretionary powers, that is, claims against others which may be 'assented or waived, insisted upon or set aside'²² or are they rights based upon the possession of interests? It was argued by Dr Kleinig that rights possession:

... does not require anything so strong as the capacity for rational choice, and therefore that a case can be made out for ascribing rights to animals.²³

Kleinig thought that his point of view represented a minority position in the debate on this subject.

3.48 Further, if animals qualify as rights holders they have 'very powerful claims'²⁴ to moral, and as a consequence, legal protection. If animals do not qualify it does not mean that they lie outside our protective concern, but that human beings as

rights-holders will take precedence over non-rights-holders. In addition, acknowledgement of animals as rights-holders does not rule out the possibility that they may have fewer and different rights vis-a-vis humans, such as a very qualified right to life, to freedom from suffering and to quality of habitat. Such rights will inevitably come into conflict with human rights but they can be ordered by examining and weighing the relative importance of the interests underlying them.

3.49 On the relationship between legal and moral rights, Dr Kleinig expressed the view:

... that one can argue for moral rights on behalf of animals, though they are perhaps not as extensive or as compelling as the moral rights that attach to human beings. But it does seem to me that animals have claims, by virtue of the kinds of welfare they have, which are strong enough to justify enforcement at law. For me, that constitutes their having a moral right to those particular claims.²⁵

3.50 When asked whether moral rights should be enforceable by statute, he responded:

Moral rights constitute a case for enforcement, in my view. They constitute moral grounds which are strong enough to justify intervention of a coercive nature. It may be by legal statute or by other means. Coercion is not the exclusive province of law, of course, but it is perhaps the main source.²⁶

3.51 When asked whether it was appropriate to say that animals themselves have legal rights, Ms M. Stone responded that it was:

Entirely appropriate, and we have already done that.²⁷

3.52 If this view is accepted, the issue is not whether or not animals have rights but which rights will be granted and who will have standing to ensure that such rights are enforced.

Animals and Equality

3.53 The question of relative status necessarily invokes the question of equality of rights. Here the argument from marginal cases has been advanced. This argument holds that the distinctions between human species and other species are not as clear as is commonly assumed. In particular, infants, the severely intellectually handicapped and, possibly, the comatose, have capacities and abilities which are more limited than those of the 'higher' animals, and therefore equality of treatment should be extended to animals. Dr Kleinig commented in evidence that:

My own worry about the argument from marginal cases is that it tends to overlook on the part of human beings the potentiality for development which humans have and which, I think, most, if not all, the higher animals do not have ... Human infants do have a capacity to develop into morally responsible and sensitive beings and I think that this potentiality, as it were, reaches back into infancy and determines the appropriate ways for treating those who are still in their infancy.

In the case of retarded people, we obviously need to distinguish between different degrees of retardation. Some retarded people obviously have a great deal of potential for development of moral and other sensitivities. In the case of the extremely severely retarded, it may be that there is no absolute distinction which can be drawn between their positions so far as capacities are concerned and the capacities of some of the animals. There are, however, I suspect, strong social policy reasons for drawing a distinction there, which includes those retarded people within the protections

that we give to other human beings, namely, that if we do not draw the line below them, then the borderline will be an arena for various kinds of abuses of those people. Again, that is not to say ... that means that the distinction between humans and animals is such that we can do what we like to animals, but should not do that at all with human beings. That certain humans are, perhaps, accorded protections beyond those which would be justifiable in terms of their capacities is not a reason for treating as we wish those who do not have that protection.²⁸

3.54 A further objection has been advanced by Dr Margaret Stone who commented that equal consideration of interests is simply an assertion of values which can neither be proved nor disproved:

Singer declares that the duty not to exhibit a preference for a particular species must prevail over the duty to promote human interests; yet this is no more or less valid than the converse assumption, that human interests take precedence.²⁹

3.55 By giving primacy to one value, equality of consideration of interest, there is a refusal to recognise a 'tragic choice'. In this case it is the choice between the competing and profound moral values, between the duty to respect the interests of humans and the duty to respect the interests of animals.

3.56 As Professor Les Holborow noted, the history of increasingly stringent regulation and legislation to protect animals suggests that the generally accepted view has been shifting towards an increasing recognition of the claims of animals. The problem remains of attempting to balance the competing claims.

3.57 Professor Holborow supported an approach based on rights. He stressed, however, that rights as he understands them are not absolute but are better understood as side constraints 'because they impose powerful restrictions on what agents may do to others'.³⁰

3.58 What has been established by the philosophical debate reviewed here is that at a minimum, the autonomy and capacity to experience distress that animals possess in varying capacities, are enough to ensure that humans as moral agents have real and important obligations and duties to them. According to Dr Arthur Caplan:

Human beings bear the burden of being responsible moral stewards for respecting and protecting the interests and welfare of those creatures which are alive and do have minimal levels of sentience ...

Both the capacity for a full mental life and the ability to suffer place demands on the responsible moral agent that are sufficient in themselves to demand compliance and discharge. Animals deserve no less respect than that which we accord the most helpless and vulnerable members of our own species.³¹

Conclusions

3.59 The autonomy and clearly demonstrated capacity of animals to experience pain, though varying in degrees, is enough to establish that human beings, as moral agents, have real and substantial obligations and duties toward them. Anyone involved in the use of animals for research purposes is therefore accountable to the wider community for the performance of those duties.

3.60 Through animal cruelty, wildlife protection and other legislation, society has acknowledged that animals, whether as individuals or species, have certain claims or interests which may be expressed as rights, that are afforded protection. Such rights are not inviolable. When rights of animals come into a conflict with those of humans, the rights of one will normally succumb to the other. Although human rights have usually predominated in such conflicts, each case should be examined on its merits and human rights should not automatically prevail.