

Arbitrariness, Inconsistency, and Utilitarianism: The Challenge for Animal Rights

Abstract:

We articulate a view that while informed by concerns about animal rights, nevertheless leaves room for the permissibility of some animal experimentation. Following Singer (2009/1975), we show that the consistent application of utilitarian principles in the justification of the moral permissibility of animal experimentation leads to the absurd conclusion that experimenting on mentally disabled humans may be justified as well. Yet, the documents regulating animal experimentation typically rely on utilitarian justification. On the other hand, human experimentation is regulated according to deontological principles. Regan (2004/1983) argues that these principles entitle animals to the same rights as humans. The big question that concerns us is: Is it possible to defend the permissibility of animal experimentation on grounds consistent with those used to defend humans against experimentation that causes suffering, infliction of harm, and death? We argue that it is and articulate a position that may be used to inform future animal experimentation policies and regulations.

1 Introduction

Support of the animal rights movement has been growing over the past decades. A lot has changed in the perception and treatment of the issue of biomedical animal experimentation since the mid-twentieth century. Currently, a number of documents spell out the rules and regulations of this practice and mandate that experiments involving animal subjects must have the approval of their protocols from Institutional Review Boards (IRB). Practicing scientists recognize that animal experimentation is often morally problematic but tend to consider it the lesser of two evils, namely human and animal experimentation. The justification of the practice typically cites utilitarian considerations in support of the benefits of animal experimentation, e.g. treatments are developed that will ultimately save lives of children. Current regulations such as the *3R Policy*, *Animal Welfare Act*, *Public Health Service Policy on Humane Care and Use of Laboratory Animals (PHS)*, and the *U. S. Government Principles for Utilization and Care of Vertebrate Animals Used in Testing, Research and Training (USGP)* rely on utilitarian considerations of

cost-benefit analysis where animal rights are seldom considered let alone guaranteed. The majority of regulations employ a notion of minimization of pain along the lines of the following prescriptions:

Proper use of animals, including the avoidance or minimization of discomfort, distress, and pain when consistent with sound scientific practices, is imperative. Unless the contrary is established, investigators should consider that procedures that cause pain or distress in human beings may cause pain or distress in other animals (USGP).

Also:

- a. Procedures with animals will avoid or minimize discomfort, distress, and pain to the animals, consistent with sound research design.
- b. Procedures that may cause more than momentary or slight pain or distress to the animals will be performed with appropriate sedation, analgesia, or anesthesia, unless the procedure is justified for scientific reasons in writing by the investigator (PHS 2002: 13).

The recognition that pain and discomfort caused to animals through experimentation are morally relevant and not permissible in excess or when there are no foreseeable benefits to the progress of science is obvious. It is also obvious that the justification for these prescriptions relies on utilitarian principles. If the benefits from this practice are greater than the suffering and discomfort caused then it is permissible to employ it. On the other hand, human experimentation is typically regulated by policies that cite deontological principles when they protect humans from experimental practices that would cause presumably similar suffering and discomfort of humans (e.g. Belmont Report).

The problem is that the inconsistency between the principles applied in the different cases may undermine the legitimacy of the policies that govern biomedical experimentation. For example, the consistent application of utilitarian justification of animal experimentation leads to

the conclusion that in some cases human experimentation may be better justified than animal experimentation even in cases where this would cause considerable suffering and discomfort. This point is more or less explicitly made by Singer (2009/1975). However, his conclusion is that animal experimentation should be abolished because it never produces benefits that are greater than the suffering it inflicts. On the other hand, the consistent application of deontological principles to the evaluation of the permissibility of animal experimentation leads Regan (2004/1983) to denouncing the practice as well.

The big question then is: Is it possible to defend the permissibility of animal experimentation on grounds consistent with those used to defend humans against experimentation that causes suffering, infliction of harm, and death? Our goal in this paper is thus to articulate a position that may be used to inform policies regulating animal experimentation which will not have implications inconsistent with the policies regulating human experimentation. We will not provide a meta-ethical argument to support the truth of the norms that we think should guide the justification of one practice or another. Our approach should be regarded at the level of applied ethics. We are concerned with a practical issue: there is an inconsistency between policies that guide animal and human experimentation respectively. We aim at eliminating those inconsistencies.

We hold that the utilitarian defense of the permissibility of animal experimentation has unacceptable implications for the permissibility of questionable human experimentation. For this reason a rights-based perspective is a more adequate approach to the problem. In effect, not all animal experimentation will be permitted. However, this position will leave room for a lot of the most successful current practices. We argue that experimentation is not permissible in some

animal species while it is in others. The difference between the two is non-arbitrary and depends on their capacity for self-consciousness.

In what follows, we first analyze Singer's argument against the permissibility of animal experimentation. We conclude that it relies on at least two questionable assumptions, namely (1) animals have the same capacity to experience pain as humans and (2) the capacity to experience pain is necessary and sufficient to inform decisions about the moral permissibility of animal, and human for that matter, experimentation. In this paper, we will not go into depth analyzing and evaluating (1). We will focus on (2). We then show that even assuming (1), Singer's view is highly questionable based on the empirical knowledge about pain articulated in Hardcastle (1999). We show that this empirical evidence combined with Singer's view, would justify not only animal but also human experimentation. However, this result goes against established legal assumptions. This is why we turn to an alternative view which relies on deontological principles (Regan 2004/1983). However, we disagree with Regan's conclusion that any animal experimentation is morally impermissible. We thus provide our argument that shows that some animal experimentation can be justified when evaluated from a deontological standpoint.

2 The Failure of the Utilitarian Challenge against Animal Experimentation

Adopting Bentham's hedonistic utilitarianism, Singer advocates universal consideration of all beings that have the capacity for suffering and experiencing pain in the evaluation of the moral permissibility of actions, including experimental practices. On the basis of established similarities of the nervous systems of animals and humans, he assumes that animals are capable of experiencing pain similarly to humans. Thus, this capacity, according to Singer, entitles

animals to equal consideration as humans in judgments of the benefits from actions in which they are involved. Consistent with the estimations of utility of experimentation, Singer would allow for animal experimentation provided that the benefits that result from it would override the harm caused to the animals. However, he vehemently maintains that rationalizations such as claiming possible benefits or knowledge gained through animal experimentation cannot act as sufficient justifications for the suffering caused to animals.

Alternatively, Singer notes that some scientists blatantly deny that animals suffer and/or experience pain the way humans do because of their relevant dissimilarities to humans. However, Singer points out that claiming this would undermine the legitimacy of the results obtained. If scientists claim to want to produce legitimate knowledge, they might be better off experimenting on humans. Given that this practice is presumably justified on grounds of its results, perhaps using human subjects that are severely deficient in their capacities to experience and recognize suffering would be better justified than producing insignificant results while subjecting animals to suffering. He suggests that mentally impaired human infants would be a good candidate for this practice. In his words,

Despite their mental deficiencies, the anatomy and physiology of these infants are in nearly all respects identical with those of normal humans. If, therefore, we were to force-feed them with large quantities of floor polish or drip concentrated solutions of cosmetics into their eyes, we would have a much more reliable indication of the safety of these products for humans than we now get by attempting to extrapolate the results of tests on a variety of other species (Singer 2009/1975: 82).

This conclusion is obviously unacceptable and thus Singer concludes that experimentation that causes suffering to animals is no more justified than human

experimentation that causes suffering. He further speculates that the problem of the lack of sufficient ground for extrapolation from animals to humans cannot be eliminated because of the inherent contradiction between the claims of similarities between animals and humans necessary to provide grounds for extrapolation and the claims of dissimilarities when it comes to the capacity to experience pain and suffering. He points out that if the researchers hold that the animals are dissimilar enough to allow experimentation then their grounds for extrapolation are eliminated. Conversely, if animals are similar to humans then research that produces pain and suffering is morally unwarranted. Either horn of the dilemma leads to rejecting the permissibility of animal experimentation (Singer 2009/1975: 40, 51-52).

Singer essentially spells out a dilemma for the defender of animal experimentation both horns of which lead to absurdity. Assuming the first horn of the dilemma leads the utilitarian to conclude that (painful) experimentation on mentally disabled humans is permissible whereas assuming the second horn of the dilemma renders animal experimentation useless. In this paper, we only consider the first option and leave the second for our future work.

For this purpose,

(1) Let us assume that animals are similar to humans in their capacity to experience pain.

Next,

(2) Let us assume a utilitarian framework for justifying animal experimentation (which the relevant policies and regulations we studied do).

(3) It follows that if – under the studied conditions – a human being can be shown to experience less pain than a non-human animal, or no pain at all, then this human being will have to be preferred as an experimental subject.

To make things worse, such humans would not be just stipulated in a thought experiment. Hardcastle (1999) discusses the complexity of human pain and points out that there are numerous occasions on which humans do not experience pain under harmful conditions. On the utilitarian framework, then, it would be permissible to perform experiments that would not otherwise be permissible on humans who suffer from conditions that leave them incapable to experience pain. There are multiple reasons not to settle for such conclusion. For our purposes, it is sufficient that this goes against the position on human experimentation articulated in the Belmont Report (a document that spells out the principles for protection of human experimental subjects). The purpose of this document is to eliminate the ethical dilemmas that inevitably accompany human experimentation on subjects of all levels of cognitive ability. According to it, every *person* is entitled to fair treatment as an autonomous agent. However, even humans without a high functioning autonomy are guaranteed equal protection. In fact, according to the document, humans with diminished faculties should be given even more consideration and protection due to their deficiencies. So, experimenting on humans with diminished capacities is out of the question.

This result leads us to the necessity to reconsider the premises of the argument. However, if we are to preserve the assumption that animals are capable of experiencing pain similarly to humans we have to give up on the utilitarian framework. For this reason we turn to an alternative challenge for animal experimentation, one that relies on a deontological defense of animal rights.

3 Subjects-of-a-Life and Their Rights

Regan (2004) provides an alternative defense of animal rights which relies on principles similar to the ones employed in the Belmont Report. For the purposes of his defense he distinguishes between two types of moral actors, namely *moral agents* and *moral patients*. *Moral agents* are,

...individuals who have a variety of sophisticated abilities, including in particular the ability to bring impartial moral principles to bear on the determination of what, all considered, morally ought to be done and, having made this determination, to freely choose or fail to choose to act as morality, as they conceive it, requires (Regan 2004/1983:151).

Whereas *moral patients* are beings that,

...lack the prerequisites that would enable them to control their own behavior in ways that make them morally accountable for what they do. A moral patient lacks the ability to formulate, let alone bring to bear, moral principles in deliberating about which one among a number of possible acts it would be right or proper to perform. Moral patients, in a word, cannot do what is right, nor can they do what is wrong” (Regan 2004/1983:152).

On his view, scientific research using animal subjects (or any moral patients) is never justified and moral agents have a duty to abolish these practices. Regan shows that utilitarian principles directly contradict our inner moral intuitions by allowing moral patients or even agents to be killed for an irrelevant aggregative value – treating beings as if they were simply conduits for sensations of pleasure and pain whose value was conditional upon their experiences with no inherent rights or protections. Instead, Regan argues, animals have inherent value and ergo rights as well. According to Regan, it is reasonable to believe that animals, particularly mammals at

least 1 year old with no mental deficiencies, have their own mental life in accordance with what he calls the “Cumulative argument for Animal Consciousness”: sentience, beliefs, desires, intentions, a continuing self-identity, and even preference autonomy. These attributes satisfy the “subject-of-a-life” requirement that is sufficient for granting inherent value which entitles those subjects to rights. Therefore, in Regan’s framework, restricting inherent value only to humans or moral agents would be arbitrary. Pursuant to the respect principle, we have prima facie duties to those beings that have inherent value. In the interests of and motivated by *justice*, moral agents have not only a prima facie duty *not* to violate the rights of other moral agents or patients, but also have a prima facie duty to *assist* those beings whose rights are violated (Regan 2004/1983: 249, 279, 284).

Regan further extends his defense of animal rights to cover not just mammals and human moral patients but all of the animal kingdom. On his view, given the physiological and anatomical similarities between all species employed in experimentation, and in an attempt not to fall into arbitrariness, Regan advises we should err on the side of caution. He shifts the burden of proof onto the research advocates to show that these animals are not capable of satisfying the requisites for inherent value. We take on his challenge and provide an argument that justifies experimentation on non-human animals belonging to species that lack the capacity for self-consciousness.

4 Are All Animals Subjects-of-a-Life?

Regan’s argument against the permissibility of animal experimentation in education and toxicology can be reconstructed as follows:

- (1) Mammalian animals have been shown to have a number of mental capacities that entitle them to the status of subjects-of-a-life;
- (2) This status entitles mammals similarly to human moral patients and moral agents to protection against infliction of harm, which scientific experimentation causes;
- (3) Nonmammalian animals share relevant similarities with mammals and this suggests that they probably possess sentience and consciousness;
- (4) Therefore, all animals should be treated as if they are subjects-of-a-life and should thus be protected against experimentation (Regan 2004/1983: 366).

We have some reservations over (1) and bluntly contest (3). We agree with Regan that the notion of subject-of-a-life provides a fruitful criterion for determining the inherent moral worth of living beings that would circumvent the issues surrounding the criterion of being-alive. In particular, this more complex notion excludes plants from the class of living beings that cannot be used as resources. Regan defines the notion as follows:

... individuals are subjects-of-a-life if they have beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference- and welfare-interests; the ability to initiate action in pursuit of their desires and goals; a psychophysical identity over time; and an individual welfare in the sense that their experiential [sic] life fares well or ill for them, logically independently of their utility for others and logically independently of their being the object of anyone else's interests (Regan 2004/1983: 243).

There are three ways to interpret the significance of this list. (1) If the list of characteristics is meant to be a list of necessary conditions for granting that status it may exclude some human patients, e.g. people in minimally conscious states who cannot initiate actions in pursuit of the goals and desires that they likely have. (2) On the other hand, the list can be read as a disjunction of individually sufficient conditions. This seems to be Regan's preference. However, we believe that such interpretation is too permissive and would grant the status to individuals belonging to species that could hardly count as subjects. For example, *Caenorhabditis Elegans* (a model organism with a very primitive nervous system) would perhaps qualify for having preference- and welfare-interests but it is extremely dubious that it has beliefs and desires or a sense of its own future. (3) Our suggestion thus is to read the list as specifying jointly sufficient conditions of which some are also necessary, particularly the ones that pertain to self-consciousness and the sense of a self. We believe that without these characteristics it is not possible to attribute experiential life to a subject.

On our view, it is possible to draw a non-arbitrary line between animals that are legitimately attributed the status of subjects-of-a-life and animals whose use in experimentation is permissible. The proper identification, even though it has not yet been definitively established, is within the scope of cognitive ethology (Allen and Bekoff 2013).

5 Conclusion

In this paper, we showed that the philosophical principles underlying policies regarding human and animal experimentation contradict each other. Animal experimentation regulations offer no guaranteed rights to the subjects as the minimal protections currently given can be

overridden provided sufficient utilitarian justifications. Meanwhile, humans are granted unqualified protection. We found no legitimate basis for this disconnect, especially given the preferential treatment of deficient humans in these policies. This factor is nonexistent in animal experimentation regulations. The only way to rectify the obvious inconsistency across the different policies is to provide animals with rights similar to those afforded to humans based on their relevant capacities, e.g. self-consciousness.

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