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Ethics And The Weatherall Report

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The Weatherall Report on the use of non-human primates in research came out on 12 December 2006. <i> §11 – comprising eight of its 153 pages – is devoted to Ethics. Its argument is difficult to untangle. There are ostensibly two strands – one utilitarian: a `cost-benefit' analysis (125) or a `moral calculus' (126), the other to do with the idea of `moral status' – which appear to intertwine as follows: utilitarianism `may be held to allow for trade-offs, by which some individuals can be made to suffer in order to improve conditions for others'; but we tend to jettison utilitarianism in connection with medical research and instead apply the more Kantian principle `that no individual may be harmed for the betterment of others'; however, the Kantian principle may itself be jettisoned even in the context of medical research if the individuals being harmed have a lower `moral status' than those being benefited, in which case we revert to utilitarianism.

If this reconstruction is correct so far, then -- given Weatherall's conclusion that `the continued use of non-human primates in research is ... morally required, so long as such research is directed toward significant human benefit and there are no plausibly more effective ways of pursuing such research' (130) -- we may expect to find arguments, first, that non-human primates have a lower moral status than humans, and secondly, that the moral cost-benefit analysis comes out in the way indicated. We do find both of these issues addressed, the first in §§11.2, 3 and 5, the second in §§11.4 and 11.6.

The moral status of humans and non-human primates.

§11.2 introduces the term `moral status': it refers to `an individual's entitlement to the concern, respect and protection of the moral community'; alternatively, `Beings differ in their moral status if differences in their entitlement to certain liberties or goods can be justified in a morally valid way' <ii> – leaving open the question of what counts as a `morally valid' justification.

§11.3 outlines a `thought experiment' wherein we are asked to imagine a major teaching hospital which contains various human beings, an animal lab (housing, inter alia, non-human primates), an assisted reproductive technology unit (with stored gametes and embryos), a pet cat, plants, bacteria, etc. There's a fire; which will we seek to rescue first? Most people, asserts Weatherall, `accord a lower priority to all animals than they accord to any humans', i.e. they say they would rescue the humans first -- if this is true, then it seems that most of us (now? in the UK?) assign a higher moral status to humans than to animals. By itself, obviously, this result, if it can be called that, carries no moral weight. I have little doubt that most people in certain societies would rescue the white patients before the black ones, or the men before the women.

Weatherall asserts that those people who would rescue the humans before the animals are not necessarily basing their preference on species prejudice (so-called `speciesism') but may be basing it `on an analysis or theory about what justifies such distinctions'. And according to n.356, some of these theories are outlined in §11.5; yet §11.5 offers, not theories which attempt to justify assigning animals and humans a different moral status, but theories -- `personhood theory', sentience, etc. -- which have been offered in favour of assigning animals (non-human primates in particular) a moral status similar to that of human beings; moreover, Weatherall simply notes `their relative strengths and weaknesses without endorsing any of them in particular' -- nor, more to the point, dismissing them. <iii>

The obvious conclusion to be drawn from §11.5 is that there is a good case for assigning non-human primates, as sentient and intelligent creatures, some of whom, in Locke's words, may possess `reason and reflection', a similar moral status to that of human beings.

This is not the conclusion which Weatherall derives from §11.5. This section ends with a consideration of the notion of informed consent (somewhat oddly, since animals' inability to give informed consent is not put forward as a reason for assigning them a high moral status). It notes that we use the test of `best interests' rather than informed consent in `the case of incompetent human beings where consent is impossible'. But rather than inferring that we ought to use this same test in the case of non-human primates, it puts forward the following breathtaking non sequitur: if it is right to claim that they have a different moral status to human beings then a balance must be struck between their interests and the interests of the humans who might benefit from the proposed research. The test of the justifiability of research with non-human primates is therefore whether (or not) the research is justifiable when the costs to the non-human primates are set against the benefits to humans [bolds added].

So this is the `argument': (i) most people (now, in the UK) think that non-human primates have a lower

moral status than human beings; (ii) they sometimes think this on the basis of reasons rather than prejudice, though we are not told what these reasons are; (iii) there are theories which are used to justify assigning non-human primates a moral status similar to that of human beings, the strongest of which Weatherall leaves unchallenged. The conclusion: (iv) non-human primates have a lower moral status than humans, hence we don't need the Kantian principle and can revert to the utilitarian framework. Obviously we don't expect demonstrations in ethics, but I can't begin to see how this rabbit was pulled out of this particular hat.

Cost-benefit analysis.

In fact, the discussion of the moral status of non-human primates was always, I suspect, a bit of a red herring from the Report's point of view, given that it sets out the problem (in §11.1.1) in utilitarian terms: 'Justification of research depends on comparing any suffering caused to animals with the probable benefits to our own species.' (It continues: 'This means comparing two variables, neither of which can be measured with precision!') The argument is then that (i) 'the evidence indicates (though it cannot prove) that a given procedure carried out on a non-human animal would result in less suffering than a similar procedure carried out on a human being' (to show this is the job of §11.4, entitled 'Costs and benefits'), and (ii) 'the number of animals used in experiments is much less than the number of humans expected to benefit', hence the conclusion: 'the continued use of non-human primates in research is therefore morally required, so long as such research is directed toward significant human benefit ...' (§11.6). I will focus on premise (i), though premise (ii) is anything but purely factual, given the totally unexamined notion of 'benefit'.

Now that we are deemed to be operating within a framework in which costs to one group of individuals can be traded off against benefits to an entirely disjoint group of individuals, we need, for the cost-accounting, a way of deciding whether, how, and to what degree animals suffer when they are experimented upon. The discussion begins with the claim that 'We cannot have certain knowledge of the feelings of another human being, let alone those of a non-human primate' and thereafter considers 'a number of criteria by which we can make a reasonable judgement' about whether an animal is capable of or is actually experiencing pain, sometimes with the qualification 'in the way that we do'.

It is asserted, for instance, that '[t]he more closely an animal's abilities approach those of humans, the more likely it is to experience pain and suffering in the way that we do', and since non-human primates fall below humans with regard to 'cognitive abilities and learning capacities', the conclusion must be on the basis of this 'criterion' that they do not experience pain and suffering 'in the way that we do'. Apes, but not monkeys, are held to possess the sort of 'reflective self-awareness' that gives them 'the ability to anticipate and reflect upon pain, as well as for painful memories to endure after a painful episode', so that apes at least, on this criterion, do experience pain 'in the way that we do'. We are told that '[s]imilarity to humans in terms of neuroanatomy and pain receptors indicates a human-like experience of pain' and that non-human primates are similar to humans in these respects; the conclusion which ought to be drawn is that on this criterion non-human primates have a human-like experience of pain; instead, it is stated, inconsequentially, that 'it is precisely these anatomical similarities that make non-human primates especially likely to yield data relevant to humans'. The overall conclusion from §11.4, therefore, should be that according to several criteria, though not all, many non-human primates are capable of experiencing pain 'in the way that we do'. How on earth, then, is premise (i) justified -- the claim that 'the evidence indicates ... that a given procedure carried out on a non-human animal [primate?] would result in less suffering than a similar procedure carried out on a human being'?

The ethical framework of the Weatherall Report.

One suspects that the consideration of the types of suffering of which non-human primates are capable was also a red herring. The only solid argument for Weatherall's conclusion that 'the continued use of non-human primates in research is ... morally required, so long as such research is directed toward significant human benefit ...' is just this (premise (ii) from above): that 'the number of animals used in experiments is much less than the number of humans expected to benefit'. This is a good argument on, but only on, the assumption of a utilitarian framework. Granted that some of the most important and influential arguments in favour of the ethical treatment of animals, notably Peter Singer's, have taken place within such a framework. Yet many ethicists writing on this issue have approached it very differently; I end with some observations about the Weatherall Report that might point in a different ethical direction. ?

Consider the 'hospital fire thought experiment'. Arguably the very willingness to engage in such an ethical thought experiment itself carries ethical weight. ('Suppose I were to say to you "You must give

me one of your children to take to the gas chambers" -- which child would you choose? (And on what criteria?)). What is right in G.E.M. Anscombe's infamous claim that to consider such a thought experiment shows a corrupt mind <v> is that utilitarianism refuses to recognise the existence of genuine moral conflicts irresolvable by any 'moral calculus' -- and the imagined hospital fire is arguably one such. ?

The Report comments, in connection with the idea that sentience confers moral status, that 'there appears to be an element of sentimentality as well as rationality in the way that humans apply this logic to practice... [since] non-sentient humans, such as those in a permanent vegetative state, tend to be accorded higher status than fully sentient animals' (Weatherall 128). Isn't the right conclusion that we don't confer moral status on the basis of sentience -- and might one not begin to doubt that we confer moral status on the basis of the possession of any properties, capacities, etc.? (Cf. Cora Diamond's question of why we don't eat our dead. <vi> Is it just 'sentimentality'?) ?

Consider the claim which precedes the review in §11.4 of 'criteria' for making a 'reasonable judgement' that a non-human primate is capable of feeling pain 'in the way that we do': 'We cannot have certain knowledge of the feelings of another human being, let alone those of a non-human primate'. Anyone who seriously supposes that we cannot have certain knowledge of the feelings of another human being should seek treatment for an autistic-spectrum disorder. It is tempting to say the same thing of anyone who seriously supposes this of non-human primates; at the least, it indicates a defect of imagination that some might suggest is the most culpable of all moral failings. <vii>

The Weatherall report has just one well-supported argument, in amongst the window-dressing, for its conclusion that the continued use of non-human primates in medical research is morally required; and that argument is only a good argument if one presupposes a moral framework -- utilitarianism -- which many philosophers working in this area reject. Medical researchers experimenting on non-human primates should not complacently suppose that Weatherall has given their work an impeccable ethical green light.

<i> Available online via www.mrc.ac.uk.

<ii> The Report seems to treat the two different formulations as equivalent. They are not.

<iii> To be precise, the Report dismisses a couple of the weaker reasons -- genetic relatedness and the sheer fact of vulnerability -- as bases for moral status. All of their arguments ignore Martha Nussbaum's point that what is relevant is not actual capacities but the capacities that are natural for the species ? she notes that the life of 'a mentally disabled child' is 'tragic' in a way that a similarly-abled chimpanzee's just isn't ('Beyond "Compassion and Humanity"', in C.R. Sunstein and M.C. Nussbaum, edd., *Animal Rights*, Oxford University Press 2004, 309).

<iv> When Singer said in the recent BBC2 documentary 'Monkeys, Rats and Me: Animal Testing' that 'I would certainly not say that no animal research could be justified and the case you have given sounds like one that is justified.', this was perfectly consistent with his lifetime position, despite the way it was reported in the media (e.g., *The Observer*, 26 November 2006, 'Animal guru gives tests his blessing').

<v> 'Modern moral philosophy', *Philosophy* 33, No. 124 (January 1958).

<vi> 'Eating meat and eating people', reprinted in her *The Realistic Spirit*, Bradford/ MIT press, 1991.

<vii> See, e.g., Cora Diamond, e.g. 'Experimenting on animals' in *The Realistic Spirit*, op. cit. Many moral philosophers stress notions like imagination, sympathy and dignity; such thinkers are entirely off Weatherall's radar, in a splendid illustration of Sartre's dictum that 'When I deliberate, the chips are down'.