

Chapter

Discussion of ethical
issues

14



Discussion of ethical issues

Introduction

- 14.1 In this chapter we resume the discussion about ethical issues raised by research involving animals. We also consider basic questions about how public policy should be shaped in this area where there is widespread disagreement among members of the UK population. In Chapter 3 we argued that the ethical question is best thought of not simply in terms of the relative moral status of humans and animals, but by consideration of two questions: first, what features of human and animals make them objects of moral concern; and second, how should those features be taken into account in moral reasoning: through weighing of factors or through the generation of absolute prohibitions?
- 14.2 We suggested that there are five features that have the potential to give rise to moral concern: sentience; higher cognitive capacities; capability for flourishing; sociability; and possession of a life (paragraphs 3.27–3.50). The last of these was the most controversial. We also explored how to consider these features in moral reasoning. A consequentialist view weighs all costs against all benefits (paragraphs 3.52–3.55). A deontological view lays down particular prohibitions (paragraphs 3.56–3.57). A hybrid view contains some prohibitions and some weighing (paragraphs 3.58–3.62). We also concluded that the ethical positions that coincide with the current UK regulations are hybrid (paragraph 3.58). It appears that, in practice, the positions of most people, except perhaps those of animal protection groups, are hybrid too, allowing some weighing of factors, and accepting absolute prohibitions in other areas.¹
- 14.3 If we accept that most views are hybrid, then we can see that the debate comes down to disagreement on two questions: first, what are the absolute constraints? and secondly, how do we weigh different morally relevant factors within the permitted area? To answer these questions, we will always need to consider at least five questions:
- i) what are the goals of research?
 - ii) what is the probability of success?
 - iii) which animals are to be used?
 - iv) what effect will there be on the animals used in the experiment?
 - v) are there any alternatives?
- 14.4 To bring the basic moral issues into sharp focus, we consider first, as a purely hypothetical example, an abstraction that might be considered by many people as a relatively uncontroversial type of animal experiment. We assume that the goal of the research is the saving of human life through the eradication of a widespread painful and debilitating childhood disease; that there is a high probability of success; that the experiments can be conducted on a small number of mice; that the animals will suffer only mild discomfort, although they will have shortened lives; and that no acceptable alternatives will be available in the foreseeable future however much effort we expend. What objections could there be, if all these conditions are met?
- 14.5 In considering the example it is important to be aware that it has been drawn up in such a way that the total benefits of the experiment (to humans) are in some sense greater than

¹ Even some of those opposed in general to animal research may allow that some research involving animals is permissible; for example non-harmful observation of animals in their natural habitat for the purpose of conservation, and possibly mildly harmful research that entails tagging or ringing of animals.

the total costs (to the animals). However, it is a further step towards the conclusion that the presence of a positive total of benefits justifies the experiment ethically. There are at least two reasons why such a justification might be rejected:

- First, a number of mice will die. Some people argue that the value of any life is such that it would be wrong deliberately to take a life for any purpose, even for the saving of a greater number of human lives. This can be called the view that *life has absolute value*. Other people might assert that although the taking of a life has no absolute value, it still has *intrinsic value* in the sense that it would be wrong deliberately to take a life for any purpose without careful justification.
- Secondly, whether or not there is a value to life, it is clear that mice are being used for the sake of human beings. Even if one takes the view that human life is much more important than the comfort and lives of laboratory mice, and that the weighing of relevant factors clearly supports the experiment, nevertheless the laboratory animals suffer costs and do not accrue any benefits, while humans receive all the benefits. This problematic distribution of costs and benefits gives rise to the objection from *forced consequentialist sacrifice*. It is a notorious problem with any consequentialism that the costs may fall in one place and the benefits arise in another. In some cases, for example within a political society or an economic community, this asymmetry may even out over time so that those who suffer today may gain tomorrow, but clearly this is not the case with the individual animals used in laboratory experiments. Similarly, it is irrelevant to point out that sometimes *animals* benefit from animal research, for the animals which benefit are not the ones on which the experiments are conducted.

14.6 The importance of the last paragraph is that independently of morally relevant features such as sentience, higher cognitive capacities, capability for flourishing and sociability, the acceptance of even relatively mild experiments for great benefit depends on the acceptance of two vital moral assumptions: that the life of laboratory animals such as mice does not have absolute value; and that consequentialist sacrifice is acceptable. There is no consensus within the Working Party as to whether these assumptions are morally acceptable. But we do agree with the conditional: harmful research involving animals must be morally unacceptable if animal life is seen as having absolute value, or if forced consequentialist sacrifice is always seen as wrong.

14.7 There is, however, still much room for disagreement among those who deny that animal lives have absolute value and who accept at least some forced consequentialist sacrifice. Nonetheless, the Working Party has not been able to agree on a common ethical stance with regard to the conditions that have to be met for animal research to be justified. Instead, we offer below an outline of four possible positions that can be taken. These views should be understood as marking positions on a *continuum*.

14.8 As will become clear, members differ not only in their positions on what forms of animal research can be morally justified, but also in their views about the status of morality itself. That is, whether it is universal, absolute and discernible by reason; whether it is largely conventional, socially relative and invented by human beings, to be discovered by sociological research; or whether some other philosophical theory of morality is correct (see paragraphs 3.4–3.7). Consequently, in the following we do not provide a statement of the Working Party's collective moral view, substantive or philosophical, which would be based on one single moral theory. Rather we aim to achieve a number of different goals, as follows:

- Our primary aim is to provide a clearer understanding of the range of moral views held on issues raised by animal research, both within the Working Party and outside, and of

the reasons that people hold them. Too often the debate about animal research is presented in a very simplified and polarised manner, differentiating between ‘those opposed’ and ‘those in favour’. Our own discussions, and our analysis of responses to the Consultation, have indicated that such perceptions are overly simplistic and unhelpful in furthering fruitful debate.

- From a philosophical perspective, consideration of the range of different views is useful because they illustrate the complex structure of ethical justification. Like other areas of controversy in bioethics, the topic of research involving animals challenges us to test, and if necessary revise, our ethical framework in view of our considered judgements about specific areas of research (paragraph 3.7).
 - Lastly, and perhaps most importantly, we also aim to clarify more precisely the scope of agreement and disagreement between different views, and the sources of disagreement. Such an exercise is helpful in reducing disagreement as far as possible, in order to identify an ethically based public policy, which, while it may not entirely accord with any particular moral framework, may be seen as reflecting a broad agreement that provides for the best accommodation of views that can be achieved under current conditions.
- 14.9 Before we present an outline of a range of ethical views, we need to make one further important observation. We have said that the Working Party does not take a view on the status of morality itself. Thus, it might be thought that the Working Party was content to agree with the following two statements.
- ‘All claims that are given a moral justification are equally valid, and hence all of the four views presented below are equally valid. Morality comes down to a matter of “picking and choosing”.’
 - ‘If there were a country in which all inhabitants agreed that there was nothing wrong with causing pain, suffering, distress or death to animals, then the matter would be entirely up to those people and they would not deserve moral criticism.’
- 14.10 The Working Party does not agree with either of these statements. With regard to the first, all members of the Working Party associate themselves with one (or more, depending on the context) of the views that we set out below. In holding their particular view, they are willing to defend their reasons and justifications for coming to particular conclusions, and they challenge others to do the same, in a calm and civilised manner. All members strive to achieve coherence between their considered judgments or intuitions about specific cases of animal research, the relationship to judgments about similar cases, and the principles, rules and theoretical considerations that govern them. Discussion of conflicts between these views provides welcome opportunity to engage in this process. The reader is invited to judge whether one or other of the positions is superior to others. However, in presenting them, we are clear there is no such thing as an ‘off-the-shelf’ morality. Moral frameworks are not acquired and maintained in a simple ‘pick-and-choose’ fashion. Rather, they require continuous scrutiny and justification.
- 14.11 With regard to the question of whether or not people of a country that showed no concern for any animals deserved moral criticism, all members of the Working Party agree that this would be so. No member takes the view that complete disregard for the five morally relevant features – sentience, higher cognitive capacities, capability for flourishing, sociability and the value of life – can be ethically justified. In this sense all members agree that the purposeless infliction of pain, suffering, distress or death to animals is a universal moral wrong. However, we disagree about the reasons for reaching this conclusion (paragraphs 3.7 and 14.8).

14.12 We consider the relation of ethical theory to public policy in more detail below (paragraph 14.53-14.63) and now turn to the four possible stances on animal research. Presenting four views rather than one may be disappointing to some. Nevertheless we believe that it is the most appropriate way of taking the complexity of the debate seriously, and providing guidance to those wishing to engage in thorough ethical analysis.

Summary: four views on the ethics of animal research

The 'anything goes' view

From this viewpoint, if humans see value in research involving animals, then it requires no further ethical justification. It is overly regulated and the primary reasons for implementing the Three Rs are economic or scientific necessity. This position marks one end of the spectrum,² and is not held by any members of the Working Party.

The 'on balance justification' view

Here it is argued that although research involving animals has costs to animals, which must be taken seriously in moral reasoning, the benefits to human beings very often outweigh those costs in moral terms. Hence it is argued that in accepting research involving animals one acts with full moral justification, while accepting that every reasonable step must be taken to reduce the costs that fall on animals, and that some forms of research are not justified.

The 'moral dilemma' view

From this viewpoint it is argued that most forms of research involving animals pose moral dilemmas: according to the current scientific approach the use of animals is necessary to comply with the moral imperative to cure human disease and to save human lives. This also means that animals are treated in ways which are morally wrong. Accordingly, however one decides to act, one acts wrongly, either by neglecting human health or by harming animals. Both alternatives cause severe regret to moral agents, and there is no justification either in principle or in general for conducting, or neglecting to conduct, research involving animals. In order to prevent further dilemmas, the implementation of the Three Rs, particularly of Replacements, must be a priority.

The 'abolitionist' view

According to this view, humans experiment on animals not because it is right but because they can. Since any research that causes pain, suffering and distress is wrong, there is no moral justification for harmful research on sentient animals that is not to the benefit of the

² More accurately, the spectrum might be constructed as follows: (i) humans are *morally required* to carry out any kind of animal research they deem desirable; (ii) humans are *morally permitted* to carry out (specific types of) animal research; (iii) humans are *morally prohibited* to carry out any type of animal research. The 'anything goes' view falls primarily in category (i), the 'on balance justification' and the 'moral dilemma' views belong primarily in (ii) and the 'abolitionist' view in category (iii). The spectrum presented here does not begin with what might be conceived of as the most 'liberal' view, since the 'anything goes' view is characterised by stating that 'research requires no further ethical justification', and it is therefore relatively close to category (ii). The reason for this structure is that the Working Party found it difficult to consider in isolation a view according to which humans were required to carry out any type of animal research. While all members agreed that there were well-grounded moral reasons that require humans to undertake *research*, it is less straightforward to conceive of good arguments that would support the argument that humans are required to carry out any research specifically requiring the use of *animals*. Thus, while such a position is conceptually possible, in practice it is difficult to construe. Moreover, arguments according to which humans are morally required to undertake *specific types* of animal research are found in the 'anything goes', the 'on balance justification' and the 'moral dilemma' views. Therefore, although the logical (liberal) end of the spectrum is not represented here, different versions of the more practical argument according to which humans are morally required to use animals in certain circumstances *are*. We hope that the discussion of the tension between these moral requirements, and the concerns that may arise in deliberations about their pursuit, are useful.

animal concerned. The greater the impact on the animal's welfare, the more objectionable the research. This is seen as valid irrespective of any possible scientific, medical or other benefit. Since humans should not act in morally objectionable ways, every effort must be made to bring an end to all animal research as soon as possible.

A view that is related to the 'abolitionist' view, but which is not considered in the same detail as the other four views above, can be called the 'weakness of morality' view. Proponents of this perspective agree with the abolitionists that from a moral point of view it is simply wrong to use animals for any human purposes that compromise their welfare in ways that are not in their interests. Despite this belief, holders of this view find that they are not motivated to act on it, for example by campaigning for the abolition of all research involving sentient animals.

Discussion: four views on animal research

- 14.13 We now consider these four positions in more detail. Before doing so, it is worth referring to an issue briefly raised in Chapter 3: the relevance of the solidaristic preference that many human beings have for each other over animals. We noted that from one viewpoint this was considered 'speciesism', analogous to racism or sexism, while from another this preference is fully justified (see paragraph 2.17 and Box 3.4). Indeed, from some views such preferences are themselves the basis of morality. This reasoning expresses itself in a number of ways. It can draw on the biological or evolutionary order of humans and other animals, or on philosophical or religious frameworks. For example, the higher status of humans vis-à-vis animals can be based on the Judeo-Christian tradition, in which a moral difference between human beings and animals may be presumed by the order of creation in Genesis.³
- 14.14 As we will see the 'abolitionist' view considers that whatever moral strength such solidaristic preferences have, universalistic morality silences them. The weakness of morality view agrees that this ought to be the case but denies that morality can, in practice, overturn such a powerful psychological drive. The 'moral dilemma' view, at least in one version, accepts both the universalistic argument of the abolitionists, while also accepting that solidaristic reasoning has a moral foundation. This tension can be what causes the dilemma. Finally those holding the 'on balance justification' or the 'anything goes' views usually believe that species solidarity outweighs universalistic morality. Consequently we see that the question of the nature and value of human solidaristic preferences for each other is, morally speaking, right at the heart of this debate. Some view such preferences as immoral, while others see them as absolutely at the heart of morality. We cannot settle this question, although we can acknowledge its powerful psychological grip on many humans and its crucial role in the debate.

³ The Biblical justification of the superiority of humans over animals was based on the claim that God had created humans, uniquely, in his own image, giving them the highest status among living beings (see Book of Genesis (1:28) (2001) *The Holy Bible, English Standard Version* (Wheaton, IL: Crossway Bibles): 'And God said to them [man], "Be fruitful and multiply and fill the earth and subdue it and have dominion over the fish of the sea and over the birds of the heavens and over every living thing that moves on the earth."') However, as noted above (paragraph 3.21) this view should not be taken to mean that humans are free to treat animals in any way they please. In fact, it may well enjoin them to maximise animal welfare as far as possible. This interpretation would not only be compatible with Christianity, but also, for example, with Judaism and Islam. Religious arguments can support a range of views which we discuss in the remainder of this Chapter, especially the 'on balance justification' view (paragraphs 14.21-14.27) and the 'moral dilemma' view (paragraphs 14.28-14.40). While we have not considered the special perspective of different religions on the question of animal research in this Chapter, we are clear that for many people it would be wrong to suggest that a strict distinction between religious, ethical and public policy perspectives can be made. We therefore present the outline of the four views that follow on the understanding that religious arguments can be of equal status and relevance in the justification of specific uses of animals, as those grounded in secular ethical theory. For a further discussion of religious perspectives on the use of animals see Linzey A (1995) *Animal Theology* (Illinois: University of Illinois Press).

- 14.15 With this background in mind we now address for each view four questions: (i) what is the justification for using animals in research? (ii) how does the justification relate to the treatment of animals in other contexts? (iii) what is the value of research? (iv) what is the role of the Three Rs?

The 'anything goes' view

Justification for using animals in research

- 14.16 As we have said, all members of the Working Party agree that research involving animals requires ethical justification. People holding different views might refer to the philosophers Malebranche and Descartes, who established a dualistic conception of mind and body that only applied to humans, arguing that animals lacked relevant cognitive capacities. According to Descartes, animals were not sentient or capable of suffering pain or distress (paragraphs 3.30 and 4.4). Based on a somewhat different assumption, in the 1960s proponents of a philosophical approach called behaviourism came to similar sceptical conclusions about mental capacities of animals. Although this approach still features in some journalistic contributions⁴ to the ethical debate about animal research, it has little currency in contemporary academic discussion.

Using animals in research and in other contexts

- 14.17 We have observed that a useful way of addressing ethical issues raised by harmful uses of animals is to identify morally relevant features, and to assess how these features should be considered in moral reasoning. The Cartesian and similar approaches simply focus on one of these features (higher cognitive capacities), and consider that this justifies categorising all animals as outside of the moral community (see Box 3.1). Nonetheless, even such radical approaches which deny animals any moral status need not allow any wanton cruelty towards them, as it can be argued that humans who are cruel to animals are more likely to be cruel to humans (the Kantian argument). Thus, the most liberal framework conceivable⁵ with regard to the use of animals in research could still prohibit some treatments of animals in other contexts; for example, some forms of hunting, or pest control without regard to the way in which animals were killed.

The value of research

- 14.18 Although the 'anything goes' view is hardly a feature of the current debate, some people, for example those affected by severe diseases such as cystic fibrosis, Huntington's or Parkinson's might argue for a very low threshold in specific cases. Some patients waiting for new or improved therapeutic interventions could take the view that the interests of animals used for medical research should be given far less consideration than their own, regardless of whether experiments are at an early stage in basic research, for example, to understand disease processes, or at more advanced stages, such as to test a new therapeutic intervention. To others, such an argument based on need appears unjustified, and they point out that there are also a great number of patients who disagree and prefer not to cause animals suffering in their name.
- 14.19 Research on diseases such as cystic fibrosis or neurodegenerative disorders involves animals at different levels of neurological and behavioural development, ranging from mice to

⁴ Guldberg H (2004) Why Humans are Superior to Apes Spiked 24 February, available at: <http://www.spiked-online.com/Printable/0000000CA40E.htm>. Accessed on 6 May 2005.

⁵ See footnote 2.

primates. It will therefore infringe on the animal's morally relevant properties (sentience, higher cognitive capacities, capacity to flourish, sociability and possession of a life) to varying degrees. We observed above that the question of whether or not other animals, and particularly primates, have higher cognitive capacities that can be compared in a meaningful way to those of humans is the subject of continuing research paragraphs 3.30, 4.4 and 4.27). No member of the Working Party is persuaded that a person's experience of suffering can justify the unlimited imposition of pain or suffering by research animals, regardless of whether they are mice or primates. However, we agree that patients' views should be fully considered in deliberations about the permissibility of animal research alongside other voices in the debate.

The role of the Three Rs

14.20 While views on the Three Rs may differ among those sympathetic to the 'anything goes' view, many proponents may view them with scepticism. Although Refinement will be relevant to all those who do not deny the capacity of suffering to animals, in general the Three Rs are likely to be of interest primarily insofar as they contribute to more economic and effective scientific progress, for example where Refinements are necessary so as not to compromise the scientific validity of results from animal research.⁶

The 'on balance justification' view

Justification for using animals in research

14.21 In Chapter 3 we referred to a number of normative ethical theories in our attempt to determine the appropriate consideration of morally relevant features of animals. These theories include deontological, consequentialist, utilitarian and virtue-ethics-based approaches and all may be used to justify some animal research. Many approaches have as their basis the argument that there is a moral primacy of humans over animals. There are also arguments based on the biological or evolutionary order of humans and other animals (paragraphs 3.20–3.26) as well as religious frameworks or other notions of solidaristic preference (paragraph 14.14).

14.22 Unlike proponents of the 'anything goes' view, supporters of this view acknowledge that research entails costs to animals, which must be taken seriously in moral reasoning. However, very often the benefits to human beings are seen to morally outweigh the costs to animals. Proponents point to the statistics about the level of pain, suffering and distress experienced by animals in research and note that, for example, 39 percent of project licences in force at the end of 2003 were classified as mild (56 percent as moderate, see Appendix 2). They take the Statistics to be broadly representative of animal suffering, view the levels as acceptable, and emphasise that the law requires that experiments must be designed to use the minimum number of animals, drawn from the species with the lowest neurophysiological sensitivity. They further argue that the welfare implications are experienced in far less negative ways by animals than by humans (paragraphs 3.29). Hence, in view of the important goals of many research programmes using animals, and the lack of alternatives, they argue that in accepting animal research they act with full moral justification. Nonetheless they can also hold that every reasonable step must be taken to reduce the costs that fall on animals, and that some forms of research are not justified.

⁶ Derbyshire S (2001) Animal Research: A scientist's defence *Spiked* 29 March, available at: <http://www.spiked-online.com/Printable/000000005547.htm>. Accessed on 6 May 2005.

Using animals in research and in other contexts

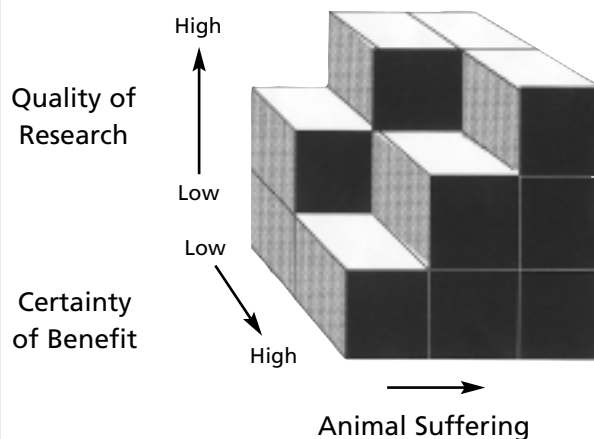
14.23 On most versions of the 'on balance justification' view, it would appear that the more harmful the experiment, the 'higher' the animal used, the less significant the goal, the lower the probability of success and the greater the availability of alternatives, then the less likely the experiment is to be considered ethically acceptable (see also Figure 14.1).

14.24 In support of the acceptability of undertaking harmful research on animals rather than on humans, this view endorses the thesis set out in paragraph 3.29, according to which suffering and especially death pose greater tragedies for humans than for animals. It can follow from this argument that special consideration must be given to primates as they

may suffer comparatively more than other animals from confinement and relative social isolation. For the same reason, proponents can accept a prohibition on the use of the great apes, and are inclined to apply the morally relevant criterion of 'sociability' to animals such as dogs (see paragraphs 3.44-3.46). Although the 'on balance justification' view could suggest a hierarchical order of the acceptability of using different species of animals for research, this need not necessarily be so (paragraph 3.22).⁷

14.25 Those who accept the use of animals for research purposes as defined by the A(SP)A usually also accept other uses of animals. In fact, the use of animals for food and clothing, for example, may be cited in support of research involving animals, as humans appear to be willing to sacrifice the lives and often also the quality of lives of animals, for human interests. We have already observed that such comparisons cut both ways. Thus, since the A(SP)A requires justification of harmful research, proponents of the 'on balance justification' view could be expected to explore similar justifications, albeit perhaps in a less formalised manner, with regard to other uses of animals. It is then important to relate the worthiness of the goal to the suffering of the animal involved, and the availability of alternative ways of achieving the goal. The 'on balance justification' view can therefore allow for all, or most of, the uses noted earlier on (paragraph 4.47 and Appendix 1). At the same time, it also allows for the conclusion that, although the use of animals is acceptable for many research goals, it is far less acceptable for the production of food or clothing, since in most Western societies relatively straightforward alternatives exist that could provide food and clothing without the use of animals.

Figure 14.1: Criteria for assessing the acceptability of a research project.*



When a research project falls into the opaque part of the cube, the experimental research should not be done.

* From Jennings M and Smith J (2003) *Handbook for Lay Members of Local Ethical Review Processes* (Horsham: RSPCA). Image © Patrick Bateson 1986.

⁷ First, more developed animals are not necessarily more important than the less developed ones, but it is simply the case that there are more morally questionable ways of treating the more developed than the less developed. Secondly, the view can allow for the conclusion that the use of a 'less developed' animal such as a mouse is less acceptable than the use of 'higher' species, such as a primate. Pain and suffering experienced by a 'lower' species may have a much more 'global' effect than pain experienced by a higher species (see paragraph 4.17).

The value of research

14.26 Insofar as the benefits cannot be obtained by any other means, proponents of the 'on balance justification' view usually emphasise the importance of the benefits derived from pharmaceutical and toxicological research, and possibly also the value of results produced in the context of basic and applied biological and medical sciences (see also Chapters 5–9). However, some assert that a reasonable likelihood of success, in terms of a useful application of research, must be given for any experiment to be justified, particularly if it is likely to adversely affect the welfare of the research animals. Others disagree with this requirement and refer to the 'jigsaw puzzle' of science, in which almost any new research project contributes to valuable knowledge (paragraph 3.53). Nevertheless, both positions can agree that research for trivial purposes, such as the testing of new cosmetics, or of new household cleaners that differ insignificantly from already marketed products, is not justifiable.

The role of the Three Rs

14.27 The 'on balance justification' view is sympathetic towards all Three Rs provided the current level of basic and applied scientific research can be maintained, and future progress is not hindered. Possible conflicts between implementing any of the Three Rs and delaying scientific progress would usually be resolved in the interest of scientific development. With regard to Replacements, proponents note that there will always be some areas in which animal research cannot be replaced. For example, researchers studying animal behaviour such as bird flight or song will clearly not be able to undertake this research on humans. In other areas, pragmatic and ethical concerns are likely to make it impossible to replace the use of animals with humans. For example, they would argue that it would neither be practically feasible, nor ethically acceptable, to produce inbred strains of humans for genetic knock-out studies (see Chapter 7).

The 'moral dilemma' view

Justification for using animals in research

14.28 According to this view, most research usually poses profound ethical dilemmas, as a decision is required between two alternatives, both of which are equally morally problematic. The current scientific approach requires animals that are viewed as moral subjects to be involved in harmful research, in order to comply with the moral imperative of preventing and alleviating human suffering. However, this approach is ethically challenging to the 'moral dilemma' view, since an inclusive conception of morality regards animals as moral subjects. At the same time, if animals were not used in potentially harmful research it would be far more difficult to comply with the duty of preventing and alleviating human suffering.

14.29 An important aspect of the 'moral dilemma' view is the fact that, to some degree, the dilemma is caused by historical circumstances. For example, the present population of adults in the UK lives in an environment in which currently available products and treatments have set a benchmark for medical standards and scientific progress. Many of these products have involved animal experimentation at some stage in their research and development. The current population did not ask for the research to be undertaken, but has become used to it and benefited from its results in many ways. Accordingly, although ethical concern for the welfare of animals would demand that at least some types of research should be given up, this is difficult, because most members of society would not be prepared merely to maintain, or even to slow down, the current scientific level of research in the biomedical sciences. The moral dilemma might never have occurred if,

hypothetically, humans had never begun to experiment on animals, had had a far more restrictive policy in place or had found different ways to gain scientific knowledge.

- 14.30 It could be argued that the ‘moral dilemma’ view differs insignificantly from the ‘on balance justification’ view: it is simply a stronger recognition of the fact that it is morally problematic to use other species. While this may be true for some positions within the concept, it may not be for other positions. These differ with regard to the way in which the relationship between humans and animals is understood; the way in which they may be used; views about the value of research; and the role of alternatives.
- 14.31 Proponents of the ‘moral dilemma’ view are less certain than those holding the ‘on balance justification’ view about the supremacy of humans over animals. There can be various reasons for this difference. Usually, interpretations of religious approaches or evolutionary theory which suggest a clear primacy of humans over animals are rejected as they could equally be used to argue for stewardship and compassion (see also paragraphs 3.21, 3.24 and 3.27–3.50). Rather, proponents may draw on religious arguments that recognise human stewardship over animals,⁸ or they assert that it is reasonable to assume that animals become members of the moral community insofar as they possess one or more of the morally relevant capacities discussed in Chapter 3 (paragraphs 3.27–3.50). Whereas within the ‘on balance justification’ view there is usually acceptance of a hierarchy of species based on the aggregate number of morally relevant capacities within the ‘moral dilemma’ view a more commonly found position is that there is no such hierarchy.
- 14.32 Similarly, whereas those holding the ‘on balance justification’ view perceive forced consequentialist sacrifice as practised under the A(SP)A as acceptable because they take the view that it matters less to the animals themselves whether or not they are used in research, some proponents of the ‘moral dilemma’ view disagree. The reason for scepticism can be called *epistemic modesty*: most proponents of the ‘on balance justification’ view assert that it is usually possible to assess levels of pain, suffering and distress in scientifically reliable ways. Some of those holding the ‘moral dilemma’ view are more cautious. They refer to philosophical problems resulting from the ‘problem of other minds’, which casts doubt over the possibility of determining the exact state of consciousness of other beings (paragraphs 4.5 and 4.22). Since skilful observation, free from inappropriate anthropomorphisms, strongly suggests that animals do possess a range of different welfare states, one should, where possible, err on the safe side and refrain from any harmful use. Similarly, one should not assume that just because an animal such as a mouse is not in possession of higher mental capacities it is therefore more acceptable to subject it to pain: as may also be acknowledged under the ‘on balance justification’ view, the quality of the pain and suffering may have a far greater intensity, despite, or rather because of, the lack of higher capacities (paragraphs 3.29 and 4.17).
- 14.33 In conclusion, from the ‘moral dilemma’ view, the primary motivation for granting animals intrinsic moral status is their possession of any of the morally relevant features. Expanding the discussion of the morally relevant criterion of sociability, proponents emphasise the importance of what can be termed *relationship morality*: humans can build meaningful relationships not only with other humans, but also with animals. The way specific areas of well-being are influenced by human action matters equally in both cases, since both are subjects of life (see Box 3.4) who have interests in maximising their welfare. Disrespecting the *prima facie* entitlement of animals to lead a life free from negative interference by humans can therefore create an existential dilemma for proponents of this position.

⁸ However, see footnote 3.

14.34 The question remains as to why humans should be able to use animals for harmful research. Proponents of the 'moral dilemma' view simply acknowledge that an uncontroversial justification cannot be obtained. Others may refer to the solidaristic preference argument (see paragraph 14.13), observing that while humans have difficulties in assessing the exact welfare-related states of animals, they have far fewer difficulties in assessing mental states relating to pain, suffering and distress in other humans. This capacity for empathy, together with the familiarity of suffering from one's own experience, leads to strong desires to help alleviate, and where possible prevent, suffering in fellow humans, even if this is at the expense of disregard for the interests of some animals.

Using animals in research and in other contexts

14.35 It is difficult to predict what kind of research would be acceptable according to this view. The following aims to provide an outline of types of research that proponents of the view could accept. In many cases the 'moral dilemma' view might be more restrictive than the 'on balance justification' view in permitting harmful research (provided the goals are comparable). But in some areas it also appears to allow for an extension. Whereas according to the 'on balance justification' view research on the great apes, such as chimpanzees, is usually prohibited, within the 'moral dilemma' view this need not be the case. For example, the role of chimpanzees in the development of a test to identify hepatitis C-contaminated blood and blood products had a major impact on decreasing human morbidity and mortality (paragraph 6.25). Such research would not currently be permissible in the UK. However, under the 'moral dilemma' view it could, in principle, be acceptable, albeit with grave regret.

14.36 With regard to other uses of animals, holders of the 'moral dilemma' view are most often reluctant to accept them: insofar as other practices involve avoidable degrees of pain, suffering and distress, which are not to the benefit of the animal involved, the use is not ethically acceptable. Since proponents of the approach can also be understood to be sceptical as to how far humans will ever be able to understand what it is like to be another species, they would usually seek to avoid the use of animals for purposes such as the production of food and clothing, and sport and entertainment, particularly since in most Western societies alternatives to the same goals are readily available.

The value of research

14.37 The moral dilemma results from the fact that a valuable good such as the development of a medicine for a severe disease for one type of moral subject (i.e. humans) conflicts with a valuable good of another moral subject (i.e. that of an animal), usually its welfare or life. This means that no conflicts need exist when the human good is comparatively trivial. Cases of trivial goods that should not be developed would include new household cleaners that are similar in all relevant qualities to a number of other already available products, or analogous cases. Similarly, the approach would require that robust mechanisms be put in place to avoid the duplication of research, be it in the academic or commercial context. This is especially important with regard to the production of GM animals and cloning, as these procedures use relatively large numbers of animals, and, in some cases, may have unpredictable implications for welfare (paragraph 4.57).

14.38 Since proponents of the 'moral dilemma' view are very concerned about possible welfare infringements and accept them only in cases where a substantial benefit is to be expected, the question of basic research poses difficulties for the approach. On the 'on balance justification' view, a wide range of basic research can be permissible. But on the 'moral dilemma' view the likelihood for any useful application to arise from knowledge gained in

basic research will need to be considered carefully. Many proponents argue that if results from basic research are unlikely to ever contribute to any practical application, the research would not be permissible, unless the welfare infringements are very minimal.

The role of the Three Rs

- 14.39 Due to the existential nature of the conflict, the moral dilemma is a situation that moral agents will seek to avoid as far as possible. Since they wish to protect the goods of both animals and humans, there is a great urgency to implement the Three Rs, with particular emphasis on Replacements. Just as proponents of the approach urge those wishing to undertake research on animals to justify its necessity clearly, they urge that every effort be made to ensure that the potential of alternatives is exhausted as far as possible.
- 14.40 They therefore welcome the provision of the A(SP)A, according to which animals can only be used for research if there is no other way of obtaining the information. However, they also argue that in order for this requirement to carry ethical weight (in the sense that the use of animals is therefore more acceptable), genuine efforts must be made to develop replacements, and to overcome the obstacles to their development and implementation (paragraph 3.63 and Chapter 11). Similarly, there is a strong obligation on those using animals in the commercial sector. For example, the view can be taken that not all products developed by the pharmaceutical industry justify the resolution of the moral conflict between the interests of animals and humans in favour of the latter. Companies operate in competitive environments, in which the primary aim is to generate profits, by focusing on those interventions that generate the highest returns. These products are not always those that are most needed (paragraphs 3.13, 8.7 and 15.83). Whereas, from the 'on balance justification' viewpoint, there was no reason to object to this *modus operandi* in principle, here it can be argued that such interventions are only justified if they do not involve harmful research on animals.

The 'abolitionist' view

Justification for using animals in research

- 14.41 According to this view, there is no justification for any harmful research on sentient animals that is not to the benefit of the animal concerned. This is valid irrespective of any possible scientific, medical or other benefit. Since humans should not act in morally objectionable ways, proponents argue that every effort must be made to bring an end to all research involving as soon as possible. Research on animals is viewed as unacceptable because any research constitutes forced consequentialist sacrifice which can come in two forms (see paragraph 15.5):
- First, animals can be used to produce results that benefit other animals. For example, research may seek to develop a vaccine for cattle. The animals directly involved in research are used without consent, which is impossible to obtain from animals. The research animals are hence forced to experience a range of negative welfare infringements for the benefit of other animals.
 - Secondly, animals can be used in research undertaken for the benefit of humans. The examples provided in Chapters 5–9 show that the welfare implications of harmful research are diverse and include research such as toxicity testing and the use of animals as disease models, both of which may cause considerable suffering. The breeding, transportation and housing conditions will also affect the animal (see paragraphs 4.31–4.59).
- 14.42 From the abolitionist viewpoint, the justification that proponents of research involving animals provide, for logical reasons, cannot support their case. The fundamental question

that abolitionists pose is why the moral capacity of an animal should count less than that of a human. The question to be answered is therefore: why should the suffering of a mouse be morally less significant than the suffering of a human? The answer usually provided is that the human is more important. Most abolitionists are willing to concede that such differences in status can justify unequal treatment in the case of competition for goods; for example, it could be argued that it is morally unproblematic for humans to prevent animals from eating the fruit of a tree by covering it with a net. However, abolitionists also argue that such difference in status cannot in itself justify the use of animals by humans for harmful research.

- 14.43 Similarly, abolitionists disagree with the argument that suffering experienced by animals is experienced in a lesser way than the suffering of humans. Quite plausibly, the nature of suffering differs between different species, but as is obvious from the discussion in Chapter 4, biological similarities, the responsible use of empathy⁹ and critical anthropomorphism emphasise the reality of animal suffering (paragraph 4.60). While, strictly speaking, it may be true that we will never really know ‘what is like to be a rat’ (see paragraph 4.5), in the absence of evidence about the different natures of suffering, humans should err on the side of caution and not make the assumption that animals suffer in a lesser way.¹⁰
- 14.44 According to the ‘abolitionist’ view, the main reasons why humans find it acceptable to use animals stem from societal conventions. Humans continue to use animals because they have always done so. In moral terms this conclusion can be called a *genetic fallacy*: the moral permissibility of actions does not follow simply from previously established practices. Rather, all actions need to be justified by reference to ethical theories. Since, on the ‘abolitionist’ view, all animals and humans capable of sentience have the same moral status, use of animals for research constitutes unjustified discrimination and illegitimate use of force by one member of the moral community against another. Such use of force that ultimately may bring about death is only justified in cases of emergencies, such as self-defence. This circumstance does not apply in the case of commonly conducted harmful animal research. Thus, from the ‘abolitionist’ view, the current treatment of most animals in Western societies is adequately described as speciesist (see Box 3.4 and paragraph 4.13): the primary criterion that distinguishes animals from humans is their belonging to different species. However, on the ‘abolitionist’ view, this is a morally irrelevant criterion. It cannot justify differential treatment of humans and animals any more than different sex or race of humans can justify differential moral treatment.

Using animals in research and in other contexts

- 14.45 As in the ‘moral dilemma’ view, the ‘abolitionist’ view concludes that the consideration of the use of animals in research must lead to a re-evaluation of uses of animals in other contexts. Insofar as other practices involve avoidable degrees of pain, suffering and distress, which arise from a practice that is not to the benefit of the animal involved, other uses are not ethically acceptable. Consequently, they seek to avoid the harmful use of animals for purposes such as the production of food and clothing, or for sport and entertainment. More difficult cases may be raised by the issue of pest control. Most abolitionists would employ barrier methods of control that cause minimum stress and suffering to the animals concerned. Alternatively, they can decide to abstain from any control. Others may argue

⁹ Thomas D (2005) Laboratory animals and the art of empathy *J Med Ethics* 31: 197–202.

¹⁰ It is also possible to assume that the suffering of animals is actually experienced in a much more severe way than that of humans. For example where they do not have the possibility of ‘understanding why they suffer’, which can provide considerably relief in the case of humans.

that temporary suffering, resulting for example from catching the animal and moving it to another environment, can be justified, provided that the new environment is comparable in quality to the previous one.

The value of research

- 14.46 The main concern of the 'abolitionist' view is the capacity of beings to suffer. Therefore, and in agreement with the previous three positions, research to alleviate suffering of humans and animals is imperative. But this imperative is constrained by the fact that research itself must not cause any suffering to beings unable to consent to such treatment. Therefore, proponents see research on voluntarily consenting humans, or Replacements such as *in vitro* research or computer studies (see Box 11.1), as the only ethically acceptable solutions. Abolitionists also frequently argue that a focus on research with human participants improves scientific practice, as it circumvents problems concerning predictability and transferability of scientific results from animals to humans (paragraph 10.27).
- 14.47 A possible problem for this approach is how to deal with the consequences of a scenario where all animal research was in fact abandoned. Would it be possible to maintain an equivalent level of basic and applied scientific knowledge without the use of animals in research? One response is to point to the potential of human creativity: throughout human history, an impressive range of inventions has been achieved, which have allowed humans to attain goals that were thought as categorically impossible in earlier periods. For example, few people would have believed a person in the mid-19th century who stated that it would one day be possible to fly to the moon. Put differently, the argument might also be presented in the form of a thought experiment: if a powerful alien race invaded Earth and demanded an end to all animal research, as otherwise all humans would be killed, would it not be likely that human creativity would very quickly develop a range of alternative methods to take the place of the previously practised animal experiments?
- 14.48 This paraphrase of the argument that 'necessity is the mother of invention' is also used to draw attention to the fact that achieving changes in policy is not always only a question of small incremental changes, but more often a matter of powerful incentives. Thus, proponents emphasise that radical changes are possible, as long as there is a political will at national and international levels to achieve a change. Recent developments such as bans on the use of animals for the testing of cosmetic products and their ingredients, alcohol or tobacco, and the policy decision not to grant licences for the use of the great apes in the UK, are also cited to support the argument that substantial change is possible.
- 14.49 All proponents need to consider another issue arising from the scenario of a sudden abandonment of animal research. It can plausibly be argued that the pace of most areas of research would slow down, and that the development of new medicines would be delayed, provided that, in principle, Replacements and studies on humans could fill the gap of animal research in the medium to long term. Many abolitionists respond by making reference to the 'historical contingency' argument which featured in the 'moral dilemma' view (paragraph 14.29). Abolitionists note that present day generations simply 'inherited' animal research and its consequences without consent. They argue that irrespective of the costs for humans, the immediate cessation of animal research is ethically superior to a compromise solution, in which a 'phase-out' approach is sought, for example by introducing further restrictive policies. But some advocate instead the need of more direct action, for example in the form of freeing animals from research facilities. Others acknowledge pragmatic political and professional constraints, and conclude that the scenario of a sudden end to all animal research is highly unrealistic. Even if there was a political will to ban all such research, in view of the practical realities, the transition would

inevitably be 'soft'. Accordingly, from the 'abolitionist' view the proactive development of Replacements is crucial in achieving a smooth and quick transition.

- 14.50 We observed above that the development of these alternatives faces considerable scientific and non-scientific challenges (paragraphs 11.6–11.9 and 11.19). There is also one type of research that cannot be replaced. This concerns harmful studies to understand the basic biological processes, behaviour and evolution of animals for the sake of advancing knowledge. The problem here would be that this research cannot be undertaken on humans, since the goal is not to learn about the human, but about the animal organism. However, appropriately conducted non-harmful and purely observational research on animals in their natural environment could be permissible. While those taking the 'abolitionist' view are, in principle, concerned about any harmful use of animals that is not in their interest, many are particularly concerned about research in which animals are sacrificed for comparatively trivial benefits to humans, agreeing with the position discussed under the 'moral dilemma' view (paragraph 14.36).

The role of the Three Rs

- 14.51 Since on the 'abolitionist' view any forced consequentialist sacrifice is ethically unacceptable, strictly speaking the options of Refinement and Reduction strategies are not compatible with the approach.¹¹ The focus is therefore usually on Replacements only, which need to be developed, validated and implemented as a matter of urgency.

The 'weakness of morality' view

- 14.52 At this point, we can briefly consider one last view, which can be seen as a sub-category of the 'abolitionist' view and can be called the 'weakness of morality' view. Proponents agree with the abolitionists that from a moral point of view it is simply wrong to use animals for any human purposes that compromise the welfare of animals in ways that are not in their interest. Despite this belief, they find that they are not motivated to act on it, just as many people think that, morally, they should give more money to charity, or cease eating meat, or act in a more environmentally friendly way, but never actually do so. In the case of research involving animals, such people believe that the benefits to humans, although improperly gained, overwhelm their moral qualms, which exist at the level of conscience only. Thus, they do not act on their belief that research involving animals is wrong, by boycotting products tested on animals or attempting to bring about social change by changing moral attitudes. Unlike the true abolitionists, they may even believe that, in general, moral advocacy is too weak a motivating force at the level of each individual human. However, they have greater hopes for structural change. From this viewpoint, implementation of all Three Rs, and particularly replacement strategies, holds out the hope that it may be possible to achieve scientific goals without being complicit in immoral behaviour, by making research involving animals unnecessary.

Public policy in the context of moral disagreement

- 14.53 It is clear, then, that great moral disagreement exists both within and outside the Working Party. Nevertheless, as in other areas of ethically contentious issues, such as abortion or euthanasia, any society needs to settle on a single policy for practical purposes. Thus steps

¹¹ Since the approach is primarily concerned with the avoidance of suffering *de facto*, the application of Refinement and Reduction could be viewed as steps towards the ultimate goals of replacement, especially insofar as they help to alleviate animal suffering. But this view is not shared by all of those taking the abolitionist position.

need to be taken to reduce existing disagreement as far as possible. At the very least, if a public policy is adopted which many believe to be morally wrong, instability, protest and, in extreme cases civil unrest may ensue. In thinking through the next stage in the argument we are partially influenced by the concept of the 'overlapping consensus', developed by the American philosopher John Rawls, who considered how to achieve fair agreements between reasonable moral agents on policies and procedures in societies that faced the 'fact of pluralism'.¹² The concept relies on the possibility that each party to a consensus supports it for its own sake, or on its own merits, based on its individual moral or other normative framework.¹³

- 14.54 In trying to achieve an overlapping consensus it is necessary to produce a procedure or position that could be adopted from all reasonable perspectives. Could it be the case that the concept of the Three Rs, and the type of hybrid moral position (some absolute constraints, some balancing), which can be said to underlie the A(SP)A, could be accepted, at least in broad outlines, by all positions? This is clearly so for the cluster of moral positions that support the 'on balance justification' view, which directly endorses such a regime. The 'moral dilemma' approach suggests that there are no decisive moral considerations, and so may, for practical purposes, be prepared to fall in line with the 'on balance justification' view, as long as the research is genuinely necessary, and no alternatives exist. The 'weakness of morality' view as a sub-category of the 'abolitionist' view cannot accept that there is a moral justification for present practices, but at the same time does not see morality as having influence on behaviour in any relevant sense. Its proponents, too, can accept something akin to the current regulations as a practical solution. Hence between these three views a form of overlapping consensus can be achieved.
- 14.55 However, whereas the 'anything goes' view can accept the permissions included in the current regulations, it cannot accept the restrictions. The position for the abolitionists is the converse: they can accept the restrictions but not the permissions. As these moral positions appear to fall outside this overlapping consensus they require special discussion.
- 14.56 Although it is, as we have said, unlikely that any serious thinker holds the view that human beings may do whatever they like to animals without any moral justification, nevertheless there are groups who view some current restrictions as unjustified. Could anything be done to bring such groups into the overlapping consensus? The place in which their disagreement is greatest concerns cases such as the policy of the *de facto* ban on using the great apes. Proponents of the 'anything goes' view argue that when there is a very good chance of providing positive results, of potential value to human health and life, then some forms of research on great apes should be permitted. The circumstances in which this would be permissible, and the forms of permissible treatment of such animals, would be very tightly controlled, to a point where, in practice, it may be very rare indeed that the conditions are met. As observed above, the current 'ban' merely has the status of policy, and is not enshrined directly in the A(SP)A (paragraphs 13.6 and 13.30). Thus, in principle, some of the proponents of the 'anything goes' view might join the overlapping consensus, as long as the prohibition is not a matter of law.
- 14.57 The abolitionists, by contrast, would prefer the policy decision to be a matter of law, rather than policy. They welcome the restrictions in current regulations, yet view the permissions as unacceptable. Widening the permissions would make matters worse for them. The

¹² Rawls J (1987) The Idea of an Overlapping Consensus *Oxford Journal for Legal Studies* 7: 1-25.

¹³ Rawls J (1989) The Domain of the Political and Overlapping Consensus *New York University Law Review* 64: 233-55.

argument for this is, as we have seen, either that it is wrong to take the life of an animal or that it is wrong to impose suffering on one being for the sake of another. This argument is also accepted by those who hold the 'weakness of morality' position and the 'moral dilemma' argument, and hence is accepted by a broader group than the abolitionists. There is therefore also a consensus between these three groups on the immorality of research involving animals. Only the abolitionists believe that it provides a decisive reason for ending harmful research upon animals.

- 14.58 Yet, it would be imprudent to abandon the project of trying to draw more people sharing the abolitionists' view into the overlapping consensus. This would, of course, mean introducing more restrictions. Some restrictions might easily suggest themselves; for example, those where animals are being used to develop consumer products with relatively trivial consumer or health benefit, to produce products which differ little from those already on the market, where research is being duplicated or where alternative methods could be developed if there was a political will to do so. Hence by being clearer about the circumstances in which research involving animals is permitted, there is some chance of creating an overlapping consensus which would gain broader, albeit not universal, approval.
- 14.59 In sum, the way to try to draw more people into the broad consensus is to examine cases where restrictions may seem to rule out very significant research, and cases where permissions allow relatively trivial work. By fine-tuning the regulations, relaxing some restrictions and introducing others, a broader group of people could give a greater endorsement to the regulations than has been possible before now, even if no one set of regulations would be considered fully acceptable by all.
- 14.60 In aiming to include the 'abolitionist' and the 'anything goes' views in the overlapping consensus it has also become clear that their willingness to adhere to the consensus differs somewhat from the 'on balance justification', the 'moral dilemma' and the 'weakness of morality' views. Whereas the latter three views are able to genuinely *share a consensus*, the former two appear at best to be able to accept the approach of the Three Rs and the provisions and practise of the A(SP)A under given current circumstances as a *compromise*. Thus, it would seem wrong to suggest that there can be *substantive consensus* (i.e. consensus on a shared view about which research can be viewed as justified), although it seems correct to say that in view of the current situation an enlarged *procedural consensus* is achievable (i.e. consensus that a certain system of licensing and control of animal research is tolerable or acceptable).
- 14.61 This distinction is important for two reasons. First, because policy should not be guided by what in effect may simply be the lowest common denominator. Rather, as we have said, we recognise that there are a number of competing moral outlooks on animal research, which need to be considered in shaping policy that is defensible and reasonable, and with which as many members of the public as possible can agree. Too often, the polarised character of the debate has obscured potential areas of genuine agreement, and it is crucial to examine, as far as possible, its potential scope.
- 14.62 Secondly, although full substantive consensus may be unattainable, we conclude that there is genuine overlapping consensus in terms of process. Even if proponents of the 'anything goes' view and the 'abolitionist' view differ on the letter of the law of the A(SP)A, current government policy and how these are implemented, most reasonable proponents of both views are likely to accept that for as long as animal research continues, animals involved must be protected. It can be argued that in these circumstances a detailed system of licensing and inspection is a necessary and legitimate instrument to reconcile the different views that stakeholders and members of society hold.

14.63 If this approach is to count as a fair process, several conditions need to be met. First, all involved need to be able to have access to relevant information about animal research, such as the goals, welfare implications and alternatives to research, in order to judge whether specific types of research and mechanisms to regulate them are justifiable with regard to their normative frameworks. Secondly, the discussion about appropriate policies must be conducted in a fair and informed manner, which permits all reasonable participants to argue their case. In this context, specific forms of protest that involve militant protests and violence are highly damaging and erode the necessary climate for reasoned debate. Thirdly, there must be a genuine possibility for policies to be readjusted if the consensus shifts. Fourthly, in order to do so there must be reliable evidence on the views of all stakeholders as to whether they can support the *status quo*, and any future developments. Thus, only if these conditions are met can it be argued that the A(SP)A, which represents a hybrid framework combining deontological and consequentialist elements (see paragraphs 3.58–3.62), is justified as, in practice, it could be endorsed by the vast majority of members of the pluralist UK society.¹⁴ We present further discussion on more detailed aspects of improving policy and the climate of debate about animal research in the next chapter.

¹⁴ Similar approaches can be found in other areas of bioethics-related policy: for example, although people in the UK have a *prima facie* right to confidentiality, this right can be infringed in cases where it is in the public interest, since it is accepted practice that medical records can be accessed without prior consent in the case of criminal investigations.