

# Open To Debate: Moral Consideration and the Lab Monkey

**Benjamin Hale, Environmental Studies Program and Philosophy Department,  
University of Colorado, Boulder**

It is not often that one reads of suggestions to reset the default presumption. Most moral theorists appear to ignore governing presumptions altogether, to assume that all actions take place within an ideal space of reasons, unsullied by presumption. But I think this is precisely the area that needs adjustment, and I have argued as much in other articles (Hale 2006a, 2006b, 2007, 2008). As Fiester (2008) rightly notes, the governing presumption of animal biotechnology research is that, in the absence of a good reason not to conduct research, anything and everything is on the table. With the burden of proof on the shoulders of those who oppose research, it is open season for animals until opponents have made their case.

On its face this smacks of the precautionary principle. Fiester (2008) does not clearly tease out the contours of the distinction between the precautionary principle and the presumption of restraint in her target article, and instead devotes only a few paragraphs to treatment of the distinction between the two. I think the distinction needs a sharper edge before I address what is really on my mind.

Despite first appearances, the precautionary principle functions differently than a presumption of restraint. The precautionary principle advocates only that when one acts, one should act with an abundance of caution. It thus advocates *in favor of* action, albeit action of a nimble and neurotic sort. Suggesting that one should presume restraint, on the other hand, advocates *against* action. It is, in Fiester's (2008) words, "a default principle that guides action in the absence of compelling, overriding reasons that speak in the action's favor" (36). She might better have said it is a principle that *restrains* action; that permits action only when it is justified. In effect, shifting the default presumption means that one must act with good reason, that one ought not to act *absent* a good reason.

I strongly agree that this is a first and important step in gaining traction among institutional review boards and other approval boards. Here is where I differ.

Fiester's (2008) argument works primarily along pragmatic lines. She suggests that for every outraged reaction to animal biotech experiments, there is a plausible retort from the optimist about experimentation. As a result of this, some ghastly experiments continue without input from these concerned and critical parties. She then introduces four claims that she believes most people would accept, followed by a set of facts that is incontrovertibly true about animals, all of which she then subjects to an extreme case of experimen-

tation as art. Following from this, we are directed to agree with her five ethical observations: 1) that this is serious business, 2) that some projects are reckless and unreflective, 3) that sometimes we overstep our boundaries and tread on the turf of the supernatural (?), 4) that sometimes experiments violate accepted norms and standards, and 5) that it is an expression of hubris to think otherwise.

Unfortunately, Fiester's (2008) pragmatic argument is not strong enough to justify flipping the default presumption from open season to restraint. The reason for this is that it operates along exactly the same lines as the logic that exasperates so many "knee jerk" opponents of animal biotechnology in the first place. In other words, Fiester's pragmatic argument purports agnosticism about both outcomes and principles; and, more importantly, does not offer a justificatory procedure that would aid a prospective animal biotechnologist in determining which projects are worth pursuing and which are not. In the mind of the animal biotechnology optimist, insisting upon a presumption of restraint is like requiring an executive chef to justify every decision that goes into *every meal*. Sure, certain culinary possibilities are off the table—such as cooking with human meat, endangered species meat, or pet meat—but outside of these obvious restrictions, any other ingredient is fair game. A presumption of restraint is either unnecessarily narrow-minded or a cumbersome crimp on the freedom of the chef. (See Hale 2008 for a more extensive discussion of this point and its relation, specifically, to the use of animals as art objects.)

The 'open season presumption' is only a problem if one *already thinks that it is a problem* that animals are used for biotechnology experiments, either because biotech experimentation will lead to bad or miserable outcomes, because it grates against our refined sensibilities, or because it involves playing God. It is therefore not clear from Fiester's (2008) argument why it is necessary to switch the default presumption at all, particularly if one is either an optimist about animal biotechnology or a proponent of scientific freedom.

What instead must be argued is that the project of animal biotechnology is essentially different than other endeavors that allow for open season presumptions. The *specific* considerations pertaining to affected entities must be demonstrated as both relevant and significant. For most of the history of ethics, this has involved making the generalized case for the moral status of certain entities—men, humans, mammals, and so on. Not surprisingly, Fiester (2008)

Address correspondence to Benjamin Hale, Center for Values and Social Policy/Department of Philosophy, University of Colorado, Boulder, Campus Box 232, 232 Hellems Hall, Boulder, CO 80302-0232. E-mail: bhale@colorado.edu

too assumes that this is the direction that one should naturally look. Indeed, in her article she throws up her hands and claims that “the moral status of animal species is far from settled,” and instead that “it is certain that they have the capacity to suffer” (36). But I think this claim assumes too much. Not only is it unclear whether suffering has ethical primacy, but it is also unclear whether one should abandon entirely the tack of seeking to establish moral status in order to guide action (as Rossi [2008] points out in his response). In fact, I think it is through this claim precisely that we can gain our purchase into the question of how to set the default presumption.

In earlier articles I too argued for resetting the default presumption: for a presumption of *consideration*. I proposed that a better way of approaching the moral status question, and thus the broader question of animal experimentation, is not as a question concerning the qualifying attribute of a given entity, but rather as three separate deontological questions rolled into one. Taking a cue from theorists such as Kenneth Goodpaster (1978), Onora O’Neill (1997), and Tim Hayward (1994), I proposed carving moral status into questions concerning 1) moral considerability, 2) moral relevance, and 3) moral significance. In this sense, *moral considerability* would relate to the default presumption, *moral relevance* to the relevance of any given consideration in a particularized context, and *moral significance* to the weight that we accord those relevant considerations.

The ground of this presumption, however, is not pragmatic. It is not that Nero must halt his fiddling and attend to the burning timbers of his city. It is instead deontological: that Nero is avoiding his obligation to act in a justified manner; and that he cannot possibly claim that his fiddling is justified *precisely because his reasons would not meet with the scrutiny of others*. Were he to take his case to his advisors, for instance, they would surely encourage him to attend to other matters.

If instead Fiester’s (2008) presumption of restraint is understood not as a restriction on action, but an obligation of the actor to seek justificatory validation, pace Habermas (1991) and/or Rawls (1951; 1974; 1980), as an obligation up to which the actor must live, then we can abandon altogether the pretense that there is no agreed upon standard for saying that one group of entities belongs or is excluded from the circle of the morally worthy.

The underlying question, therefore, is not whether we must reshape the default presumption, but what shape this presumption should take. If it is merely an injunction against acting, such that we must pause to spill wine on the altar of our subjects before we proceed with our plans to manipulate their genes, then it is a wafer thin injunction indeed. We restrain; and it is open season once again. If instead it is an injunction that requires us to call upon the full resources of reflection and justification—to subject our reasons for embarking on these experiments to the scrutiny of a wide, reflective community of genuinely concerned and rational interlocutors—then there is considerably more punch. It requires that we act with good reasons.

So, to summarize: I think Fiester (2008) is absolutely right to call our energies to the task of resetting the default presumption. It is, indeed, this default presumption that has gotten us in a great deal of hot water in areas extending well beyond animal biotechnology. I suspect I agree with her on much more than I disagree.

The fact is, we need a reason to act—and a good reason. The only standards we can employ with regard to these reasons are standards that meet with the scrutiny of others and that can pass stringent validity tests. The reason we need good reasons is because we ourselves are, essentially, reflective endorsers of reasons (Korsgaard 1996). We understand as justified actions those that have met or could meet with the scrutiny of a wide range of affected parties. If we deny this fact about ourselves, and thereby do not subject our reasons to open debate, then it is open season on the moral tundra. ■

## REFERENCES

- Fiester, A. 2008. Justifying a presumption of restraint in animal biotechnology research. *American Journal of Bioethics* 8(6): 36–44.
- Goodpaster, K. 1978. On being morally considerable. *Journal of Philosophy* 75: 308–325.
- Habermas, J. 1991. Discourse ethics. *Moral Consciousness and Communicative Action*. Cambridge, MA: MIT Press.
- Hale, B. 2006a. The moral considerability of invasive, transgenic animals. *Journal of Agricultural and Environmental Ethics* 19(2): 337–366.
- Hale, B. 2006b. Scape invaders: Transgenic animals, nature, and the ecoscape. In *Ecoscapes*, eds. G. Backhaus and J. Murungi. Lanham, MD: Lexington Books, 17–38.
- Hale, B. 2007. Mother Gruesome’s nursery. *Ogmios: Newsletter of the Center for Science and Technology Policy Research* 20: 1–3.
- Hale, B. 2008. Technology, the environment, and the moral considerability of artifacts. In *New waves in philosophy of technology*, eds. E. Selinger, J. K. B. Olson, and S. Riis. London, England: Ashgate.
- Hayward, T. 1994. Kant and the moral considerability of non-rational beings. In *Philosophy and the Natural Environment*, eds. R. Attfield and A. Belsey. Cambridge, UK: Cambridge University Press, 129–142.
- Korsgaard, C. 1996. The sources of normativity. Cambridge, MA: Cambridge University Press.
- O’Neill, O. 1997. Environmental values, anthropocentrism and speciesism. *Environmental Values* 6: 127–142.
- Rawls, J. 1951. Outline of a decision procedure for ethics. *Philosophical Review* 60(2): 177–197.
- Rawls, J. 1974. *Theory of Justice*. Cambridge, MA: Harvard University Press.
- Rawls, J. 1980. Kantian constructivism in moral theory. *Journal of Philosophy* 77(9): 515–572.
- Rossi, J. 2008. Toward a zoocentric animal ethics. *American Journal of Bioethics* 8(6): 50–52.