

From What Kind of Research Can They Dissent?

Distinguishing between Biomedical and Behavioral Research in Granting Dissent and Assent to Chimpanzees Used in Experimentation

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In his article “Can a Chimp Say ‘No’; Reenvisioning Chimpanzee Dissent in Harmful Research,” Andrew Fenton,¹ adopts the concerns found in pediatric bioethics in order to examine the morality of using chimpanzees in experimental research that is harmful to chimpanzees. Holly Kantin and David Wendler,² in “Is There a Role for Assent or Dissent in Animal Research,” also use some of the central concepts discussed in studies of consent in children to provide a justification for the ethical treatment of chimpanzees in research. All of these authors argue for granting chimpanzees the capability to dissent from participating in research. For the authors, dissent is the capacity that chimpanzees have to express an objection to what they are experiencing when subjected to experiments that produce distress, pain, or stress. The expression of this objection does not require complex cognitive capacities that allow chimpanzees to fully understand the research; chimpanzees participating in experiments are capable of dissent if they are capable of expressing their refusal. This expression of refusal can be made through different modes such as crying, refusing to stay still, or any other behavioral expression of stress, discomfort, or discontent.

The main differences between these authors are that, first, Fenton believes

that granting chimpanzees the capacity of dissent entails respecting agency in chimpanzees, because researchers would be respecting the expressed preference to not participate in harmful research. For Kantin and Wendler, respecting dissent in chimpanzees is a way of increasing the well-being of chimpanzees. Second, Fenton believes that it is impossible for chimpanzees to give their assent in experiments because they lack the cognitive capacities necessary to be fully aware of the purpose of the experiment and the fact that it could help other chimpanzees. Kantin and Wendler grant chimpanzees, under some circumstances, the capacity of assent. They argue for the importance of requiring an indication of a chimpanzee’s willingness to participate in research before engaging it in an experiment. Kantin and Wendler argue that in respecting assent we respect agency in chimpanzees, that is, we respect the capacity that chimpanzees have to shape their own life.

Fenton and Kantin and Wendler³ argue that ascribing dissent to chimpanzees involved in experimental research is in accordance with the *Chimpanzees in Biomedical and Behavioral Research: Assessing the Necessity*⁴ report presented to the National Institutes of Health (NIH) by the Institute of Medicine (IOM). This report argues that any future research using chimpanzees in

comparative genomics and behavioral research has to be implemented in such a way that only acquiescent animals are used. Moreover, evidence of acquiescence, as described in the IOM report, is similar to the behavioral evidence of dissent described by Fenton and Kantin and Wendler. For Fenton and Kantin and Wendler dissent is the capability to dissent from participating in research, the IOM report argues that “evidence of acquiescence includes situations in which animals do not refuse or resist research-related interventions and that do not require physical or psychological threats for participation.”⁵

Focusing on dissent is a promising avenue for understanding the moral status of animals used in experiments, in particular if some form of basic agency can be attributed to them. Moreover, focusing on dissent constitutes an interesting interpretation of the recommendations presented in the IOM report. However, there are several challenges that need to be met before the concept of dissent can be used in animal ethics, particularly in future guidelines for the use of nonhuman animals other than chimpanzees in experimental research. First, if Fenton’s and Kantin and Wendler’s arguments about dissent are applicable to the recommendations found in the IOM, they must explain why this respect for dissent applies only to comparative genomics and behavioral research. The IOM report offers two distinct guidelines for invasive biomedical research and comparative genomics and behavioral research: these guidelines request acquiescence for comparative genomics and behavioral research only. Thomas Beauchamp, Hope R. Ferdowsian, and John Gluck⁶ find this distinction among different types of research problematic because no clear morally relevant reasons are provided to justify the distinction, resulting in what the authors call “moral

incoherence”; in other words, the IOM report should have explained what allows researchers to produce more harm in biomedical research. Therefore, if Fenton and Kantin and Wendler want to argue for dissent in chimpanzees and argue that this is in accordance with the IOM, they must provide reasons that justify considering dissent for comparative genomics and behavioral research only.

In 2013, after accepting the IOM report, the NIH commissioned the *Council of Councils Working Group on the Use of Chimpanzees in NIH-Supported Research (CoC)*,⁷ a report on how to implement the principles and criteria described in the IOM report; the CoC report ultimately led to the historic NIH decision in 2015 of retiring all NIH chimpanzees from research. There are two elements unique to the CoC report that are not found in the IOM report, which I believe are closer to the arguments presented by Fenton and Kantin and Wendler. The CoC report recommends that there be no distinction among different kinds of research because, “[a]n implementation based on this dichotomy (comparative genomics and behavioral research) would require that less invasive, and potentially less harmful, behavioral research on chimpanzees meet the standard of acquiescence ...that in the current IOM rubric would not be applied to biomedical research, even though most biomedical research is more invasive.”⁸

The CoC report suggests that all future research has to be evaluated using the same principles; therefore, all chimpanzees used in research have to be acquiescent. In other words, this addition in the CoC report solves the concern presented in the IOM report about the implications of distinguishing between biomedical research and comparative genomics and behavioral research, and further emphasizes the importance of integrating, as with humans in

experimentation, some basic form of consent (or at least dissent) in the use of chimpanzees in experimentation. Therefore, given their failure to distinguish between comparative genomics and behavioral research, it may be argued that the notions of dissent argued by Fenton and Kantin and Wendler are applicable to the recommendations presented in the CoC (rather than the IOM report). Moreover, the elimination of this distinction removes the need to provide an account of why dissent is only applicable to behavioral research.

Furthermore, recommendation EA8 in the CoC report recognizes that one of the best ways of allowing the acquiescence promoted in the IOM report is positive-reinforcement training for veterinary treatment or other aspects of research in which “[a]nimals chose whether to participate or not on their own volition.”⁹ Therefore, the CoC report, not the IOM, report seems to be in accordance with Kantin and Wendler’s argument regarding assent.

However, if it is accepted that there should be no distinction between biomedical and comparative genomics and behavioral research, a new pragmatic problem arises. Following King,¹⁰ Beauchamp, Ferdowsian, and Gluck¹¹ hypothesize that the aim in the IOM report of maintaining the distinction among different types of research is to preserve biomedical research, because no chimpanzee would acquiesce to the painful procedures involved in biomedical research. Moreover, according to King, it is not possible to respect acquiescence in some kinds of biomedical research because once the research starts the animal may already be immobilized or injected with a harmful substance, and it is difficult, if not impossible, for the animal to withdraw from the experiment. Therefore, the discussion returns to distinguishing between behavioral and biomedical research, because it is

likely that chimpanzees would dissent from painful biomedical procedures, and, as a result, no painful medical procedures would be conducted in the future.

In the same vein, Fenton argues that respecting dissent is problematic because it would entail a great many chimpanzees dissenting from participation in experimental research. Kantin and Wendler also acknowledge the impossibility of withdrawing in many biomedical experiments, which would make dissent impossible in some cases. However, Fenton and Kantin and Wendler, even though they recognize these problems with respecting dissent from nonhuman animals, they dismiss them because they believe that these problems do not undermine the theoretical requirement of respecting dissent from experiments. Moreover, neither Fenton nor Kantin and Wendler offer a pragmatic solution to these problems. I believe that it is necessary to offer a more complex answer, particularly if, as Kantin and Wendler¹² argue, these notions of dissent and assent can be used as ethical guidelines for the use of other kinds of nonhuman animals.

Acknowledging from a pragmatic perspective that respecting dissent makes it impossible to conduct most kinds of painful biomedical research leaves two choices: either we as researchers cannot ask for dissent in animals involved in painful biomedical research, or we have to ban painful biomedical research. From a pragmatic perspective, the first choice undermines the requirement of respecting animal dissent from experiments; the second choice is unlikely to be accepted in the biomedical community. Neither of these options seems desirable; therefore, as researchers we need a pragmatic answer to the difficulties of respecting the dissent of nonhuman animals from biomedical research.

It may be argued that there is no need to answer these challenges given that in 2015, the NIH decided to no longer use chimpanzees for biomedical research. However, determining whether respect for dissent and assent played an important role in the NIH decision, that is, whether respecting dissent and assent played an important role in justifying the decision to stop using chimpanzees for experimental research, could advance the debate about whether it is morally acceptable to use other kinds of non-human animals in biomedical research, in particular whether future guidelines should include respect for dissent and assent in species that are capable of demonstrating these capacities as outlined earlier.

Notes

1. Fenton A. Can a chimp say 'no'? Reenvisioning chimpanzee dissent in harmful research. *Cambridge Quarterly of Healthcare Ethics* 2014;23: 130–9.
2. Kantin H, Wendler D. Is there a role for assent or dissent in animal research? *Cambridge Quarterly of Healthcare Ethics* 2015;24:459–72.
3. See note 1, Fenton 2014, at 135; note 2, Kantin, Wendler 2015, at 459–60.
4. Institute of Medicine (IOM). *Chimpanzees in Biomedical and Behavioral Research: Assessing the Necessity*. Washington, DC: The National Academies Press; 2011.
5. See note 4, IOM 2011, at 34.
6. Beauchamp TL, Ferdowsian HR, Gluck JP. Where are we in the justification of research involving chimpanzees? *Kennedy Institute of Ethics Journal* 2012;3:211–42.
7. Council of Councils working Group (CoC). *Council of Councils Working Group on the Use of Chimpanzees in NIH-Supported Research*, 2013; available at https://dpcpsi.nih.gov/sites/default/files/FNL_Report_WG_Chimpanzees_0.pdf (last accessed 1 July 2016).
8. See note 7, CoC 2013, at 41. The CoC also argues for eliminating this distinction because it entails a potential dichotomy between mental functioning and functioning components outside the central nervous system.
9. See note 7, CoC 2013, at 24.
10. King B. Retirement home or research lab? Report weighs fate Of U.S. chimpanzees. NPR Blogs, December 15, 2011; available at <http://www.npr.org/sections/13.7/2011/12/15/143735486/retirement-home-or-research-lab-report-weighs-fate-of-u-s-chimpanzees> (Last accessed 20 June 2016).
11. See note 6, Beauchamp et al. 2012.
12. See note 2, Kantin, Wendler 2015, at 468.