

## BETWEEN THE SPECIES

### Harming (Respectfully) Some to Benefit Others: Animal Rights and the Moral Imperative of Trap- Neuter-Release Programs

#### ABSTRACT

Because spaying/neutering animals involves the harming of some animals in order to prevent harm to others, some ethicists, like David Boonin, argue that the philosophy of animal rights is committed to the view that spaying/neutering animals violates the respect principle and that Trap Neuter Release (TNR) programs are thus impermissible. In response, I demonstrate that the philosophy of animal rights holds that, under certain conditions, it is justified, and sometimes even obligatory, to cause harm to some animals (human or nonhuman) in order to prevent greater harm to others. As I will argue, causing lesser harm to some animals in order to prevent greater harm to others, as TNR programs do, is compatible with the recognition of the inherent value of the ones who are harmed. We can, and do, spay/neuter cats while acknowledging that they have value in their own right.

CHERYL ABBATE  
University of Colorado, Boulder

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## Introduction

A fundamental tenet of the philosophy of animal rights is that it is wrong to harm beings with inherent value, including nonhuman animals, just so that we can “bring about the best aggregate consequences for everyone” (Regan 1983, 249). While this prohibition on harming individuals with inherent value for consequentialist reasons is an attractive element in the eyes of deontologists, it nevertheless is said to pose a serious problem for the philosophy of animal rights when it comes to some thorny moral issues, like the problem of animal overpopulation (Boonin 2003). David Boonin (2003), for instance, takes this prohibition on harming to imply that it is, at least in general, impermissible to spay/neuter cats (and dogs). As he explains:

After all, when we spay a cat we typically justify our act by saying that it is warranted because it will prevent others from suffering, not by claiming that it is in the cat’s own interest to be spayed. A common bumper sticker advocating spaying and neutering reads simply: “There are not enough homes for all of them. Spay or neuter your pet,” and I have yet to see one that says “sterilize your pets: they’ll be glad you did.” Yet justifying the imposition of costs on one animal by appealing to the benefits that this imposition will provide to others seems to be paradigmatic of the sort of position that is ruled out by a rights-based approach, even when the others involved are other animals and not human beings. (Boonin 2003, 1-2)

Since we intentionally harm individuals with inherent value to benefit (or prevent harm to) others when we spay/neuter, Boonin concludes that the philosophy of animal rights must

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hold that spaying/neutering animals violates their right to respectful treatment and that it is thus morally impermissible. Similarly, Clare Palmer claims that when we “desex” animals, we treat them as “instruments, as a means to an end, where the end is the good of the whole population or, more frequently, an easier life with the owner” (2006, 576). As a nonconsequentialist moral theory that emphasizes the moral importance of respecting individuals, it would seem that the philosophy of animal rights must condemn the practice of “de-sexing,” i.e., spaying/neutering, animals. However, as Boonin predicts, defenders of animal rights likely want to avoid such a commitment.

But is the philosophy of animal rights committed to the condemnation of Trap-Neuter Return (TNR) programs, that is, programs that capture free-living cats and spay/neuter them before releasing them back to where they were found? Assuming that TNR programs effectively stabilize cat populations by preventing, or at least combatting, feline overpopulation, I argue that the philosophy of animal rights provides resources for justifying TNR programs that are directed at managing cat populations, even when granting that spay/neuter procedures cause net harm to the ones who are spayed/neutered. After reviewing what the respect principle both prohibits and requires, I conclude that while the respect principle clearly forbids causing greater harm to (an) individual(s) with inherent value in order to avoid causing lesser harms to others, there’s reason to think it permits trade-offs that involve the causing of lesser harm to prevent greater harm. I moreover illustrate that, under certain conditions, the worse-off principle, which is derivative from the respect principle, *requires* moral agents to cause lesser harm to (an) individual(s) with inherent value in order to prevent greater harm to others. Given that TNR programs

cause lesser harm to some animals in order to prevent greater harm to others, the philosophy of animal rights is committed to the view that spaying/neutering cats, under certain conditions, is not only permissible, but morally obligatory.

### **Preliminary Remarks**

The discussion in this article is limited to a moral evaluation of TNR programs that aim at managing only cat populations. The moral issue of spaying/neutering dogs cannot be sufficiently addressed in this article, as this article investigates the permissibility of spaying/neutering animals only under the conditions in which free-living cats, i.e., cats who spend all or a portion of their time outdoors, find themselves. As Jessica Pierce notes, it's problematic to lump together cats and dogs in discussions about spay/neuter campaigns because the "population dynamics are very different for cats and dogs in the United States" (2016, 157). As she explains, while there are large populations of feral cats, there are relatively fewer feral dogs (2015, 157). The moral issues surrounding feral cat populations are thus distinct from the moral issues surrounding feral dog populations, so we ought to consider these issues separately. Due to space constraints, I cannot provide an answer in this article to the question of whether, or when, it is permissible to spay/neuter dogs. Because of this, the following discussion about the ethics of spaying/neutering free-living cats ought not to be used in an attempt to generate a conclusion about the ethics of spaying/neutering dogs.

While I ultimately conclude that TNR programs that aim at managing cat populations are morally required, according to the philosophy of animal rights, this does not imply that it is permissible for individuals to spay/neuter cats living in their homes, provided that these cats lack the opportunity to

procreate. Since indoor-only animals who do not have the opportunity to procreate do not contribute to the threat of animal overpopulation, spaying/neutering these animals would indeed violate their rights, provided that Boonin (2003) is right that spaying/neutering is an all-things-considered harm to the ones who undergo either of these procedures. When an individual spays/neuters an animal in order to turn the animal into a better or “more amenable companion,” that individual expresses an attitude of instrumentalism, which is categorically forbidden by the philosophy of animal rights (Palmer 2006, 576).

### **Respectful Treatment and the Prima Facie Duty not to Harm**

To get his animal rights theory off the ground, Regan postulates the notion of inherent value, which is said to be a distinctive kind of value possessed equally by all experiencing subjects-of-a-life (humans and nonhumans), that is, beings who “have beliefs and desires, who perceive, remember, and can act intentionally, who have a sense of the future, including their own future (i.e., are self-aware or self-conscious), who have an emotional life, who have a psychophysical identity over time, who have a certain kind of autonomy (namely, preference-autonomy), and who have an experiential welfare” (Regan 1983, 153). According to Regan, we can be confident that conscious mammals (human and nonhuman) over the age of one are experiencing subjects-of-a-life and that they thus have inherent value.

To say that a being has inherent value is to say that the being has value that is distinct from and incommensurate with the intrinsic value of that being’s experiences, like pleasures or preference satisfactions (Regan 1983, 235). An individual who has inherent value has value in-and-of-herself, which means that

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she has value even if she has no intrinsically valuable experiences and even if her existence provides no benefit to others. The respect principle, which rests on the postulate of inherent value, demands that we treat individuals with inherent value “in ways that respect their inherent value” (Regan 1983, 248). It is a matter of strict justice that individuals are given their due, and what they are due is equal respect of their inherent value. Individuals with inherent value thus have a fundamental right to respectful treatment, and all moral agents are said to possess a fundamental duty to treat those who possess inherent value with respect (Regan 2003, 68). The right to respectful treatment is not just fundamental; it is also absolute, as we are never justified in ignoring or overriding this right (Regan 1983, 286).

Regan’s account of respect borrows the Kantian idea that we cannot treat those with inherent value as “mere means to securing best aggregate consequence” (Regan 1983, 249). In describing how moral agents violate the respect principle, Regan explains:

[W]e fail to treat individuals who have inherent value with the respect they are due, as a matter of strict justice, whenever we treat them *as if they lacked* inherent value, and we treat them in this way whenever we treat them *as if they were mere receptacles* of valuable experience (e.g., pleasure or preference satisfaction) or *as if their value depended upon their utility* relative to the interests of others. (Regan 1983, 248)

This passage implies that there are two different ways in which we might treat individuals with inherent value as mere means, thereby violating the respect principle: when we treat them as “mere receptacles of value, lacking any value in them-

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selves” (Regan 1983, 259), *or* when we treat them as “having value only relative to the interests of others” (Regan 1983, 345). In other words, we fail to treat experiencing subjects-of-a-life with the respect they are due when we treat them as mere receptacles *or* as resources.

Regan explains that we treat individuals with inherent value as *mere receptacles* when “*their* goods (e.g., their pleasures) and *their* harms (e.g., pains) are viewed as being *directly morally relevant* to the determination of what ought to be done,” yet the harm done to them is assumed to be justified if “the best” aggregate consequences are produced (Regan 1983, 345). For instance, a Utilitarian might view rodeo animals to be mere receptacles when, in their moral deliberations about the permissibility of rodeos, they acknowledge that the pain and suffering of rodeo animals is morally relevant, but they nevertheless go on to conclude that it is permissible to harm animals in rodeos, provided that rodeos produce a significant amount of pleasure for rodeo-viewers and that this aggregate of pleasure experienced by rodeo-goers “outweighs” the pain caused to the relatively few animals used in rodeos.

We also violate the respect principle when we treat individuals with inherent value as *resources*, which occurs when we treat individuals “*as if their value depended upon their utility* relative to the interests of others” (Regan 1983, 248). When we treat individuals as resources or things, we assume that “*their* goods and *their* harms can have no *direct* moral significance,” essentially reducing them to the status of things (Regan 1983, 345). We not only find it permissible to harm individuals in order to bring about the best aggregate consequences, but we also treat the harm inflicted upon them as morally insignificant. Later in *The Case*, Regan points out that our society often

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treats nonhuman animals not just as resources, but as *renewable resources*. Take factory farmed animals, for example. We treat these animals as *resources* because we assume that their value is “contingent upon their utility relative to the interests of others,” and we treat them as *renewable* because we treat them as replaceable; after we kill them, we replace them with other similar beings. And as Regan notes, to treat or view animals as renewable resources is to view them “*as even less than mere receptacles*,” and thus “it is an even greater injustice” to treat animals like renewable resources (Regan 1983, 345).

Whether we treat an experiencing subject-of-a-life as a mere receptacle of value *or* as a resource, we treat the being as a *mere means*, thereby violating the respect principle. So, we must ask: in what sense do we allegedly violate the respect principle when we spay/neuter cats? To state the obvious, we certainly do not treat cats who are spayed/neutered as resources, as we do not act as if the harms that cats endure through the spay/neuter process lack moral significance. After all, one priority of a veterinarian is to minimize the pain and suffering experienced by those who are spayed/neutered. For instance, animals are under anesthesia when they are spayed/neutered, even though it would be cheaper to perform these procedures without using anesthesia. Those who request that a veterinarian spay/neuter an animal would be morally outraged if they learned that the veterinarian withheld pain relief to the animals on whom they operate. Moreover, cats who are spayed/neutered by TNR programs are released back to the location where they were found so that they can go on to enjoy the remainder of their lives. The reason why animal protection agencies opt for spaying/neutering cats instead of killing them is because they recognize that the lives of cats are valuable and that the goods they might experience are morally significant. So if spaying/neutering in-



volves a rights violation, the violation must occur because the ones who are spayed/neutered are treated not as resources, but as *mere receptacles*. In what follows, I argue that although cats who are spayed/neutered are harmed in order to prevent harm to others, TNR programs do not violate the respect principle, as those who are spayed/neutered are not treated as mere receptacles. In support of this claim, I begin by providing a detailed review of Regan's account of both impermissible and permissible harms, which will clarify what it means to treat someone as a mere receptacle.

### **Impermissible Harms & Aggregative Computations**

The respect principle imposes the harm principle, which declares a prima facie duty not to treat individuals with inherent value in ways that detract from their welfare (Regan 1983, 262). According to the philosophy of animal rights, it follows that we have a prima facie negative duty not to harm individuals with inherent value, and individuals with inherent value have a prima facie right not to be harmed. But it does not follow that we ought never to harm individuals with inherent value. After all, not every instance of harming constitutes a rights violation. The philosophy of animal rights thus acknowledges that the right not to be harmed is not absolute, and thus it can be overridden by competing moral concerns.

To determine if a given harm constitutes unjust treatment, we must ask whether the one who is harmed is treated disrespectfully. And to determine this, we must consider the *reason* why the harm is produced. As John Atwell suggests, an agent's attitudes are relevant in determining if she has treated another disrespectfully (Atwell 1986, 112). The philosophy of animal rights, too, is concerned not just with disrespectful treatment,

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but also with disrespectful *attitudes*. It holds that we fail to act in accordance with the respect principle when we treat or *view* an individual with inherent value merely as a mere receptacle of what has value or as a resource (Regan 1983, 249). As R.S. Downie and Elizabeth Telfer note, “if a person has a certain attitude towards something he will necessarily adopt certain principles of action towards it other things being equal, and the general nature of the principles can be inferred from knowledge of the attitude” (Downie and Telfer 1970, 16). Likewise, the philosophy of animal rights holds that we can determine whether a harmer violates the respect principle by evaluating his attitude toward the one he harms and by considering his reason for causing the harm.

While, under certain conditions, the injunction against harming individuals with inherent value can be permissibly overridden, the rights view holds that it is impermissible to cause harm “on the grounds that all those affected by the outcome will thereby secure “the best” aggregate balance of intrinsic values (e.g., pleasures) over intrinsic disvalues (e.g., pains)” (Regan 1983, 286). When we harm individuals with inherent value *in order to produce optimal consequences* for all concerned, we treat them like mere receptacles, failing to treat them with the respect they are due (Regan 1983, 249, 261, 277, 393). Thus, what the injunction against viewing or treating individuals with inherent value as mere receptacles implies is a prohibition on harming individuals with inherent value *in order to produce optimific results* for all those affected by the outcome.

The philosophy of animal rights thus rejects the minimize harm principle, which is the consequentialist principle that says when we are in a situation that presents us with options

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that all produce some amount of harm to innocent others, we ought to choose the option that produces the least total sum of harm (Regan 1983, 302). Consider the following hypothetical scenario that is entertained by Regan, which provides us with three choices:

We may harm A quite radically, or we may harm a thousand others in a modest way, or we may do nothing, in which case both A and the thousand will be harmed as described. Suppose we could place numerical values on the harms in question. A's harm equals, say, -125; the aggregate of the thousand, each of whom will be harmed at a value of -1, is -1,000; and the aggregate of both, then, is -1,125. (Regan 1983, 302)

In this situation, which alternative should we choose, asks Regan? If we use the minimize harm principle to answer this question, we will find that we ought to harm A. Yet, as Regan declares, "that seems grossly unfair" (Regan 1983, 302). The quality of the life of A "would be in shambles" if we choose that option, whereas the welfare of the thousand others would be only modestly diminished if we opted for harming them (Regan 1983, 302). What we ought to do, says Regan, is spare A gross harm and spread the harm around by choosing to harm the thousand. The assumption here seems to be that the minimize harm principle is not a valid moral principle *because* the philosophy of animal rights forbids causing greater harm to (an) individual(s) with inherent value in order to avoid causing lesser harms to others that, when aggregated, "outweigh" the greater harm. The philosophy of animal rights forbids this type of trade-off because when we cause great harm to an individual just to prevent lesser harms to others that, when aggregated, outweigh the harm caused to the one, we treat the

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harm one, at the very least, as a receptacle of what has value. The individual is assumed to have no value of her own; she can be harmed greatly or altogether destroyed if this prevents a number of lesser harms to others that, when added together, “outweigh” her losses.

Regan writes elsewhere that we cannot justify causing serious harm to a cow just because others would receive relatively trivial culinary rewards from killing, cooking, and eating the cow. As he explains, even if, after we add up the total culinary benefits that might be produced by killing and eating a cow, we find that the total benefits greatly outweigh anything the cow has been made to endure, it would still be impermissible to kill and eat a cow because, as Regan puts it, we cannot justify “imposing a prima facie greater harm on a given individual if the aggregate of the lesser harms done to others happens to outweigh the total harm done to the individual” (Regan 1983, 336). This discussion lends further support to the view that what is fundamentally wrong with using aggregative computations is that this kind of moral mathematics permits moral agents to cause greater harm to one individual in order to avoid causing lesser harms to others that, when added together, “outweigh” the greater harm imposed upon the individual.

The prior discussion in this section demonstrates that the respect principle categorically forbids at least one specific type of trade-off: *a trade-off that causes greater harm to (an) individual(s) with inherent value in order to avoid causing lesser harms to (or to modestly improve the welfare of) others.* But this does not imply that *all* trade-offs are impermissible. So if we are to use Regan’s discussion of the respect principle to definitively claim that TNR programs are impermissible on the rights view, it must be the case that TNR programs cause

greater harm to some animals in order to spare others lesser harms (or to moderately improve the welfare of others). But this isn't what happens when TNR practices are implemented. Rather, as I will later demonstrate, TNR programs cause lesser harm to some animals in order to prevent *greater* harm to others. Indeed, the aim of TNR programs is to reduce the serious harms that invariably accompany overpopulation, such as ferality, hunger, lack of shelter, ill-health, and premature death. Yet in his discussion of the respect principle, Regan does not claim that it is wrong to cause lesser harm to individuals with inherent value in order to prevent greater harm to others. Consequently, it's possible that the philosophy of animal rights, as it is described by Regan, rejects the view that TNR programs are impermissible.

### **The Worse-Off Principle, Comparable Harm, and Permissible Harms**

In the previous section, I argued that Regan's discussion of the respect principle can't be used to definitively say that TNR programs are impermissible. Regan's discussion of the respect principle is limited to a discussion about a particular type of trade-off where (an) individual(s) is harmed in order to prevent *lesser* harms to others, and TNR practices do not involve this type of trade-off. But, one might ask, what about trade-offs that involve the causing of lesser harm to some in order to prevent greater harm to others? Perhaps this type of trade-off also violates the respect principle, even though Regan did not explicitly say so. Consequently, it still could be the case that TNR programs involve a type of trade-off that is also forbidden by the philosophy of animal rights.

In response, I argue that Regan's conception of animal rights holds that, under certain circumstances, it is obligatory to cause

harm to (an) individual(s) with inherent value in order to avoid causing greater harms to others, and this implies that TNR programs are not only permissible, but obligatory. Indeed, the philosophy of animal rights does not claim that whenever we harm an individual in order to prevent harm to others, we treat the individual like a mere receptacle of value, lacking any value in her own right. Quite the contrary, the philosophy of animal rights endorses moral principles that sanction the harming of some individuals with inherent value in order to prevent greater harm to others, under certain conditions. For instance, the liberty principle holds that “any innocent individual has the right to act to avoid being made worse-off even if doing so harms other innocents,” so long as the respect principle is not violated, which implies that the respect principle is compatible with the view that, under certain conditions, it’s permissible to harm others in order to benefit another (in this case, the self) (Regan 1983, 331). Moreover, the philosophy of animal rights acknowledges that some trade-offs are not only permissible, but *obligatory*. Consider the moral guidance offered by the worse-off principle, which, according to Regan, is derivable from the respect principle:

*Worse-off principle:* Special considerations aside, when we must decide to override the rights of the many or the rights of the few who are innocent, and when the harm faced by the few would make them worse-off than any of the many would be if any other option were chosen, then we ought to override the rights of the many. (Regan 1983, 308)

The worse-off principle applies in “prevention cases,” which refer to situations in which, “no matter what we decide to do—and even if we decide to do nothing—an innocent subject-of-

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a-life will be harmed” (Regan 1983, xxviii). In a prevention case that involves incomparable harms, Regan claims that we ought to choose to cause the lesser harm in order to avoid making some worse-off than others, even if this results in harming “the many.” But, as Regan insists, we should not appeal to an “aggregative computation” to justify the harm that we might impose upon another. That is, our reason for causing harm should never be that the aggregated consequences of making this choice would be better. Rather, when it comes to prevention cases that involve unequal harms, we ought to settle the conflicts by appealing to the notion of *comparable harm*.

In defense of the worse-off principle, Regan writes:

To say that two individuals, M and N, have an equal right not to be harmed, based on the equal respect each is owed, does not imply that each and every harm either may suffer is equally harmful. Other things being equal, M’s death is a greater harm than N’s migraine. If we are to show equal respect for the value and rights of individuals, therefore, we cannot count a lesser harm to N as equal to or greater than a greater harm to M. To show equal respect for the equal rights of the two, one must count their equal harms equally, not their unequal harms equally, a requirement that entails, other things being equal in prevention cases, that M’s right override N’s when the harm to M would be greater if one choice were made than the harm done to N would be if another option were chosen. (Regan 1983, 309)

Regan’s claim is that when there is a prevention case that involves unequal harms, those who are vulnerable to greater harms ought not to be harmed. As he explains, “[i]t is not the

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aggregate balance of goods and evils for all those affected by the outcome that is decisive; it is the magnitude of the harm done to the individuals directly involved that is” (Regan 1983, 314). In determining whether it is justified to inflict harm upon an individual with inherent value, we ought to evaluate the magnitude of the harm and compare the seriousness of the harm to the other relevant harms, but we ought not to consider the aggregate consequences in this decision. Thus, when we have a choice between two or more options that all cause harm to innocent others and one of these options will make (an) individual(s) worse-off than the others, then we must not cause the harm that makes (an) individual(s) worse-off than the others (Regan 1983, 313). In prevention cases, we ought to cause the lesser harm.

As Alan Clune rightly notes, Regan intended for the worse-off principle to be used in “true-life boat cases,” that is, cases that involve a group of individuals who “naturally share equally in a set of threatening circumstances, as opposed to being purposely placed in such circumstances” (Clune 1996, 35). On Regan’s view, in order for a conflict to be characterized as a prevention or life-boat case, two conditions must obtain. First, none of the parties in the conflict situation can be “involved” in the conflict just because their rights were violated. That is, none of the parties can be there “as a result of being treated with a lack of respect” (Regan 1983, xxxi). Second, the individuals involved just “happen” to find themselves in a situation where all will be harmed if some action is not taken (Regan 1983, xxxi). Given these conditions, animal exploitation, including animal research, cannot be justified on the grounds that it is a type of “prevention case.” First, animals used for biomedical research are purposely placed in research labs. Mice do not just wander into a researcher’s lab, forcing researchers to choose between



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killing a mouse and saving a child with disease. Second, it's not the case that *everyone* involved in the biomedical research "conflict" will be harmed if some action is not taken. Indeed, the research subjects would do quite well if action is not taken, that is, if the researchers altogether refrained from experimenting on them. Setting aside exploitative environments, where "conflicts" are artificially constructed due to a violation of rights, every time we are in a situation where we can harm one to prevent harm to others, we are possibly in a "life-boat" predicament.

### **An Impurrfect Lifeboat**

From Regan's discussion of prevention cases and the worse-off principle, it's clear that the philosophy of animal rights implies the following:

*When we find ourselves in a prevention case where we can prevent greater harm to (an) individual(s) by causing lesser harm to another individual(s), we ought to do so.*

This, in turn, implies that we ought to spay/neuter free-living cats, as TNR programs do. As I will argue in this section, the situation involving free-living cats and the threat of animal overpopulation qualifies as a prevention case and, moreover, TNR programs prevent greater harm to some free-living cats by causing lesser harm to others. As I proceed, I assume that spaying/neutering is the least harmful way of managing effectively cat populations, although later I consider the possibility of using less harmful sterilization procedures and the moral imperative of pursuing such alternatives in lieu of the standard spay/neuter operations employed in the United States today. However, since we lack sufficient evidence that these alterna-

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tives are equally effective at managing cat populations, I grant that it is morally responsible to assume, until further research is conducted, that the best available method of sterilizing animals is spaying/neutering. But even so, TNR programs still ought to investigate the possibility of less harmful alternatives.

When it comes to the question of how we ought to approach the moral issue surrounding free-living cats and the threat of overpopulation they face, we have two choices: first, we can cause harm to some of them by spaying/neutering them in order to manage populations, or we can do nothing and permit cat populations to proliferate, which inevitably will lead to an increase of serious harms that many, if not all, free-living cats will endure, including illness, starvation, territorial conflicts, and premature death. Yet, one might claim that domestication is unjust, and thus domesticated animals are, by default, victims of injustice, and, consequently, free-living cats are party to the conflict as a consequence of having their rights violated. As Kylmicka and Donaldson claim, “domestication has been characterized by the coercive confinement, manipulation, and exploitation of animals for the benefit of humans” (2011, 73). The objection, then, is that since free-living felines are allegedly party to the conflict because they have been treated unjustly, the situation involving free-living felines does not constitute a prevention case.

Even if we grant that the human domestication of animals is always unjust, it does not follow from this that free-living cats who were conceived thousands of years after the domestication process took place have had their rights violated merely in virtue of being conceived by another domesticated animal or in virtue of being descendants of animals who were, at one point, allegedly treated unjustly. Moreover, there’s evidence

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that, in some sense, cats domesticated themselves, choosing to live with humans thousands of years ago, and thus the original domestication of cats is said to have happened without coercion, as cats likely were willing participants in the domestication process. After all, thousands of years ago, cats voluntarily entered human farming spaces during the period of agricultural development and they soon developed what some would say is a mutually beneficial relationship with humans (Driscoll et al., 2007). Farmers provided cats, who entered human agricultural spaces in an effort to hunt and eat the rodents living on farms, with warmth and food in exchange for keeping the rodent population in check. This marked the beginning of the feline-human relationship, which was centered around food, and the beginning of feline domestication. It's thus likely that feline domestication was unintentional and, moreover, that the domestication of felines does not signify injustice.

While cat breeders violate the rights of cats when they imprison them and often times forcibly impregnate them, the majority of free-living cats alive today are not the victims of kitten mills or breeders. But should we come across free-living cats who we have good reason to believe are victims of forced breeding, we ought to refrain from spaying/neutering these animals given their potential status as victims of injustice. However, even if morality demands that we refrain from spaying/neutering these animals if doing so is not for their own good, this does not entail that it's impermissible to spay/neuter cats who haven't been treated unjustly, which seems to be the case for the majority of free-living cats.

In understanding how the situation involving free-living felines constitutes a prevention case, we ought to further bear in mind that currently existing cats face the dangers that accom-

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pany overpopulation. If we ceased TNR practices today, many, if not all, free-living cats who currently exist will themselves endure the negative impacts of overpopulation. For instance, ceasing spay/neuter operations will, in the lifetime of currently existing cats, lead to enlarged feral cat communities, and thus an increase in disease, hunger, and conflicts over territory and food, all of which are seriously harmful. Moreover, some of the cats who currently exist will face the harm of premature death because, given that many unwanted feral cats end up in animal shelters, kill-shelters will increase the number of cats they kill as intake increases due to the rise of feral cat populations. Currently, in the United States alone, animal shelters kill 2.4 million healthy cats and dogs each year in order to prevent overpopulation (Humane Society of the United States 2017). If the number of free-living cats increases, wildlife agencies, like the American Bird Conservancy, will insist that more feral cats be taken to local animal shelters. And, as Julie Levy and Cynda Crawford suggest, “a large influx of feral cats removed from the environment would crowd shelters and increase euthanasia of both feral and friendly homeless cats” (2004, 1357). Essentially, an increase in free-living cats leads to an increase in shelter intake and, ultimately, an increase in feline-killing. We can only expect that the first to be killed in shelters are those who are “less adoptable,” including older feral cats who are difficult to socialize, that is, the very animals who were alive at the time the decision was made to halt spay-neuter practices. This is to say that *currently existing* cats are “at risk” from the serious harms that stem from overpopulation. Consequently, when we spay/neuter, we do not “transfer” risk that future existing cats will face in a world without trap-spay-neuter release programs to the current population of cats. Cats who exist *at this moment*, themselves, face the risk of serious harm that would manifest in a world without spay-neuter programs.

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Because TNR programs reduce the number of cats ending up in overloaded, high-kill shelters, a large-scale TNR effort is a core and effective strategy for reducing the number of healthy animals killed in shelters (Levy and Crawford 2004). For instance, in 2011, the County of Santa Clara's Animal Care & Control Division reported that their TNR program caused a 15% reduction in cat intake and a 65% reduction in cat euthanasia (County of Santa Clara 2012) and, throughout the U.S., counties that have implemented TNR programs report a similar decline in shelter killing. These findings explain why TNR programs are rightly described as alternatives to trap-and-kill methods of controlling feline populations, which would harm seriously felines living today in the absence of TNR programs.

Given what's been argued, we ought to conclude that the situation involving free-living cats qualifies as a prevention case. So the question we must ask is this: are the harms produced by overpopulation greater than the harms produced by spay/neuter procedures? As Boonin notes, animals who are spayed/neutered experience a number of nontrivial harms, such as anxiety, fear, and terror when they are transported and exposed to the unfamiliar environment at the veterinarian's office, and general disorientation, nausea, and physical discomfort, which last for several days after the spay/neuter procedure (2003). Moreover, animals who are spayed/neutered might be subject to deprivational harm. While, as Palmer points out, "[w]e cannot know whether de-sexing matters to a cat or dog, and if it does, how much and in what ways," it is possible that the pursuit and act of sex, along with the experience of carrying and raising offspring, are enjoyable for cats (2006, 576). Bernard Rollin, for one, speculates that animals "probably enjoy sexual congress as much as we do" (2006, 305). There's good reason to think that Boonin is right in claiming that if there are any benefits

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to the animals who are spayed/neutered, such as the alleged reduced risk of breast cancer, these benefits do not outweigh the costs imposed upon them.

Perhaps, then, it is the case that because spaying/neutering both causes a series of physical harms and denies the ones who are spayed/neutered potential sources of satisfaction, such procedures cause non-trivial harm. But even if this is so, the harms that free-living cats face in a world without population management, especially the harm of premature death, are arguably greater. While spaying/neutering may deprive animals of various opportunities for satisfaction, death is the ultimate harm because it deprives the one who dies of *all* opportunities for satisfaction (Regan 1983). Anyone who lives with a spayed/neutered cat can attest to the fact that desexed cats go on to enjoy a wide array of satisfactions and that their lives are certainly worth living. Because of this, if we have a choice to spay/neuter them or kill them (or allow them to die), we certainly ought to opt for spaying/neutering them, for their own sake. When it comes to the moral predicament surrounding free-living felines, we are faced with a choice between causing the lesser harm of spaying/neutering or permitting the proliferation of overpopulated feral cat communities, where disease, malnutrition, conflict, and premature death run rampant. The life-boat logic implies that we ought to cause the lesser harm of spaying/neutering, rather than allow the tragic and more serious harm of overpopulation to materialize.

Now that we have a better understanding of what type of harm is impermissible and what type of harm is permissible, according to the rights view, let us return to the claim that the philosophy of animal rights implies that spaying/neutering animals is categorically wrong. Boonin argues that in defense of

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the practice of spaying/neutering animals, “[t]he benefits we appeal to are simply those which follow from reducing the population of unwanted animals: less overall suffering” (Boonin 2003, 2). But, as he continues, “if cats and dogs have the right to respectful treatment, then these benefits cannot provide a moral warrant for our behavior” (Boonin 2003, 2). The assumption here is that when we spay/neuter animals, we harm individuals just so that we can “bring about the best aggregate consequences for everyone” (Regan 1983, 249).

Let us assume that it is true that the animals who are spayed/neutered are harmed and that the harm inflicted upon them is not for their own sake, but to prevent harm to others. And let us assume that it is true that the aggregate of harm that will result when cats are spayed/neutered is less serious than that would result if we allow the harm of overpopulation to manifest. We still cannot move from either the claim that spaying/neutering cats reduces aggregate harm or the claim that cats who are spayed/neutered are harmed in order to prevent harm to others to the claim that spaying/neutering constitutes a violation of the respect principle. As I’ve demonstrated, it is not the case that every time we harm some individuals to prevent harm to others, we use an aggregative computation to justify that harm. Sometimes, we appeal to the notion of comparable harm. Moreover, when it comes to prevention cases, the philosophy of animal rights *requires* moral agents to harm (an) individual(s) with inherent value in order to prevent *greater* harm to others. We cannot, then, conclude that spaying/neutering cats is wrong just because it involves the harming of some animals in order to prevent harm to others. Regan’s discussion of the worse-off principle and prevention cases implies that there is a moral imperative to implement TNR practices, when doing so is needed to manage effectively free-living cat populations.

### **Serious Harms and Basic Rights**

While the argument in the previous section appeals to Regan's claim that in prevention cases, we ought to cause lesser harm to some in order to prevent greater harm to others, the discussion that follows proposes that instead of thinking in terms of "lesser" and "greater" harms, we think in terms of "basic" and "non-basic" interests and rights. After all, the discussions surrounding the respect principle, the minimize harm principle, and the worse-off principle imply that we treat an individual with inherent value like a mere receptacle when we sacrifice what Henry Shue refers to as an individual's "basic rights" in the name of another's non-basic interests.

Shue explains that rights are basic insofar as "enjoyment of them is essential to the enjoyment of all other rights... basic rights are the morality of the depths. They specify the line beneath which no one is to be allowed to sink" (Shue 1980, 18-19). I take basic rights to be rights that protect basic interests and non-basic rights to be rights that protect what Donald VanDeVeer refers to as "peripheral interests" (1979). While basic interests are those interests that must be satisfied in order for a being to function in a "minimally adequate way," peripheral interests are those that allow a creature to thrive in some way if they are satisfied, but they aren't required for minimally adequate functioning. As VanDeVeer notes, peripheral interests can be serious or trivial, whereby serious interests are those that are not basic, but not frivolous either (1979, 61). Yet even though some peripheral interests may be serious, basic interests are always weightier than all peripheral interests, as basic interests are required for "minimally adequate functioning."

There are three basic rights, says Shue: the rights to subsistence, physical security, and, liberty. Although Regan does not



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use the language of “basic rights,” his writings indicate that he has something similar in mind in *The Case*. Regan claims that rights protect three fundamental goods or vital needs: our lives, our bodies, and our freedoms (Regan 2003, 75). It would seem, then, that the rights to life, body, and liberty are basic for the philosophy of animal rights, too, as the substances of these rights are fundamental goods. Gary Francione, who advances a theory of animal rights that shares Regan’s abolitionist goals, points out that “[i]f animals are to have any rights at all (other than merely legalistic or abstract ones to which Shue refers), they must have certain basic rights that would then necessarily protect them from being used for food, clothing, or experiments” (2003, 8). It thus seems that the notions of “basic rights,” “fundamental goods, and “basic interests” have normative force in the philosophy of animal rights. And since these notions help clarify what is fundamentally at stake in the animal ethics discourse, animal rights theorists ought to emphasize that the respect principle implies that *it is wrong to sacrifice an individual’s fundamental goods or basic rights in the name of non-basic goods or non-basic rights*. Moreover, the philosophy of animal rights ought to make clear that *in prevention cases, the worse-off principle requires us to sacrifice an individual’s non-basic interests (or non-basic rights) when doing so is necessary to preserve the basic interests of another*.

Cats who are spayed/neutered by TNR programs go on to enjoy and exercise a wide array of rights, including the right to roam about and the right to track and hunt prey. If cats are spayed/neutered, it doesn’t follow that, as a consequence of this operation, they will be unable to function in a minimally decent way. Although spaying/neutering animals might deprive them of the opportunity to thrive in the way that they would were they not desexed, these animals are still able to enjoy a

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good quality of life, as other opportunities for satisfaction remain open to them. Since the right not to be spayed/neutered does not protect a fundamental good or basic interest, the right not to be spayed/neutered should be characterized as non-basic. This is not to deny that cats have a morally important interest in sexual activity or procreation. It is possible that animals “enjoy sexual congress as much as we do” (Rollin 2006, 305) and that they would derive satisfaction from the process of producing offspring (Palmer 2006, 576). My account leaves open the possibility that cats have a serious, but non-basic, interest in not being spayed/neutered. All that is claimed is that this interest is not basic, and thus it is less weighty than basic interests, like the interest in avoiding unrelenting pain and suffering or the interest in remaining alive.

But even though the right not to be spayed/neutered is non-basic, TNR programs ought to employ less invasive or less aggressive sterilization methods, if they are available. Some animal ethicists speculate that there are sterilization options that allow some animals to retain their drive for sex, if they do have one at all. For instance, Rollin proposes that we use vasectomies to sterilize male cats instead of castration (2006, 305), and Pierce suggests that we opt for tubal ligation or ovariectomies to sterilize female cats, which involves the removal of just the ovaries, instead of ovariectomies, which involves the removal of both the ovaries and uterus (2016, 156). As Rollin rightly argues, we ought to do what we can to minimize the potential harm that animals face when we forcibly sterilize them. One virtue of Boonin’s article is that it, too, challenges the unquestioned view that no costs are imposed upon animals who are spayed/neutered. As Pierce remarks “there is a tendency to oversimplify the issue of spay/neuter and to promote the essential benefits without recognizing that our animals do

suffer some harm...we owe it to them to acknowledge their losses” (2016, 158). Likewise, I recognize that even though forcible sterilization can be justified under certain conditions, this does not imply that all sterilization procedures are permissible. Surely respect for our feline neighbors requires that we sterilize them in the least harmful way possible and that we dedicate time and energy to exploring ways in which this may be accomplished.

### **Implications for Biomedical Research**

If TNR programs are justified, does it follow that it is permissible to perform biomedical research on animals, if the research is aimed at preventing serious harm to humans? Regan himself claims that rational humans are harmed more by death than other animals, thus we might conclude, as Gary Varner does, that “if we knew by performing fatal research on a given number of animals we could save even one human life, then the worse-off principle would apply, and it would require us to perform the research” (1994, 27). After all, one might argue, the “lesser” harm caused by animal research is done in the name of preventing greater harm to humans.

As I indicated earlier in this article, even when granting the claim that the goal of biomedical research is to promote the basic interests of humans, most research on animals still violates the respect principle. There are morally salient differences between the harm produced by spaying/neutering and the harm produced by biomedical research on animals. To state the obvious, most biomedical research thwarts the basic interests of laboratory animals, as these animals are subject to perpetual injuries to and assaults on their bodies, permanent confinement, and often death. And, as Aaltola notes, “[s]ince most animal experimentation involves much more extreme suffer-

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ing than what human beings would have to undergo when ill... much of it would lack justification even when aimed at serving primary [or basic] human interests” (2012, 113). Moreover, laboratory animals are treated not just as resources for us, but as *renewable resources* (Regan 2003, 97). As Regan writes, “animals used in research are routinely, systematically treated as if their value is reducible to their usefulness to others, they are routinely, systematically treated with a lack of respect; thus are their rights routinely, systematically violated” (Regan 2003, 97). Regan points out that animals in laboratories are treated with a lack of respect because, in virtue of just being produced in and confined to the laboratory, they have had their rights violated (Regan 1983, xxx).

On the other hand, as I’ve argued, spaying/neutering animals does not thwart their basic interests. While animals are harmed non-trivially when they undergo a spay/neuter procedure, this harm is not one that impairs their abilities to realize their fundamental goods of life, liberty, and physical security. Moreover, as previously argued, felines who are spayed/neutered by TNR programs are not treated as renewable resources, nor are they treated as resources for us. Finally, as I argued earlier, most cats in the feline “lifeboat” are not there because their rights have been violated.

Nevertheless, there may be some unusual or exceptional cases of animal experimentation that arguably are justified on my interpretation of the rights view. For example, consider the case of Pain Experiment:

*Pain Experiment:* A scientist breaks into a local aquarium to rescue the fish who are confined there for human entertainment. Before releasing the fish into the

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ocean, he brings them to his home and injects the fish with bee venom to see if they will react in a way that demonstrates that they are sentient. While the bee venom does cause mild pain to the fish, the pain only lasts for a moment. The scientist conducts this experiment with the aim of influencing others to refrain from exploiting fish. The scientist suspects that he would have better data if he performed excruciatingly painful experiments on the fish, but he chooses not to because he believes *that* would be an unjust way to treat the fish. After all, even the fish who are exploited by humans do not suffer as badly as the fish in his home would suffer if he were to inflict such excruciating pain upon them. After the scientist conducts this short experiment, he releases the fish into the ocean so they can live out their lives with their conspecifics, and he then publishes a research article on fish sentience.

In Pain Experiment, as in the case of spaying/neutering, the harm the fish endure does not impair their ability to function in a minimally adequate way. Moreover, the harm the fish endure is caused in the name of basic interests or fundamental goods of other fish. It can even be argued that the fish in this scenario ended up in the scientist's home not because of a rights violation. The fish end up in this prevention case situation because the scientist *rescued* the fish from an unjust situation. Keeping with the logic of what has been argued in this essay, the philosophy of animal rights is not committed to the position that it is impermissible to perform experiments like "pain experiment." After all, the scientist in "pain experiment" does not treat the fish as if they are merely useful; rather, by acknowledging that there is a limit to how much pain can be imposed upon the fish

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and that it is his duty to eventually free the fish, he recognizes that the fish are valuable in themselves.

The use of this example is meant to illustrate that in only very limited, *exceptional* circumstance, can biomedical research on animals be justified on the philosophy of animal rights. As Regan (1985, 24) rightly declares, “[I]ab animals are not our tasters; we are not their kings.” The standard type of animal research that is conducted in laboratories today, on the rights view, violates the rights of the animals, which cannot be justified through the use of “life-boat” ethics. And this is a commitment to which the philosophy of animal rights proudly, and rightly, endorses.

### **Conclusion**

The claim that the philosophy of animal rights categorically forbids moral agents from causing harm to some in order to prevent harm to others contravenes the worse-off principle, which advises that, in prevention cases, it is obligatory to cause harm to some in order to prevent greater harms to others. Yet, despite that the rights view, under certain conditions, sanctions the causing of some harms in the name of basic, fundamental goods, it recognizes that there is a limit to how much harm we can inflict upon an individual with inherent value. And when we accept that there is a limit to how much harm we can inflict upon an individual, we recognize the inherent value of the individual. Indeed, we do not treat or view the individual as disposable. Rather, we acknowledge that there is value that exists over and above the experiences of individuals and the utility individuals provide to others. By recognizing that certain tradeoffs are impermissible, such as trade-offs that involve sacrificing someone’s basic rights or interests for the non-basic rights or interests of others, regardless of the good consequences that

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might be produced by these trade-offs, the philosophy of animal rights renounces the Utilitarian view that individuals can be treated like mere receptacles. Even though the philosophy of animal rights allows, under certain conditions, the harming of some in order to prevent greater harm to others, it always affirms that experiencing subjects-of-a-life are to be regarded as having value above and beyond their usefulness to others. Indeed, we can, and do, spay/neuter cats while acknowledging that they have value in their own right.

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