

How to Help when It Hurts: The Problem of Assisting Victims of Injustice

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1. Introduction

In *The Case for Animal Rights*, Tom Regan (1983) argues that all nonhuman animals who are experiencing subjects-of-a-life have inherent worth and thus possess the right to respectful treatment. While Regan maintains that the right to respectful treatment, in its most basic form, entails that moral agents have a prima facie negative duty not to harm subjects-of-a-life, he also acknowledges that there are certain conditions under which the right to respectful treatment prescribes positive duties, such as the duty to assist those who are the “victims of injustice at the hands of others” (Regan 1983, 249).

While Regan’s theory of animal rights is often criticized for its alleged problematic resolutions to conflict situations involving both nonhuman animals and humans (Edwards 1993; Finsen 1988; Francione 1995), in this essay I will draw attention to a potential challenge that Regan’s account faces in regard to conflicts between *nonhuman animals*.¹ Specifically, I suggest that, in certain cases, our obligation to assist nonhuman animals who are victims of injustice appears to conflict with our prima facie negative duty not to harm nonhuman animals. This is because, in a number of cases, assisting a victim of injustice necessitates that we harm some other nonhuman animal(s). In illustrating this conflict, I draw attention to a scenario where we have no choice but to harm a nonhuman animal if we are to fulfill our duty to assist a carnivorous victim of injustice who resides in a wild animal sanctuary and thus depends upon human beings for her very survival and welfare.² In defending Regan’s account against this apparent inconsistency, I suggest an additional principle that is consistent with Regan’s philosophy of animal rights, which I refer to as the *guardianship principle*. I then argue that this principle can explain how we are justified, under certain conditions, in overriding our prima facie duty not to harm nonhuman animals in order to fulfill our obligation to assist nonhuman animals who are victims of injustice.³

Throughout this essay, I assume that, as perhaps the most philosophically rich, careful, and influential theory of animal rights, Regan’s intricate theory of animal liberation is worth exploring closely (and perhaps, if necessary, rehabilitating) when we are faced with serious moral dilemmas involving nonhuman animals. Since Regan has provided the philosophical groundwork for navigating

situations of conflict between right holders, a careful exposition of Regan's philosophy of animal rights promises to yield important insights regarding the question of whether, and under what conditions, providing sanctuary to obligate carnivores is morally justified.

2. Tom Regan's Philosophy of Animal Rights

Perhaps the central tenet of Regan's theory of animal rights is the claim that all experiencing subjects-of-a-life, which includes at least every normal mammal over the age of one, have equal *inherent value* and thus they have the right to be treated with respect (Regan 1983, 247).⁴ As Dale Jamieson (1990, 350) explains, to say that beings have inherent value is to say that they have "value that is logically independent of the value of their experiences and of their value to others." Positing inherent value, then, can be viewed as a defense against the following contentious commitment of utilitarianism: if more overall utility could be brought about by harming an individual, then harming is not only permissible but required. The fundamental normative principle of Regan's theory of animal rights, which guards against this problematic utilitarian commitment, is the *respect principle* (also referred to as the "principle of respect for individuals"). In its most basic form, the respect principle commands the following: *we are to treat those individuals who have inherent value in ways that respect their inherent value* (Regan 1983, 248).

Since all subjects-of-a-life have inherent value, the principle of respect prohibits moral agents from treating subjects-of-a-life as if they were mere receptacles of value "lacking any value in their own right" (Regan 1983, 277). Keeping this in mind, the most general form of the respect principle can be described in negative terms: we violate the respect principle when we treat subjects-of-a-life as if they lacked inherent value, such as by using them "merely as a means to securing the best aggregate consequences" (Regan 1983, 249). Taking seriously this principle demands that we recognize that subjects-of-a-life have the right to respectful treatment. This is the basic, fundamental moral right that all beings with inherent value possess and it is a right that we are never justified in ignoring or overriding (Regan 1983, 286).

Regan claims that we can derive an additional moral principle from the respect principle, which he refers to as the harm principle. This principle sets forth a *prima facie* duty not to harm subjects-of-a-life, such as by killing them, confining them, or causing them physical or emotional harm (Regan 1983, 264).⁵ According to this principle, moral agents are never justified in *harming* a subject-of-a-life "merely on the grounds that others will benefit," whereby harm can take the form of either a *deprivation* or *infliction* (Regan 1983, xxviii).⁶

As Regan points out, harms need not always hurt. Specifically, he argues that there can be *unexperienced* harms, also referred to as deprivations. By way of example, consider the following: a child would be harmed if she were to be deprived of an education and/or the opportunity to develop her intellectual

capacities, even if she were to live in a perpetual state of blissful ignorance without ever “hurting.” For Regan, the most fundamental and irreversible kind of deprivation is death, making death the “ultimate harm because it is the ultimate loss—the loss of life itself” (Regan 1983, 100). While Ruth Cigman (1980, 57), Jeff McMahan (2002, 199; 2008, 66–76), R. M. Hare (1993, 226), and Peter Singer (1979, 104) maintain that a painless death does not significantly harm nonhuman animals, Regan maintains that all experiencing subjects-of-a-life, including normal nonhuman mammals over the age of one, are harmed by death because an untimely death cuts an individual’s life short in the sense that “a particular psychological being ceases to be” (Regan 101–02). When nonhuman animals die, they are deprived of the opportunity to enjoy satisfactions that they otherwise would have enjoyed had they remained alive (Regan 1983, 324). The fundamental harm of death, for any subject-of-a-life, is that it deprives the one who dies of future opportunities for satisfactions.⁷

A logical consequence of the respect principle and the harm principle is that nonhuman animals have two important rights: an absolute *right to respectful treatment* and a *prima facie right not to be harmed*, which cannot be overridden “in the name of achieving some greater good for others” (Regan 2001, 16). If nonhuman animals have a *prima facie* right not to be harmed in order to produce the best aggregate of consequences for all involved, we should immediately cease the harming of them in the name of human interest, such as when we cause them to suffer and/or die in order to use them for food, medical advancement, entertainment, and so forth. Regan’s theory of animal liberation, like most strong accounts of animal rights, such as Gary Francione’s (1996; 2000) and Gary Steiner’s (2008), promotes an abolitionist, “hands off” policy of noninterference in our dealing with nonhuman animals. It entails that we should not “trespass” into the nonhuman animal world and that we should *let nonhuman animals be* (Regan 1983, 357).⁸

3. The Duty to Assist Victims of Injustice

According to Regan, moral agents have both acquired and unacquired duties. While unacquired duties, such as the *prima facie* duty not to harm another or the duty to treat subjects-of-a-life with respect, “apply to us without regard to our voluntary acts,” Regan maintains that acquired duties apply to us “because of our voluntary acts or our place in institutional arrangements” (Regan 1983, 273). As a result, Regan concludes that, while we have *prima facie* negative duties of nonharm to *all* subjects-of-a-life, under certain conditions, the respect principle also imposes the *prima facie acquired* duty to assist subjects-of-a-life who are “victims of injustice at the hands of others,” that is, individuals who have had their rights violated (Regan 1983, 249).⁹

While J. Baird Callicott (1989, 45–46) accuses Regan of employing a “policy of human predator extermination,” Regan rejoins that the duty to assist subjects-of-a-life, on the grounds of justice, arises *only* when subjects-of-a-life

are harmed by *moral agents*. This is because only moral agents are capable of violating rights, and victims of injustice are those who have had their rights violated. As a result, Regan's theory is not committed to "saving the sheep from the wolf." Since the wolf is not a moral agent, she cannot violate the rights of the sheep.¹⁰ Consequently, the sheep is not a victim of injustice and thus we have no obligation, on the grounds of justice, to assist the sheep by protecting her from a predator, such as a wolf (Regan 1983, 357 and 285).¹¹ Yet, because non-human animals currently in captivity, such as those who reside in zoos and circuses, have been harmed intentionally and without justification by *moral agents*, we have acquired a duty to assist them.

While Regan acknowledges that his account of assistance is incomplete, certain animal ethicists, such as Clare Palmer (2010; 2011; 2013) and Sue Donaldson and Will Kymlicka (2011), have expanded this aspect of Regan's theory of animal rights, noting that we have additional relational obligations to certain nonhuman animals that arise from the varied ways that nonhuman animals relate to human societies and institutions.¹² Palmer (2011) maintains that we have assistance-generating relationships to nonhuman animals when either (1) we *create* nonhuman animals who are vulnerable and dependent, *or* (2) when our voluntary actions *cause* nonhuman animals to be in a particular context or situation where they are vulnerable or dependent. Essentially, the claim is that humans "establish certain relations with animals that change what is owed to them" (Palmer 2011, 701). In particular, our "voluntary actions *and* institutional arrangements" create additional, nondiscretionary obligations toward those nonhuman animals whom humans have caused, or created to be, dependent and vulnerable (Palmer 2011, 707).

Palmer notes that the paradigm example of such an arrangement is *domestication* (Palmer 2011, 707).¹³ Through domestication, humans have shaped and formed the capacities of nonhuman animals: their natures are shaped by us and they are deliberately created to be vulnerable or dependent (Palmer 2011, 712). Likewise, Donaldson and Kymlicka (2011) add to this discussion by pointing out that since the actions of humans have deprived them of any alternative existence, domesticated animals are dependent on their relationship with human beings. As Martha Nussbaum (2006, 376) points out, it is highly unlikely that domesticated animals will flourish on their own in the wild. Since "humans have acted to create animals that are constituted such that they are unable to be independent," domesticated animals are thus entitled to special protection, which in turn generates special duties to assist these beings (Palmer 2011, 715).

In addition to acquiring positive duties to assist domesticated animals, Palmer points out that we can also acquire special obligations to assist nonhuman animals whom we did not deliberately *create* to be dependent and vulnerable: we can acquire the duty to assist nonhuman animals whom we *cause* to be vulnerable and dependent by our actions. For instance, Palmer points out that, due to the building of large residential housing developments which have destroyed the hunting territory and denning areas of coyotes, we have caused

coyotes to be displaced (and thus vulnerable and dependent) (Palmer 2010, 102). Palmer concludes that, because we have caused these coyotes to be vulnerable and dependent due to our voluntary actions, we have acquired a duty to assist them.

While Palmer is primarily concerned with the duties of assistance that we *acquire* when we destroy the habitats of nonhuman animals, one could also argue that we acquire the duty to assist nonhuman animals when we cause them to be dependent by *socializing* them in a way that inhibits them from cultivating their natural capacities or by harming them in a way that causes them to become completely dependent on us for survival, such as by depriving them of the opportunity to cultivate their natural capacities, declawing them, or ripping out their teeth.¹⁴ For instance, wild animals, such as tigers, lions, bears, and so forth who are held captive or bred into existence by the entertainment industry (such as in circuses and zoos) are paradigm examples of victims of injustice. Moral agents have violated their rights by kidnapping them from their natural habitat, confining them, preventing them from exercising their natural capacities and predatory natures, causing them pain and suffering, preventing them from fulfilling their emotional and social needs, and so forth.¹⁵ Since humans have, through their voluntary actions, condemned these animals to a life of vulnerability and dependency (and, oftentimes, pain and suffering), we have acquired special obligations to assist these animals.

While Regan's account of animal rights does not specify what exactly the special duty of assistance involves, Palmer (2013) develops this aspect of Regan's theory, suggesting that, at the very least, the duty of assistance involves feeding, sheltering, protecting, and providing medical attention to nonhuman animals who are victims of injustice. Although Nussbaum offers a theoretical approach to animal protection that differs significantly from both Palmer's and Regan's theories, some of what she has to offer may also help to work out what we owe an animal when we do owe it something. For instance, Nussbaum (2006) suggests that, when determining what is owed to a being, we should take into account the capabilities and capacities of both the individual animal and its species. After having done this, we should attempt to create a habitat that is conducive to the animal's flourishing by securing the group of core capabilities up to some minimum threshold for the animal, such as bodily health, life, play, psychological well-being, the ability to move about freely, the ability to form social networks, and so forth (see Nussbaum 2006, 76–77). In what follows, I will assume Nussbaum's claim that our duty to assist nonhuman animals requires us to not only provide them with basic necessities, such as food, shelter, and medical protection, but it also requires us to aid them in flourishing physically, psychologically, emotionally, and socially.

4. When Helping Hurts

Despite the intuitiveness of Regan's claim that we are obligated to assist nonhuman animals when we have either created them to be—or caused them to

be—helpless, vulnerable, and dependent on us, there are circumstances in which Regan’s account of assistance raises thorny moral questions. There are situations, and these not infrequent, where assisting one animal who has been treated unjustly requires that we harm another animal. For the sake of simplicity, let us consider just one example:

There is a big cat sanctuary that takes in neglected, abandoned, abused, retired, and injured large felines who cannot be released into the wild. At this sanctuary, there is a lion named Sophia, who was kidnapped from her natural habitat and forced to perform in the circus for years. While Sophia was held captive by the circus industry, she was declawed and her canine teeth were ripped out, making it impossible for her to chew tough flesh. Sophia was also subjected to a number of other harms that circus animals commonly face: she was confined to a small, barren cage for most of her life and she was subjected to whips, chains, and electric prods during training. She was also prohibited from forming social bonds with conspecifics due to all of the moving around she was subjected to.¹⁶ Because of her condition, Sophia cannot be released back into the wild since her inability to hunt would inevitably lead to a painful death of starvation. Furthermore, if released, Sophia will not belong to a social or familial group, thereby further decreasing her prospects for survival in the wild. She is thus utterly dependent on the big cat sanctuary for survival.¹⁷

Clearly, Sophia is a victim of injustice. In every way possible, she has been denied the opportunity to satisfy her most basic interests and species-specific capabilities. She has been harmed, by moral agents, through both (1) deprivation, in the sense that she was deprived of the opportunity to realize her species-specific capacities, *and* (2) infliction, in the sense that she was subjected to abuse at the hands of her circus “masters” and forced to endure a significant amount of pain when she was declawed and her teeth were ripped out. Furthermore, she now remains in a complete state of dependency: she cannot be released to the wild, in part because she does not have the capacity to hunt and kill prey for survival, due to the fact that she is missing her canine teeth and claws.

Without a doubt, a theory of animal rights that recognizes duties of assistance to victims of injustice would demand that we assist Sophia by feeding her, providing her with shelter, giving her the medical attention she requires, satisfying her social and emotional needs, and so forth. Yet, if we are to fulfill this moral obligation to assist Sophia by providing her with her basic sustenance needs, we will be forced to cause harm to other nonhuman animals. This is because Sophia is an obligate carnivore, which means that she must eat other animals if she is to survive. Yet, since she has neither claws nor teeth, she cannot hunt on her own. Thus, in order to fulfill the duty to assist Sophia, her caretakers must provide her with animal flesh.

Keeping this in mind, let us consider the common feeding protocol of wild-life sanctuaries, as described by the Wild Animal Sanctuary in Colorado (2013): “cats and wolves eat a USDA approved, special blend of raw meat that is prepared by a special company in Burlington, CO. The diet consists of beef, horse, poultry, mutton and pork—with vitamins, minerals, and health related organs

added—that are ground and mixed together into 10 lbs blocks. We receive weekly deliveries of meat, as we feed about 8,500 lbs. of meat per week to the cats and wolves.” So, not only do wild animal sanctuaries, like the Wild Animal Sanctuary in Colorado, participate in the killing of innocent subjects-of-a-life, they often support industrial animal agriculture, which is notorious for its inhumane and exploitative treatment of nonhuman animals.¹⁸ This sanctuary, then, violates Regan’s fundamental claim that “no one has a right to be protected by the continuation of an *unjust practice*,” such as animal agriculture, which routinely violates the rights of nonhuman animals (Regan 1983, 347).

Even if wild animal sanctuaries purchased their meat from so-called “humane” farms, they would still violate the respect principle. This is because the animal agriculture industry not only harms nonhuman animals through both deprivation and infliction, but this industry also treats farm animals as if they were renewable resources or tools for increasing social utility. As Regan (1985, 13–14) points out, “what is wrong isn’t the pain, isn’t the suffering, isn’t the deprivation. These compound what’s wrong. Sometimes—often—they make it much, much worse. But they are not the fundamental wrong. The fundamental wrong is the system that allows us to view animals as *our resources*, here for *us*—to be eaten, or surgically manipulated, or exploited for sport or money.” What we can conclude from this passage is that, according to Regan, when we breed nonhuman animals into existence and raise them for food, we fail to treat them with the respect they are due as “possessors of inherent value,” even if these animals are treated “nicely” (Regan 1983, 345).

As a possible solution to this moral quandary, one might suggest that wild animal sanctuaries feed only those animals who have died of natural causes to their obligate carnivores. However, this possibility has been considered and dismissed by wildlife sanctuaries because they “do not take in road-kill or any other kind of carcass animals since they are not fresh, or safe, for our animals to eat. Dead animals can bring in all sorts of fleas, ticks and other parasites—which can cause a lot of medical problems for our animals” (Wild Animal Sanctuary, 2013). Assuming, then, that we can neither feed obligate carnivores who reside in sanctuaries a vegetarian diet, nor can we feed them animals who have died of natural causes, we are left asking: how, or can, we fulfill our moral obligation to assist Sophia without violating the harm principle?

5. Should We Euthanize Sophia?

If feeding Sophia in accordance with her nutritional needs requires us to harm some other subject(s)-of-a-life, then perhaps we are simply unable to fulfill our positive duty to provide her with her basic sustenance needs. And since Sophia cannot hunt on her own, she would be condemned to a future of starvation and/or severe malnutrition. It would seem, then, that we should euthanize Sophia, as a swift, painless death is surely preferable to a drawn out and painful death from malnutrition (Regan 1983, 109–14).

This approach to the issue at hand is troubling. It is arguably a double-cross to kill Sophia immediately after she is released from captivity, without *ever* granting her the opportunity to experience satisfaction in life. Furthermore, in assisting nonhuman animals like Sophia, animal sanctuaries are not just acting with “beneficence” or doing a “nice” thing when they take in these carnivores; they are acting in accordance with *justice* by fulfilling a duty that is *demand*ed by the respect principle. In failing to provide Sophia with her basic sustenance needs, we fail to perform a serious moral obligation *and* we violate Sophia’s right to respectful treatment, which, in her case, entails the right to assistance.

6. A Relevant Distinction: Disrespecting and Harming Subjects-of-a-Life

The fundamental question, then, is the following: Are there any situations where it is justified to harm a subject-of-a-life in order to satisfy Sophia’s carnivorous needs? As mentioned, current practices of wild animal sanctuaries involve feeding obligate carnivores animal flesh that is a product of animal agriculture and this in turn both harms subjects-of-a-life and fails to treat subjects-of-a-life with the respect that they are due. Yet, we must remember that Regan’s theory of animal rights draws a distinction between *harming a subject-of-a-life* and *using a subject-of-a-life as a mere means or renewable resource*. While Regan’s account would never permit us to use a subject-of-a-life as a mere means or renewable resource in order to feed Sophia, this does not entail that we could never harm a subject-of-a-life in order to feed Sophia. This is because the right not to be harmed is a *prima facie* right, which can be justifiably overridden under certain conditions. Thus, if we can find a way to feed Sophia without using a subject-of-a-life as a renewable resource, even if we end up harming the subject-of-a-life, we *might* be justified in causing this harm in order to feed Sophia.

7. Overriding the Right Not to Be Harmed: Prevention Cases

In order to determine whether we are ever justified in harming a subject-of-a-life in order to feed Sophia, let us consider whether the situation regarding Sophia might be characterized as a *prevention case*. Prevention cases, according to Regan, involve situations in which, “no matter what we decide to do—and even if we decide to do nothing—an innocent subject-of-a-life will be harmed” (Regan 1983, xxviii). In such cases, we can prevent an innocent subject-of-a-life from being harmed *only* by harming some other subject-of-a-life who would be harmed even if we refrained from acting. The distinguishing feature of a prevention case, then, is that “causing harm to the innocent cannot be prevented” (Regan 1983, xxviii).

When prevention cases transpire, Regan maintains that we can be justified in overriding a subject-of-a-life’s right not to be harmed. In order to decide whose rights we should override in these situations, Regan introduces two

additional principles: the *miniride principle* and the *worse-off principle*, both of which are said to be derivable from the respect principle.

i. The *minimize overriding principle* (or the *miniride principle*):

Special considerations aside, when we must choose between overriding the rights of the many who are innocent or the rights of few who are innocent, and when each affected individual will be harmed in a *prima facie* comparable way, then we ought to choose to override the rights of the few in preference to overriding the rights of the many. (Regan 1983, 305)

The *miniride principle* informs us that, when we are faced with choosing between harms that are comparable, numbers count. Thus, we ought to attempt to minimize the number of beings who are harmed. For example, if fifty-one miners are trapped in an underground mine shaft and we can use an explosive to kill one miner (who is stuck in the entrance of the shaft) in order to free the other fifty, we ought to kill the one miner in order to save the others. Since the harms of death for all the miners are comparable to each other, it is better to cause only one instance of harm rather than fifty-one instances of that same harm.

ii. The *worse-off principle*:

Special considerations aside, when we must choose between overriding the rights of the many who are innocent or the rights of 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)

According to the *worse-off principle*, it is morally preferable to cause many subjects-of-a-life to suffer lesser harms than to significantly harm one subject-of-a-life (Regan 1983, 308–9). The central idea behind the *worse-off principle* is that, in certain scenarios, the harms faced by innocents are not always *prima facie* comparable. What we can take from this is that harms are not always equal and, furthermore, “they [harms] may also be unequal when different individuals are harmed in the same way” (Regan 1983, 303). To illustrate this, Regan suggests that “the untimely death of a woman in the prime of her life is *prima facie* greater than the death of her senile mother” (Regan 1983, 303). According to Regan, since the woman in her prime has more opportunities to pursue satisfaction in life than her senile mother, death is a greater harm for the woman in her prime than it is for her senile mother. On the other hand, two harms are comparable when they “detract equally from an individual’s welfare, or from the welfare of two or more individuals” (Regan 1983, 304). This entails that “death is a comparable harm if the loss of opportunities it marks are equal in any two cases” (Regan 1983, 304).

Keep in mind that, in order for a conflict to be characterized as a prevention 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 circumstance where all will be harmed if some action is not taken (Regan 1983, xxxi).¹⁹ Thus, both the *miniride* and *worse-off* principles help us determine whose rights we ought to override in situations where there *already* is a requirement that we override someone's rights. Neither principle can be used to justify the harming of a subject-of-a-life when a moral agent is responsible for creating the conflict-situation by acting unjustly. In fact, Regan writes that "if some of those involved are in their present predicament because other involved individuals have violated their basic rights in the past, then these past violations make a moral difference in the application of the *miniride* and *worse-off* principles" (Regan 1983, 322). Keeping this special consideration in mind about the "historical background leading up to situations where we are called upon to decide whose right not be harmed should be overridden," we will find that Sophia's circumstance cannot be characterized as a prevention case because Sophia is "involved" in the situation only because moral agents have previously violated her rights and, as a result of their unjust treatment of her, we are now called upon to decide whose right not to be harmed should be overridden.

8. Overriding the Right Not to Be Harmed: The Liberty Principle

Given that the situation involving Sophia does not satisfy the prevention-case criteria, neither the *miniride* nor the *worse-off* principle can provide us with moral guidance regarding Sophia's situation. However, there remains a final principle within Regan's theory of animal rights that might be useful in explaining how we can, under certain constraints, be justified in harming a subject-of-a-life in order to fulfill our duty to assist Sophia: the *liberty principle*.

Regan explains that the *liberty principle* permits an individual, subject to qualifications, "to do what is necessary to avoid being made worse-off relative to other innocents, even if this involves harming innocents":

Provided that all those involved are treated with respect, and assuming that no special considerations obtain, any innocent individual has the right to act to avoid being made worse-off even if doing so harms other innocents. (Regan 1983, 331)

According to this principle, under certain conditions, the duty not to harm individuals may be justifiably overridden. For example, we can be justified in harming a subject-of-a-life in order to promote our own welfare. As Regan points out, we have an equal right to advance our own welfare and to do what is necessary to avoid being made worse-off, even if this means harming other innocent beings, so long *we treat all of those involved with respect* (Regan 1983, 332). And, as we recall, *treating an individual with respect entails that we not use it as a renewable resource or merely as a means for maximizing utility*.

9. Overriding the Right Not to Be Harmed: The Guardianship Principle

Although Regan's liberty principle only mentions that individuals are justified in acting on behalf of *themselves* to avoid being made *worse-off*, I suggest that it is compatible with Regan's account of animal rights to extend this principle so that it permits individuals to act to avoid making victims of injustice worse-off. That is, a moral agent can be justified (and perhaps even obligated to) in exercising the liberty principle on behalf of subjects-of-a-life who are unable to pursue their welfare *because* their liberty has been impaired *by the unjust actions of moral agents*. After all, if all moral patients have the right or liberty to secure their own welfare, it seems unfair that a victim of injustice, like Sophia, is prevented from exercising this right simply because the unjust actions of moral agents have rendered her incapable. In such a case, it seems as though moral agents *have acquired a duty* to intervene on behalf of these vulnerable and dependent victims of injustice in order to enable them to exercise their liberty right. Furthermore, since we have a duty to treat all subjects-of-a-life with respect, and respecting Sophia requires that we assist her, it would seem that we would fail to treat Sophia with the respect she deserves if we were to deny Sophia the opportunity to achieve a minimal level of welfare by sustaining her life simply because others will be less well-off.

My proposal, then, is that Regan amend his theory of animal rights so it includes an additional moral principle that would require moral agents to promote the welfare of innocent victims of injustice who are caused to be vulnerable and dependent because of our voluntary actions and institutional arrangements. Let us refer to this as the *guardianship principle*:

Provided that all those involved are treated with respect, and assuming that no special considerations obtain, a guardian is obligated to harm other innocents when doing so is required to avoid making a vulnerable and dependent victim of injustice at least as *worse-off* as the innocents so harmed are made.

9.1. Limits of the Guardianship Principle

If we are trusted to act as a guardian for Sophia, this means that we are responsible for helping her exercise her liberty right. One might then argue that, as a consequence of this principle, we are now permitted to breed into existence, raise, and kill domestic farm animals in order to feed Sophia. Yet, we mustn't forget that there are two fundamental moral constraints on the liberty principle (and thus, also, the guardianship principle). First, one acts within his rights "only if those who are harmed by what he does were treated with respect" (Regan 1983, 346). Since the practice of raising nonhuman animals for food "routinely treats these subjects-of-life in ways that are contrary to the respect that they are due as a matter of strict justice," we are not permitted to engage in such a

practice, even in an attempt to assist a victim of injustice (Regan 1983, 346). This is because nonhuman animals who are reared for food, even on so-called “humane” farms, are treated as renewable resources: they are intentionally brought into the world, killed, and replaced with other animals just so we are able to one day use them for their flesh. Since “no one has a right to be protected by the continuation of an unjust practice, one that violates the rights of others,” we cannot fulfill our duty to assist Sophia by feeding her domesticated animals who are reared in even so-called “humane” agricultural conditions (Regan 1983, 347).

In addition to prohibiting moral agents from violating the respect principle, the guardianship principle has a further constraint: we are permitted to harm other innocent subjects-of-a-life *only* in cases where doing so is required to avoid making a victim of injustice *at least as* worse-off as the innocents so harmed are made. This constraint would prohibit the killing of nonhuman animals in order to provide a top-quality meat-based diet to a house cat, whose health could be sustained sufficiently on a plant-based diet (supplemented with synthetic taurine and other nutrients). While a house cat might be worse-off when she eats a slightly poorer, yet decent-quality plant-based diet, her being “worse-off” in this situation does not justify the killing of other innocents in order to provide her with a “top-quality” flesh-based diet. Since the harm of having a slightly poorer diet is not comparable to the harm of death, the cat would not be made *at least as worse-off* as the animals who would be killed. The only way for the cat to be made *at least as worse-off* as the animals who are killed would be if she would inevitably *die* from being deprived of a flesh-based diet.

9.2. Permissions of the Guardianship Principle

Although it is clearly out of the question to deliberately breed nonhuman animals into existence just so we can slaughter and feed them to big cats on animal sanctuaries, perhaps there are other conditions under which we could fulfill our moral obligation to assist Sophia in exercising her right to avoid being made *worse-off* comparable to others *without* treating another subject-of-a-life as a renewable resource. For example, we might consider whether it is permissible to hunt and kill wild prey animals, like deer, elk, rabbits, and so forth, who are not deliberately bred into existence for the sole purpose of being used as a renewable resource. As Plumwood (2000, 300) points out, there is a significant difference between industrial animal agriculture and hunting: “in the one case [in industrial animal agriculture] an animal’s entire life can be instrumentalized and distorted in the most painful ways” while in the case of hunting, “an animal can be made use of responsibly and seriously to fulfill an important need, in a way that respects . . . both its individuality and its normal species life.”²⁰

While one might argue that it is a contradiction to speak of “hunting and killing an animal respectfully,” we must keep in mind what exactly Regan means when he speaks of our duty to respect nonhuman animals. According to

Regan, treating an animal with respect merely entails that one should not contravene the respect principle by treating the one who is harmed as a mere receptacle of value or as a thing whose value is reducible to its utility relative to the interests of others (Regan 1983, 343 and 265). As a result, this account of respectful treatment entails that it is possible to both simultaneously respect and harm an animal, because it is possible to harm an animal without using that animal as a mere receptacle.

For instance, Regan argues that *if* it were true that we, as humans, could obtain our essential nutrients *only* by consuming animal flesh, we would “be making ourselves, not the animals, worse-off if we become vegetarians” (Regan 1983, 337). According to Regan, if rational humans were to die from malnutrition, we would be deprived of a greater variety and number of opportunities for satisfaction than nonhuman animals would be deprived of if they were to be killed (Regan 1983, 337). Given this discussion, Evelyn Pluhar (1992, 193) concludes that, according to Regan’s liberty principle, “humane subsistence hunting would be justified, as would animal husbandry practices far more humane than those prevailing now. Minimum suffering and death, maximum care and respect, would be required here, but these other innocent beings with an equal claim to life as oneself could be consumed.”²¹

While Pluhar’s claim that Regan’s theory of animal rights would permit humane subsistence hunting seems plausible enough, it is doubtful that his account would permit even the most “humane” animal agriculture practices.²² And it seems contradictory for Regan to suggest that raising, killing, and eating farm animals could be justified by appealing to the liberty principle.²³ This is because Regan argues that any institution that treats individuals with inherent value as renewable resources is unjust, as it constitutes a failure to treat them with respect (Regan 1983, 343). As he points out, “it is the impoverished view of the value of these individuals, not only the pain or suffering they are made to endure, that exposes the practices as fundamentally unjust” (Regan 1983, 344).

One might still insist that farmers can, in fact, have a sincere intrinsic concern for the welfare of the animals they breed into existence and eventually slaughter. For instance, perhaps there might be a farmer who breeds animals into existence because he genuinely desires to give a fulfilling life to animals who would not have otherwise existed *and* he desires to feed obligate carnivores in animal sanctuaries. Yet, the fact remains: any form of animal agriculture, regardless of how “nicely” the animals are raised and how much the farmers “care” about the animals, violates the respect principle because it necessarily involves breeding animals into existence, confining them, killing them, and then *replacing* them with other animals *just so that they can become someone’s food*. When we breed animals into existence with the intention of one day turning them into a meal, we reduce them to commodities and renewable resources. Given that these animals exist *only* because they one day will become someone’s food and, when they die, they will be replaced by another animal who

fulfills that very same function, they are treated as mere replaceables: individuals who are not perceived as having value in-and-of-themselves.

On the other hand, unlike farm animals, nonhuman animals who are hunted in the wild, such as deer, have not been purposefully bred into existence (and they are not replaced when they die), nor are they forced to reproduce, nor are they confined for their entire life just so they will one day become slabs of meat on someone's dinner plate. Even when deer are killed (for subsistence), they are not treated as commodities and renewable resources because their existence, up until this point, has not been predetermined, controlled, or defined by human beings.

So, if respecting a subject-of-a-life just entails not treating a being as a renewable resource, it would seem that it is possible, under certain conditions, to swiftly kill a deer in order to sustain the life of another animal (or human) without violating Regan's respect principle. Thus we can conclude that, if killing a deer does not violate the respect principle *and* killing a deer is necessary to avoid making Sophia *worse-off* than the deer, then the guardianship principle would permit us to, under certain conditions (which will be discussed below), hunt and kill deer in order to feed Sophia.

Yet, it is important to keep in mind that deer in overpopulated areas can plausibly be construed as commodities or renewable resources. In many cases where there is a so-called "overpopulation problem," state wildlife management agencies have artificially inflated the number of deer just so that there will be a generous supply during hunting season. For instance, Brian Luke points out that, "in order to boost deer herd size to please hunters, wildlife managers (both public and private) feed deer, manipulate flora and decimate natural predators. Once the herd has become unnaturally large through such measures, wildlife managers make sure it stays that way, ensuring an annual 'harvestable surplus' for hunters by carefully regulating how many are killed" (Luke 2007, 69). As Marti Kheel (1996) points out, wildlife agencies "manage" animals so that sufficient numbers will remain to be killed. Keeping this in mind, one might also argue that deer found in overpopulated areas are also victims of injustice and thus they are entitled to our assistance. So, rather than hunting, killing, and feeding them to lions in sanctuaries, we ought to focus our attention on how we can best assist them.

Two responses are available. First, we might grant the claim that deer in overpopulated areas are victims of injustice. As a result, we might conclude that we ought to refrain from killing deer in *overpopulated* areas and, instead, only hunt deer in areas that have not been "managed" by wildlife agencies. A second response is to maintain that, while Sophia, herself, has suffered direct harms and has had her rights violated by assignable moral agents (such as by being confined, having her claws and teeth ripped out, and so forth), individual deer in overpopulated areas have not been harmed in this same, direct way and thus it is not clear whether their individual rights have been violated. For instance, it is difficult to see how killing off the predator of deer or increasing the food supply of deer violates an individual deer's rights.²⁴ Since a victim of injustice is

someone who has had her rights violated by moral agents and it is not clear that the rights of deer in overpopulated areas have been violated, it would be more accurate to say that *some* deer in overpopulated areas are harmed by the side effects of questionable wildlife “management” and hunting practices, rather than concluding that the deer are victims of injustice.²⁵

10. Comparing Lives and Comparing Deaths

Thus far, I have argued that, according to the guardianship principle, in order to be justified in harming a deer in order to feed Sophia, three conditions must be met: (1) Sophia is a victim of injustice, while the deer who is harmed is not, (2) it is necessary to harm a deer in order to sustain Sophia’s life, and (3) Sophia would be made at least as worse-off by death as the deer who is harmed is made. I have argued there are at least some deer who are not victims of injustice, and thus moral agents do not have the additional obligation to assist these deer, while moral agents do have the positive duty to assist Sophia. Furthermore, I assume that, as an obligate carnivore, Sophia’s survival depends upon the consumption of animal flesh. Now we must ask: Would Sophia be made at least as worse-off by death relative to a deer who is killed in order to sustain her life?

In order to determine if Sophia’s death would make Sophia at least as worse-off relative to any of the deer who would be harmed if we were to feed them to Sophia, we must weigh Sophia’s individual right not to be harmed against the same right of each of the deer who would be killed. And in order to justify killing the deer, we must demonstrate that death is not a lesser harm for Sophia than it is for the deer who are killed. Keeping this in mind, we need a careful assessment of how bad death is for the deer and how bad death is for Sophia. If we find that, in attempting to kill a deer in order to feed Sophia, we make the deer worse-off than Sophia would be if we were to euthanize her, then we are not permitted to kill the deer.

10.1. *Is Death Worse for Bambi than Sophia?*

The first thing to keep in mind is that Regan assumes that, although the inherent value of all subjects-of-a-life is the same, the value of the *lives* of beings with inherent value can differ from one being to another. Specifically, “the value of life . . . increases as the number and variety of possible sources of satisfaction increases” (Regan 1983, xxxiv). Thus, it seems that, in cases of conflict, the harm of killing less complex subjects-of-a-life is a less grave harm than killing a more complex subject-of-a-life who, because of her complexities, has more possible sources of satisfaction. Thus we must ask: Is it the case that deer have more opportunities for satisfaction than Sophia? In answering this question, we need to carefully consider all of the possible opportunities for satisfaction that death will foreclose for both the deer and Sophia.

When we kill an average, healthy deer, we prevent that deer from mating and rutting, from the pleasures of successfully foraging for food and, if the deer is female, we prevent her from bonding with her current or future fawns. Depending on which deer is killed, we might also deprive that deer from the satisfaction of engaging in social interactions with conspecifics. For instance, female white-tailed deer who are known to live in matriarchal social groups with their fawns and young males often form what is commonly referred to as a “bachelor herd” (Smith 1991).

On the other hand, it might be argued that, because of her unfortunate physical condition and confinement situation, the satisfactions that are usually available to lions are not available to Sophia. For instance, since she has lost her natural ability to hunt and since she is confined to a sanctuary, Sophia does not have the opportunity to interact with her conspecifics or to exercise her predatory urges.²⁶ As it is pointed out, captive animals, including those in sanctuaries, are often unable to exercise all of their natural activities (Emmerman 2014). Thus, it might appear that a normal, healthy deer would be deprived of more satisfaction by premature death than Sophia and thus the deer would be harmed more by death than Sophia.

Yet, important to note is that an animal’s desire to exercise her predatory nature can, to some degree, be satisfied in captivity without harming prey animals. For instance, Nussbaum writes about a tiger in the Bronx Zoo who was provided with a large ball on a rope, which symbolized a gazelle. According to Nussbaum, “[t]he tiger seemed satisfied” (Nussbaum 2006, 371). Keeping this in mind, it is likely that Sophia could exercise her predatory urges in an animal sanctuary by chasing after and holding down a similar ball, even though she lacks claws, teeth, and access to natural prey. Moreover, it is plausible that animal sanctuaries can, to some degree, satisfy Sophia’s social desires. For instance, they could surround her with same-sex lions so that she is provided with the opportunity to live in a pride of some sort. Or, it might even be the case that, since she does not need to protect her territory from other lions nor does she need to hunt, Sophia would not have an interest in living in a pride that the animal sanctuary would frustrate. In addition, one might argue that, because a lion like Sophia has suffered so much deprivation throughout her life, Sophia might be content, if not happily overwhelmed, with the simple pleasures that were previously unavailable to her, such as the pleasure of rolling in the grass, looking at the sky, feeling the earth beneath her paws, swimming, and just experiencing tranquility and peace for the first time in her life.

Yet, an unfortunate fact remains: in animal sanctuaries, lions like Sophia experience “confinement, boredom, limited expression of natural behaviors such as ranging, predation, and reproduction” (Emmerman 2014). While animal sanctuaries are often successful in at least mitigating these negative experiences and finding creative ways to enrich the lives of their animals, it is unlikely that they are able to provide their animals with the type of life that they would have in the wild. Yet, at the same time, since nonhuman animals who live in sanctuaries

have access to adequate nutrition, healthcare, and protection from inclement weather and other threats (such as hunters), there is a sense in which aspects of their welfares might actually be enhanced. And these benefits accessible to Sophia are not available to deer who live in the wild, including those who need these benefits the most, such as those who are sick, old, subjected to brutally cold winters, or live near roads with heavy traffic or areas that hunters frequent.

10.2. Can Death Be Worse for Sophia than Bambi?

What the prior discussion illustrates is the following: as beings who possess limited knowledge about the mental and social lives of nonhuman animals, we most likely are not in a position to make comparable judgments about the lives of nonhuman animals from different species. Consequently, we should suspend our judgments about which lives have more opportunities for satisfaction and assume that the harm of death for a normal healthy deer is comparable to the harm of death for a lion in a sanctuary. As a result, I suggest that we should assume that these animals would be harmed *equally* by death. However, even if we were to assume this, we would still be required to exercise the guardianship principle because it entails that we, as moral agents, are obligated to kill deer since doing so is required to avoid making Sophia, a victim of injustice, *at least as worse-off* as the deer who are killed are made. Given that Sophia and the deer have a mutual right to life and, presumably, both would be harmed equally by death, Sophia would be made at least as worse-off relative to a deer if she were to die and the deer were to live, since she, and not the deer, would be the one who is subjected to the harm of death. Since Sophia is the one who is undoubtedly a victim of injustice and entitled to our assistance, we are obligated to ensure that she is not the one who is made worse-off.²⁷

Yet, even if it is the case that we are obligated to kill deer in order to sustain Sophia's life, we must remember that there are situations where killing certain deer would clearly make the deer worse-off relative to Sophia if Sophia were to be killed. For example, Regan (1983, 355) points out that, since not all hunters are expert shots, they might end up subjecting deer to slow and agonizing deaths, which would lead us to question whether this sort of death is worse than the death Sophia faces, as we would be better able to ensure that her death is painless. Furthermore, if Sophia is a few years away from dying and we kill a healthy deer in his youth or prime to feed Sophia, then we have reason to believe that the deer would be made worse-off from death relative to Sophia. Since, in this case, the deer's expected lifespan is longer, his death would deprive him of more opportunities for enjoyment than Sophia would be deprived of if Sophia were to be killed.

11. Restraints on Killing Bambi

Thus far, I have suggested that, since it is sometimes necessary to kill deer in order to avoid making Sophia at least as worse-off as the deer who are killed,

the act of killing deer (who are not themselves victims of injustice) in order to feed Sophia is, at times, required by the guardianship principle. However, this does not entail that animal sanctuaries can kill deer whenever, however, and wherever they choose. There will be restrictions. First, animal sanctuaries should attempt to avoid Sophia's death without harming *any* subject-of-a-life. So, instead of dismissing all such flesh as "unfit for consumption," animal sanctuaries might feed Sophia road kill or scavenge for corpses, provided that these corpses are suitable for consumption.²⁸ In this same vein, were "frankenmeat" ever to become commercially available, animal sanctuaries should purchase this meat and feed it to Sophia, instead of taking the lives of deer in order to feed her. In situations where sanctuaries must kill deer to feed Sophia, animal sanctuaries ought to ensure that the deaths of the deer would not make the deer worse-off than Sophia if she were to be euthanized, such as by employing measures of caution when hunting on behalf of Sophia. This might entail only allowing "expert shots" to hunt and kill deer and instructing these hunters to only kill deer who are sick or old. Animal sanctuaries might also attempt to kill deer in overpopulated areas, since there is reason to believe that these deer might actually be benefitted by a quick, premature death if their alternative option is a drawn-out death from starvation or from being hit by a motor vehicle.

12. Objections

12.1. Objection #1: The Implausibility of Regan's Liberty Principle

According to the liberty principle, which contains a non-aggregation clause, one is permitted to kill any number of individuals if doing so is required to avoid making herself worse-off than each individual who is killed. Consequently, the guardianship principle requires a moral agent to kill any number of individuals if doing so is necessary to avoid making the victim of injustice worse-off than each individual who is killed. For instance, so long as Sophia would be harmed comparably (or worse) by death as every deer who is killed, the guardianship principle requires us to kill as many deer as it takes to sustain Sophia. That being said, over the course of Sophia's life we might have to kill hundreds of deer in order to avoid making her worse-off relative to each of the deer who are killed. In response to this implication of the guardianship principle, one might insist that the morally preferable course of action is to euthanize one subject-of-a-life (Sophia) in order to spare the lives of hundreds of deer. Since Regan's account seems to violate this intuition, one might then suggest that this is evidence that the implications of Regan's theory, or at least the implications of his liberty principle, are too problematic, and thus either his theory should be abandoned or, at the very least, his liberty principle should be rejected. As some might argue, contrary to the liberty principle, we are not permitted to harm others just so we can promote our own welfare.

This response fails to acknowledge perhaps one of the most widely shared intuitions: individuals are justified in harming others in order to preserve their own lives, such as in self-defense situations, which essentially entails the harming of another in order to promote one's own welfare. Furthermore, it is important to note that Regan clearly states that the liberty principle is subject to certain qualifications and thus the right to do what is necessary to avoid being made worse-off relative to other innocents is "not a license to moral anarchy" (Regan 1983, 332). For instance, Regan points out that the liberty principle would not justify my act of stealing my friend's Mercedes, just because I would be made worse-off relative to him if I do not take possession of it. Since my friend has an additional right, a property right, there is a special consideration that "limits my liberty" (Regan 1983, 331).

To be clear, Regan's principle is not motivated by the assumption that we have a *right* to enhance our own welfare at any cost. Rather, it is motivated by the assumption that all subjects-of-a-life have equal inherent value and thus possess an equal liberty to avoid being harmed. Given this, an individual should have the liberty to protect herself from experiencing certain harms, even when this requires that she subject others to equal harms. To deny a person her liberty to avoid harm or avoid being made worse-off just because others will be less well-off represents a failure to treat her with the respect that she is due (Regan 1983, 332). Furthermore, it suggests that the "others" have more value than she, as it has been determined that she, and not the others, must endure some harm. To require one to assume harm for the sake of other subjects-of-a-life is not required by an account of respectful treatment. That is not so counterintuitive.

One might still argue that when a moral agent exercises the liberty principle, she incorrectly judges herself to be more valuable than others. For instance, imagine the following scenario:

There are no more nonhuman animals on earth and the plants available for consumption are inadequate to sustain a human's life. The only way humans can sustain their lives, then, is by eating other humans. While most humans only need to kill one person throughout their entire life to sustain themselves, there is one person, call her person A, who has an insatiable appetite and extraordinarily intense nutritional needs. Thus, she will need to eat ten people throughout the course of her life in order to sustain herself.

In this situation we might say that if person A were to kill ten human beings throughout the course of her life in order to sustain herself, she would essentially give more weight to her own life, as ten is more than one, and all eleven people who would be harmed equally by death have an equal right not be harmed. If person A chooses to override the rights of ten people in order to sustain her own individual life, then she has overridden an equal right ten times when she could have chosen to let a right be overridden just once—in this case, her own life. Essentially, if she chooses to save her own life by harming ten other innocents,

she acts as if her right not to be harmed is more important than the other rights in this situation.

But, important to note is that Person A does not kill ten people at once in order to sustain her own life. Rather, she kills person 1 at T1, person 2 at T2, and so forth. At each time frame, she makes a new decision about whether she should preserve her own life or the life of another person. That is, she does *not* make a decision about whether she should preserve her life over the lives of ten people. Rather, at each time period, she makes a new, independent, and difficult choice about whether she should preserve her life at the cost of 1 other human life. For all she knows, in between killing person 1 and person 2, person A will find suitable substitutes for eating humans and will no longer need to take human lives to sustain herself. Likewise, we could say the same conditions are present in Sophia's case. At T1, we kill deer 1, at T2 we kill deer 2, and so forth. At each time period, we make a new, independent, and difficult choice about whether we should preserve Sophia's life at the cost of the life of a deer. Yet, for all we know, in between killing deer 1 and deer 2, we might find a truckload of edible animal carcasses and will no longer need to take the lives of deer to sustain Sophia. That being said, in deciding to keep Sophia alive in a sanctuary, we do not judge Sophia's life to be more important than the lives of a hundred deer. Rather, at T1, we find it justified to kill deer 1 to sustain Sophia because both are harmed equally by death (provided the deer is a healthy, normal deer), at T2 we find it justified to kill deer 2 in order to sustain Sophia because both are harmed equally by death (provided the deer is a healthy, normal deer), and so forth.

12.2. Objection #2: The Problem of Marginal Cases

One might argue that, according to Regan's logic, it would be preferable to kill and feed the corpses of nonstandard human beings (also commonly referred to as "marginal human beings," such as those humans in the late stages of Alzheimer's and permanently comatose human beings) to Sophia since it is likely that those humans with severe cognitive deficiencies are less psychologically complex than a deer and, in many cases, they do not seem to meet Regan's subject-of-a-life criteria. So, if it is justified to kill and feed deer, who are clearly subjects-of-a-life, to Sophia, then it would seem that it is certainly justified to kill and feed those humans who are not clearly subjects-of-a-life, such as those humans with severe cognitive deficiencies, to Sophia. As the argument goes, Regan's logic commits him to the position that it is preferable to harm nonstandard humans rather than deer because, presumably, it is unclear whether these humans are bearers of rights, yet there is no question about whether deer are right-holders.

One thing to note is that it is not obviously true that a human being with severe cognitive impairments, like someone in a later stage of Alzheimer's, lacks beliefs, desires, and the like, and thus we cannot definitively say whether or not she is a subject-of-a-life. Furthermore, Regan argues that, even if it is true

that some nonstandard humans do not have moral rights, we have reason to act as though they do. According to him, we should foster a moral climate where the rights of individuals are taken seriously and, since “it is unclear where we should draw the line between those humans who are, and those who are not, subjects-of-a-life,” the rights view would encourage moral agents to give nonstandard humans “the benefit of the doubt, viewing them as if they are subjects-of-a-life, as if they have basic moral rights, even while conceding that, in viewing them in these ways, we may be giving them more than is their due” (Regan 1983, 320). Regan’s point is that a failure to give the benefit of the doubt to nonstandard humans and a failure to afford them with serious moral protection could quite possibly lead to the weakening of the rights of rational human beings, who arguably are made worse-off by death than Sophia.²⁹

12.3. *Objection #3: Ecological Impacts*

Earlier I wrote that one particular wildlife sanctuary in Colorado feeds approximately 8, 5000 pounds of meat to its carnivores per week. Keeping this in mind, if every animal sanctuary were to adopt the ethically responsible deer-hunting policy that I am proposing, it would be unlikely that we would obtain enough pounds of animal flesh to feed all of the obligate carnivores in animal sanctuaries. And if it turns out that we, in fact, are able to kill enough deer in the ways I suggest, then the deer population surely would be decimated. The decimation of deer could lead to widely catastrophic consequences that make other subjects-of-a-life worse-off than Sophia is made if we were to euthanize her. For instance, if there were a shortage of deer, then mountain lions might suffer a painful death due to starvation, which would make them worse-off than Sophia would be if she were to be euthanized. Yet, if we were to continue to artificially inflate the population of deer in order to ensure that there are enough deer to feed animals in sanctuaries, we would be guilty of treating deer as renewable resources.

The solution, then, might be to permit wild animal sanctuaries to kill only a certain number of deer each year, so that the population of deer is not decimated. Or, better yet, perhaps wildlife sanctuaries should be instructed to kill *only* those deer who will suffer a painful death, such as those who are sick, those who are malnourished, those who will endure brutally cold winters, or those who live in overpopulated areas (so long as the sanctuaries are not, themselves, increasing or promoting artificial deer inflation). While we have good reason to assume that Sophia would certainly be made worse-off by death relative to these deer, it is reasonable to suspect that normal, healthy deer have *more* opportunities for satisfaction than Sophia does in captivity and thus they, and not Sophia, might be made worse-off by death. Thus, we should encourage wildlife sanctuaries to *only* kill deer who face obvious impediments to living a satisfying life.

If animal sanctuaries were to feed obligate carnivores in the ethically responsible way that I suggest, they would only be able to sustain a fraction of obligate carnivores in animal sanctuaries. While this might appear to be an

imperfect solution, we must remember that, given the moral tragedies and complexities inherent to the practice of assisting carnivorous victims of injustice, this is the best we can hope for, until we eradicate the injustices that necessitate the existence of animal sanctuaries in the first place.

13. Practical Implications

While I have pointed to a potential problem for Regan's theory and offered a possible solution that I hope preserves the integrity of his philosophy of animal rights, one might wonder whether what I have discussed in this article would matter to anyone beyond those "immersed in the intricacies of Regan's work."³⁰ That is, would organizations such as the Wild Animal Sanctuary in Colorado even care to appeal to this argument as a guide to conducting their daily operations? Or is what I have done here completely divorced from the real world and actual animal suffering?

The first thing to note is that many individuals, including those who were never particularly inclined to care about nonhuman animal welfare, have made the choice to become vegan after reading Peter Singer's *Animal Liberation* (1975). If individuals who are not especially concerned with the welfare of nonhuman animals can be moved by an intellectual argument regarding the ethical treatment of nonhuman animals, then it is likely that those who have devoted their lives to helping nonhuman animals will consider and be inspired by some of the issues raised in this article. For instance, those who operate and volunteer at animal sanctuaries presumably care a great deal about treating nonhuman animals with respect, and thus they, perhaps more than anyone else, are in a position to be moved by a philosophical argument that provides thoughtful guidance regarding how we ought to navigate complex situations that require us to harm some nonhuman animals in order to preserve the lives of others.

While some might dismiss what Regan has to offer because his theory might be characterized as "too theoretical for practice," I have illustrated that his theory can provide important insights regarding the very real and immediate moral dilemmas that wild animal sanctuaries face. At the very least, his writings remind the public of the moral importance of the work carried out by animal sanctuaries. Animal sanctuaries are not just promoting an aesthetic good or "luxury" to the public when they provide homes for beautiful, charismatic animals who inspire a sense of awe in us. More than this, animal sanctuaries have been entrusted with the ever-important task of making reparations for past injustices: injustices for which we, as a species, are responsible. Regan's theory of animal rights, developed in this essay, will hopefully remind others that, since wild animal sanctuaries are tasked with cleaning up the unjust mess made by our species, we are obligated to support these sanctuaries.

Moreover, my hope is that this discussion about the conflicting rights of nonhuman animals will encourage some animal sanctuaries to reconsider their feeding policies. If animal sanctuaries do believe that *all* nonhuman animals are

entitled to basic respect, they ought to resolve to avoid participating in the inherently unjust institution of animal agriculture. While it is a tragic reality that some nonhuman animals will inevitably be harmed as we attempt to rectify past injustices, animal sanctuaries should remind themselves that certain harms can never be justified, such as the harm of treating a subject-of-a-life like a renewable resource. One way animal sanctuaries can maintain their moral integrity is by refusing to purchase animal flesh from farms and, instead, they might consider alternatives to killing nonhuman animals (such as by scavenging for animal corpses that are fit for consumption) and/or employing the ethically responsible hunting tactics discussed in this essay. We cannot forget that, while justice commands us to assist victims of injustice, justice also demands that we do so while treating all subjects-of-a-life with basic respect.

If wild animal sanctuaries take seriously the discussion in this article, they will come to acknowledge the unfortunate reality that animal sanctuaries are “imperfect solutions to horrific problems” (Emmerman 2014, 228). Hopefully, the recognition that fulfilling the duty to assist obligate carnivores comes with an enormous cost will inspire wildlife sanctuaries to aim at their own obsolescence, for instance by drawing awareness to the inherently unjust treatment of nonhuman animals such as the use of nonhuman animals in circuses or the selling of “exotic” animals for “pets,” which necessitate the existence of wildlife sanctuaries in the first place. The fact that there is a demand for animal sanctuaries entails that we are living in a world where nonhuman animals are unjustly treated and thus we must fight relentlessly for a world that has no need for animal sanctuaries in the first place. It is not enough, then, for animal sanctuaries to be content with providing so-called restitution to nonhuman animals who have been harmed. Animal sanctuaries should seek to educate visitors about the innocent blood that must be shed in the course of rescuing of obligate carnivores and they should remind the public that the mere existence of animal sanctuaries is indicative of a moral tragedy.

Finally, we must remember that, as Regan’s theory informs us, it is not just animal sanctuaries who ought to campaign against the injustices that nonhuman animals like Sophia face. The injustices that nonhuman animals face often stem from our *institutional arrangements*, and thus each and every one of us, as individuals, have acquired the duty to assist these nonhuman animals due to our place in this institutional arrangement. One way that we can fulfill this obligation is by supporting and volunteering at animal sanctuaries that both employ ethically responsible feeding practices and promote public awareness about the injustices that necessitate the existence of these sanctuaries in the first place.

14. Conclusion

I have illustrated that, in many situations, our *prima facie* duty not to harm subjects-of-a-life conflicts with our positive duty to assist victims of injustice like Sophia. In order to navigate these conflicts, I suggest that animal rights

theorists adopt the *guardianship principle*, which explains under what conditions we are justified in harming nonhuman animals in order to fulfill our positive obligation to assist carnivorous victims of injustice. As I illustrated, this permission to harm other subjects-of-a-life in order to avoid making victims of injustice worse-off entails important constraints regarding which nonhuman animals can be harmed and under what conditions this harm is justified.

If implemented on a practical level, my proposal would call for significant changes to how animal protection organizations, like wildlife sanctuaries, operate on a daily basis. While the mission of wildlife sanctuaries is commendable, we must remember that sanctuaries do not get a “free” pass to harm any animal in whatever way they choose, just because the harm is caused in the name of victims of injustice. As Emmerman (2014, 228) points out, sanctuaries are “sites of hope but also of pain, of triumph over trauma but also of continued trauma, of new beginnings wrapped up in an inescapable past and captive present.” We must remember the unfortunate fact that, in many circumstances, it hurts to help, and the hurting aspect must never be ignored, overlooked, or discounted.

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Notes

¹See Franklin (2001) for a defense of Regan against such criticisms.

²By obligate carnivores, I mean animals who have a biological necessity to eat animal flesh in order to survive.

³Note that the guardianship principle should also be used to navigate situations that involve assisting humans who are victims of injustice. However, for the purpose of this paper, I will focus exclusively on how this principle applies to our duty to assist nonhuman animals who are victims of injustice.

⁴Regan describes experiencing subjects-of-a-life as individuals who “have beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference and welfare-interests; the ability to initiate action in pursuit of their desire and goals; a psychophysical identity over time” (Regan 1983, 243). From here on out, I refer to “experiencing subjects-of-a-life” as just “subjects-of-a-life.”

⁵This is not to say that the duty not to harm subjects-of-a-life may never be justifiably overridden. Regan allows that there are certain situations, such as in self-defense, where it may in fact be justified to harm a subject-of-a-life (see Regan 1983, 286–94 for a complete discussion of when the right not to be harmed can be overridden).

⁶When Regan claims that subjects-of-a-life have a “prima facie right not to be harmed,” he assumes that this can be overridden under certain conditions. The notion of *prima facie* rights stems from Ross’s (1930) discussion of *prima facie* duties, which he characterizes as obligations we have in most situations, except for when there is a more pressing duty that “overrides” the others. According to most rights theorists, negative duties, including those of noninterference, have a

correlative rights claim. So, if there is a negative duty not to harm subjects-of-a-life, then there is a corresponding right: the right not to be harmed. Yet, if there are situations where our duty not to harm others can be overridden by other, equally (or more) pressing duties, it follows that the right not to be harmed is *prima facie* and can also be overridden.

- ⁷ See Alastair Norcross's paper on animal death (2012) for further support of the view that death harms nonhuman animals.
- ⁸ Francione (2008, 13) also advocates for this "hands off policy" and writes that, in the case of non-domesticated animals, "we should simply leave them alone."
- ⁹ There is a question regarding who is responsible for assisting victims of injustice. Regan (1983, 37) writes that moral agents acquire duties to assist victims of injustice due to their "voluntary acts or one's place in an institutional arrangement." This seems to entail that we can have obligations to assist victims of injustice even when we are not personally responsible for the injustice they suffered. For the purpose of this paper, I will assume that, as moral agents, we have a shared obligation to assist domesticated animals and wild animals in captivity because of our institutional arrangements. For a more thorough discussion of responsibility, see Palmer (2010, 96–114) for a detailed discussion concerning "who has what obligation toward whom."
- ¹⁰ Note that Rowlands (2012) and De Waal (2002; 2006) argue that certain nonhuman animals possess at least a primitive form of morality, which Bekoff and Pierce (2009; 2012) coin as "moral behavior." While some nonhuman animals can be said to act morally (by displaying traits of empathy, cooperative behavior, and justice), even those who attribute moral behavior to nonhuman animals do not make the further claim that nonhuman animals are therefore moral agents in the Kantian sense.
- ¹¹ In addition to having a duty, on the grounds of justice, to assist victims of injustice, Regan also recognizes that we have a general *prima facie* duty of beneficence, which "enjoins us to do good for others, independent of considerations about what we owe to one another on the grounds of justice" (Regan 1983, xxvii). In recognizing the *prima facie* duty of beneficence, Regan defends his account against Jamieson's (1990) objection that Regan is committed to the claim that moral agents have no obligation to assist someone who is harmed, or might be harmed, by natural events or nonmoral beings.
- ¹² Note that Nussbaum (2004; 2006) presents a much stronger case for human intervention into the lives of wild animals which can be viewed as a competing account of assistance. She argues that since humans have ubiquitously intervened in the lives of most nonhuman animals, including animals who live in the wild, nonintervention is no longer a choice for human beings (Nussbaum 2006, 378–79). She furthermore claims that we should in fact prevent the wolf from harming the sheep "if we can do so without doing greater harms" (Nussbaum 2006, 379).
- ¹³ It has been argued that, in certain cases, domestication is a two-way relationship, from which *both* nonhuman animals and humans benefit. See Budiansky (1992) for this perspective on domestication.
- ¹⁴ Bekoff (2010, 38–39) draws a distinction between domesticating and socializing nonhuman animals, whereby "domestication is an evolutionary process that results in animals such as our companion dogs and cats undergoing substantial behavioral, anatomical, physiological, and genetic changes." Socialized nonhuman animals are animals with wild genes who are brought in to live with human beings, such as an individual chimpanzee who is brought to live alongside a human in a private home.
- ¹⁵ A thorough discussion of the ways in which zoos commonly harm nonhuman animals can be found in Jamieson (1985) and Bekoff (2007, 152–60). See Francione (2000, 22–23) for a description of the typical treatment of nonhuman animals in circuses.
- ¹⁶ As Bekoff (2007, 158) points out, "the vast majority of animals form close social and familial bonds," and when animals are unable to form these bonds, their well-being is severely impaired.
- ¹⁷ A version of this dilemma, as it applies to feeding domesticated animals (specifically, cats and dogs) the flesh of other nonhuman animals, is presented in *Zoopolis*, where the following question is raised: "Do we have an obligation to feed meat to our domesticated animals, particularly

if this is part of their (so-called) natural diet?" (Donaldson and Kymlicka 2011, 149). Donaldson and Kymlicka consider the possibilities of letting cats hunt, scavenging corpses, inventing "frankenmeat" grown by stem cells, and feeding companion animals ethically produced non-meat animal protein, like eggs, as alternatives to feeding companion cats "pet food." Yet, they note that there is good reason to suspect that each option is morally problematic in its own way. They thus conclude that living with a companion animal, like a cat, comes with great moral responsibility. Rowlands (2002, 173–74) suggests that, as it currently stands, there is no real "dilemma" when we feed our companion animals "pet" food, since this meat is actually just "mechanically reclaimed" food: food that is a "by-product" of animal agriculture and that humans would not eat anyway. As such, he points out that feeding our companion animals "pet food" does not increase the number of farm animals who will inevitably suffer and die. But, he does recommend that we should remain concerned about increasing the *profitability* of the agriculture industry, which is essentially what happens when we purchase "pet food." In the same vein, Gillen (2008) argues that we should, when possible, feed companion animals, such as cats and dogs, a vegan diet. According to Gillen, feeding our cats and dogs a well-formulated vegetable-based meal is most likely healthier than feeding them meat that has been genetically manipulated and pumped full of hormones. See Gray, Sellon, and Freeman (2004) and Zoran and Buffington (2011) for a further discussion regarding the nutritional needs of domestic cats. While there is evidence that some domestic cats can survive on a vegan diet (when the food is supplemented with taurine and other nutrients), a big cat, such as a lion, cannot survive on a plant-based diet. Since the metabolism of big cats is unable to synthesize certain essential nutrients (such as retinol, taurine, and arachidonic acid) out of vegetable protein, they need animal protein to supply these elements. See Fiennes (1996) and Robbins (1983) for a discussion regarding the nutritional needs of obligate carnivores like lions. When we feed big cats meat on animal sanctuaries, we do not, nor is it even possible to, feed them "mechanically reclaimed" food. Rather, we must feed big cats meat that would be fit for human consumption. This is because the slaughterhouse by-product we feed cats and dogs in the form of "pet food" is stripped of taurine (and other nutrients) in the denaturing process and then the taurine is synthetically added. Since there is no "natural" taurine in "pet food," big cats would be unable to survive on this "mechanically reclaimed" meat.

¹⁸ See Engel (2000), Norcross (2004), Rollin (1995), Singer (1975), Singer and Mason (2006), and Foer (2009) for a description of the horrors that nonhuman animals are forced to endure in industrial animal agriculture.

¹⁹ In prevention-case situations, the involved parties face harm because of the circumstances they find themselves in; they do not face harm because of the actions of moral agents. For instance, Regan discusses a scenario where fifty-one miners are stuck in a mine shaft and one becomes stuck in the entrance of the shaft and must be killed to save the other miners (Regan 1983, 307). In this case, none of the miners are in the mine shaft as a result of having their rights violated by some moral agent(s). However, if a solitary person is trapped in a mine shaft because he was forced into the shaft by the fifty other miners, the fifty miners would no longer be entitled to protection under the miniride principle (Regan 1983, 322–23).

²⁰ See also Tim Ingold (2000), who draws a distinction between hunters and gatherers and farmers and herdsman. Ingold notes that hunters and gatherers have a different mode of life than farmers and herdsman, as hunters and gatherers obtain resources that are not cultivated or husbanded by humans. Furthermore, Ingold argues that hunter-gatherer societies often demonstrate a sense of respect for the nonhuman animals whom they hunt by paying tribute to them. Likewise, Mails (1972) argues that traditional subsistence hunters can be said to respect their prey when they ask for the killed animal's forgiveness, mourn their deaths, explain to the animals why they must be killed, and use every part of the animal.

²¹ Some ecofeminists, such as Deane Curtin (1991) and Karen Warren (2000), defend what they refer to as "contextual vegetarianism," which implies that there is no absolute moral rule that prohibits eating meat under *all* circumstances. According to Curtin, we ought not treat all interests of

beings the same if we have different relationships to these beings. Specifically, Curtin argues that, in cases of necessity, he would kill an animal to feed his son because of his special relationship to his son. In the discussion at hand, we could argue that Regan is committed to similar reasoning: since we have a special relationship to Sophia in virtue of the fact that she is a victim of injustice, we ought to treat her differently than we would a deer.

- ²² Regan does seem to assume that it is possible for one to raise a farm animal in a respectful way, although he does not describe what this would look like. Rather, he focuses on making the claim that animal agriculture “as presently conducted, routinely treats these animals in ways that are contrary to the respect they are due as a matter of strict justice” (Regan 1983, 346). I argue that raising nonhuman animals on farms for food can *never* be justified on Regan’s account, especially since he famously argues that “the fundamental wrong is the system that allows us to view nonhuman animals as *our resources*, here for *us*.”
- ²³ One might argue that there is a distinction between (1) using a subject-of-a-life as a renewable resource, and (2) using a subject-of-a-life as a *mere* renewable resource. While it is always unacceptable to use a being as a mere resource, perhaps Regan’s theory permits the use of a being as a resource, such as in so-called “humane” cases of animal agriculture, without violating the respect principle. That is, perhaps we could use an animal as a renewable resource without viewing or treating the animal as something whose value is reducible to its utility relative to the interests of others. Yet, Regan does not draw a distinction between treating an animal as a “renewable resource” and treating the animal as a “*mere* renewable resource.” His position is that, any time we treat a subject-of-a-life as a *renewable resource*, we violate the respect principle (Regan 1983, 243). Yet, in his discussion of the respect principle, he argues that we should never treat subjects-of-a-life as “mere” receptacles or “merely” as means to securing the best aggregate consequences (Regan 1983, 248–49). We might then conclude that using a being as a renewable resource is equivalent to treating that being as a *mere receptacle* or a *mere means* to maximizing social utility.
- ²⁴ Furthermore, when a hunter kills a deer, it is impossible to know whether that particular deer has been negatively affected by questionable wildlife “management” or if that particular deer is one who now exists only because the population of deer was artificially inflated.
- ²⁵ Even if this response is unsatisfactory and it turns out that deer are, like Sophia, also victims of injustice, the following problem remains: there is a choice to be made about which victim of injustice we should assist (the deer or Sophia). Exploring the answer requires that we turn to Regan’s discussion about comparing the value of lives.
- ²⁶ Note that, in my original example involving Sophia, which I employed in order to clearly motivate the dilemma at hand, I described a victim of justice who had been harmed in a very extreme way. That is, I used an example of a lion who was declawed, had her teeth ripped out, and was deprived of important social interactions with her conspecifics. If I were to have used an example of a retired circus tiger who has not been declawed or had his teeth ripped out, we would not need to consider whether the tiger’s future opportunities for satisfaction has been seriously impaired. Since tigers are solitary animals, they would not need to be surrounded by conspecifics. Furthermore, these tigers could exercise their predatory nature if they were given substitutes for prey, such as the large ball on a rope that Nussbaum describes (Nussbaum 2006, 371).
- ²⁷ I will later argue that, in order to employ caution, we should only kill sick deer, elderly deer, and deer in overpopulated areas to feed carnivores in sanctuaries since we have better evidence that their lives contain fewer opportunities for satisfaction than Sophia’s life.
- ²⁸ While it is true that some animal carcasses are unfit for consumption, others clearly are not, since some scavenger-carnivores, like hyenas, sustain themselves mainly by scavenging for carcasses.
- ²⁹ Furthermore, it is worth noting that we most likely would impede upon the rights of the nonstandard human’s family members if we were to just kidnap, kill, and feed their grandmother to Sophia, and this right is arguably a special consideration which limits who we are permitted to kill under the guardianship principle.

³⁰I would like to thank one of the reviewers for *The Journal of Social Philosophy* for encouraging me to pursue this line of thought.

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