

# Rights, Justice, and Duties to Provide Assistance: A Critique of Regan's Theory of Rights\*

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In *The Case for Animal Rights*, Tom Regan seeks to develop a moral theory that is a dramatic alternative to utilitarian theories, and then to apply it to some practical problems concerning our treatment of animals.<sup>1</sup> The range of Regan's book is enormous: it includes thorough and subtle discussion of the foundation and nature of rights, as well as eloquent passages telling us what we must do to respect them. Even the reader who is uninterested in the question of animal rights will find much that is stimulating and provocative. In the wake of Regan's achievement, the facile dismissal of animal rights may finally be seen as the prejudice that it is.

Still, despite his impressive accomplishments, Regan has failed to develop a compelling and dramatic alternative to utilitarian theories. In this essay I present an overview of Regan's theory, then critically examine two areas in which it is most problematic: its account of our duties to render assistance and its principles for overriding rights. I argue that Regan's theory has serious problems and that the most plausible revisions would lead Regan back in the direction of utilitarianism.

## AN OVERVIEW

A familiar objection to utilitarianism is this: utilitarianism regards individuals as valuable only insofar as they contribute to making the world a better place; when individuals cease to so contribute, either by being

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1. Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 1983). All parenthetical page references are to this book.

unhappy themselves or by causing others misery, it is not wrong to kill them. But this conclusion is unacceptable.<sup>2</sup>

Regan's positive theory begins from this familiar objection. He charges that utilitarianism views individuals as "mere receptacles" for value. Regan espouses instead what he calls the "Postulate of Inherent Value": individuals have value that is logically independent of the value of their experiences and of their value to others. Inherent value is, so to speak, the value of the receptacle rather than the value of what the receptacle contains. According to Regan, when the Postulate of Inherent Value is conjoined with some other plausible assumptions, it logically implies his theory of rights.

Regan argues in the following way. Everything with inherent value must have equal inherent value, since the alternative would lead to a "perfectionist" theory of justice, one which sanctions differential treatment of individuals on the basis of the degree to which they exemplify various virtues. According to Regan, perfectionist theories of justice have morally pernicious consequences and, hence, are unacceptable. Since both moral agents and "patients"—those individuals, like infants and most animals, who can be benefited or harmed but are not responsible for their actions—are "subjects of a life," they are of equal inherent value. Next Regan introduces the Respect Principle, which "rests on" the Postulate of Inherent Value. It states that we must treat those individuals who have inherent value in ways that respect their inherent value. According to Regan, the Respect Principle requires not only that we refrain from treating others in ways forbidden by this principle but also that we come to their defense when they are threatened by moral agents. Regan takes the Respect Principle to imply the Harm Principle. This principle tells us that we must not harm either moral agents or patients, since to harm them is to treat them in ways which do not respect their inherent value. Regan goes on to argue that these principles generate basic rights: creatures who have inherent value have basic rights. It is not merely that it would be wrong for us to treat others in ways that are forbidden by these principles but, rather, that to do so would be unjust. These rights are not absolute, however, and Regan specifies some kinds of cases in which rights may be "overridden." Finally he discusses some practical implications of his view.

In such an ambitious book there is much that deserves reflection and discussion. In what follows I will consider only the duty to render assistance, and Regan's account of when we should override rights, and how we should decide whose rights should be overridden.

## DUTIES OF ASSISTANCE

According to Regan, duties of assistance are grounded in the Respect Principle. They are "unacquired" duties; they do not rest on promises,

2. For a version of this objection, see Richard Henson, "Utilitarianism and the Wrongness of Killing," *Philosophical Review* 80 (1971): 320–37. For a reply, see my "Utilitarianism and the Morality of Killing," *Philosophical Studies* 45 (1984): 209–21.

contracts, or other special relationships. He writes: "The respect principle, as a principle of justice, requires more than that we not harm some so that optimistic results may be produced for all affected by the outcome; it also imposes the *prima facie* duty to assist those who are victims of injustice at the hands of others" (p. 249). Creatures are victims of injustice when their rights are violated. Though both moral agents and patients can be victims of injustice, only moral agents can commit injustices, for only they can violate rights.<sup>3</sup> This provides Regan with the basis of an important distinction: although we are required to assist those who are victims of injustice, we are not required to help those in need who are not victims of injustice.<sup>4</sup>

Limiting the duty to render assistance in this way permits Regan to avoid one common objection to the idea that animals have rights. It is sometimes said that if animals have rights, then we have duties to protect them from their predators. Many people find this conclusion absurd and hold that animals do not have rights. But, according to Regan, we (typically) have no duties to protect animals from their predators, for predators are not moral agents and therefore cannot commit injustices. He writes: "In claiming that we have a *prima facie* duty to assist those animals *whose rights are violated*, therefore, we are not claiming that we have a duty to assist the sheep against the attack of the wolf, since the wolf neither can nor does violate anyone's rights" (p. 285). There are serious difficulties with circumscribing the duty to assist in the way that Regan does. These difficulties can be illuminated by considering some hypothetical cases.

Suppose that I am hiking across the slope of a mountain. Somewhat ahead of me, on a trail below, is a man I do not know. Also somewhat ahead of me, but on a trail above, is a woman I do not know. In the five cases which I will describe, a boulder is set in motion. As a result, the man will be killed unless I warn him. In Case 1 the woman intentionally pushes the boulder down the mountain toward the man. In Case 2 the woman takes a step, inadvertently causing the boulder to roll. In Case 3 the woman sneezes, and the boulder rolls toward the man as a result. In Case 4 there is a wolf on the trail above instead of the woman. While stalking her prey, the wolf causes a boulder to roll down the mountain toward the man. In Case 5 the boulder is set in motion by a landslide.

On the basis of what Regan says, we would have to conclude that, in Cases 4 and 5, I do not have a duty of justice to warn the man. On Regan's view neither wolves nor landslides can violate rights since they are not agents, and for this reason we do not have a duty of justice to aid their victims.

3. For present purposes I do not challenge Regan's claim that only moral agents can violate rights. It can be maintained, however, that moral patients can also violate rights, though we do not hold them responsible for such violations.

4. For the purposes of this paper "X has a duty to do (or not to do) A," "X ought to do (or not to do) A," "X is required to do (or not to do) A," and "X must do (or not do) A" are usually taken to be equivalent. Finer distinctions can and should be drawn, but they are not necessary for present purposes.

It is less clear what Regan would say about Cases 1–3. Regan believes that only agents can violate rights, but he says little about the circumstances in which an agent-caused harm constitutes rights violation. There seem to be three different positions that he could take.

The first position is that only in Case 1 is there a rights violation. The ground for this claim might be the view that agents only commit injustices when what they bring about is the intended result of an action which they perform.

A second position is that in both Cases 1 and 2 there are rights violations, but not in Cases 3–5. The ground for this claim might be the view that any action performed by an agent can be an injustice, even if the consequence is not intended, or the action is not intentional under the description in which it constitutes an injustice.

Finally it could be claimed that Cases 1–3 are all examples of injustices. The ground for this view might be that any harm caused by an agent can be an injustice, even if no action is involved in bringing about the harm.

There are difficulties with all three positions. None provides a satisfactory ground for distinguishing cases in which we are required to provide assistance from those in which we are not required to provide assistance.

It seems arbitrary to suppose that we are required to warn the man when the woman intentionally pushes the boulder, but not when she inadvertently causes it to roll in his direction. It seems just as arbitrary to hold that we are required to warn the man when the woman inadvertently sets the boulder in motion, but not when the boulder is set in motion by her sneeze. And if it is granted that we ought to warn the man in all three of these cases, what plausible reason could be given for supposing that we do not have a duty to warn him in Cases 4 and 5? All five cases are alike in important respects. We can even suppose that the boulder describes the same trajectory and travels at the same velocity in all five cases and that only the causes of its being in motion are different. The man will be killed unless he is warned; only I am in a position to warn him; and the costs of my warning him are very low. It is thus natural to suppose that what I ought to do is the same in all five cases. I believe that I ought to warn the man, but if I believed otherwise about Cases 4 and 5 I think I would believe otherwise about the other cases as well. The different origins of the threats in these cases do not seem relevant to determining my duty.<sup>5</sup>

The following example may help make this clear. Suppose that I see a boulder headed straight for the man. On the trail above is a woman

5. A more general argument for a similar conclusion is given by Nancy Davis, "The Priority of Avoiding Harm," in *Killing and Letting Die*, ed. Bonnie Steinbock (Englewood Cliffs, N.J.: Prentice-Hall, 1980), pp. 172–216. See also Thomas Nagel, *The View from Nowhere* (New York: Oxford University Press, 1986), p. 178.

walking her dog. I am unsure whether the woman intentionally pushed the boulder at the man, whether it began rolling because she slipped and dislodged it, whether her dog caused the boulder to roll, or whether the boulder was set in motion by a geological tremor. Despite my uncertainties about what set the boulder in motion, I should have no uncertainties about my duty: I ought to warn the man.

Still, it might be claimed that some limit (short of maximal utility) must be set on the duty to assist, otherwise too great a burden would be placed on people who are in the wrong place at the wrong time with the right resources. Limiting the duty to provide assistance to victims of injustice is one way of setting the limit.

Even if we accept the need to limit duties to assist, there are reasons to resist Regan's way of doing it. We might instead limit the duty to assist to those cases in which it is obvious that the costs of providing assistance would be very low and the benefits would be very great. The reason for setting the limit in this way might be our concern to protect the freedom of moral agents to pursue their own ends in a world which is very "needy."<sup>6</sup> Regan's approach, however, leads to the conclusion that in cases in which rights are threatened we may have duties to assist even when the costs would be great and the benefits small, while in cases in which rights are not threatened we may have no duties to assist even though the costs would be small and the benefits great. For example, I may have a duty to help prevent a thief from stealing your toothbrush while you are camping at the top of Long's Peak, even if this means that I must miss a rare performance of Mahler's Sixth Symphony; yet I may not have a duty to make a phone call which would save one hundred children from a collapsing circus tent.

There is an alternative strategy that might be suggested. Since a theory of justice is only part of a complete moral theory, we could hold that I have a duty to assist in all five cases, but that it rests on different grounds in Cases 4 and 5 than in Cases 1–3. Though this appears to be a more plausible strategy than the one previously discussed, it too is problematic.

First, if Regan were to adopt this strategy, he would have to forgo his response to the argument from predation. For the fact that we have no duty of justice to assist the sheep who is threatened by the wolf would not be sufficient for supposing that we have no duty at all to assist the sheep. Our duty to assist the sheep might rest on some ground other than justice.

6. This approach is suggested by some remarks of Bernard Williams in sec. 5 of his "Critique of Utilitarianism," in J. J. C. Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973); and by Thomas Nagel in the third of his Tanner Lectures, "The Limits of Objectivity," in *The Tanner Lectures on Human Values*, ed. Sterling M. McMurrin (Salt Lake City: University of Utah Press, 1980). See also Joel Feinberg, *Harm to Others*, vol. 1 of *The Moral Limits of the Criminal Law* (New York: Oxford University Press, 1984), chap. 4.

It might be objected, however, that the relationship between the predator and the prey is radically different from the relationship between the man and what threatens him. The wolf needs dead sheep in order to survive. The landslide and the woman are not similarly dependent on the death of the man. The wolf's killing the sheep might therefore be regarded as a case of "necessity," and it might be thought that (unlike in the boulder cases) there are no duties to assist in cases of necessity.<sup>7</sup> But even if there are cases of predation in which we have no duty to assist the prey, troublesome cases remain. Some of the "necessary" deaths caused by carnivores involve "unnecessary" pain. And sometimes animals kill other animals even when it is not necessary to preserve their lives. It could be claimed that we ought to save as many animals as possible and that when animals must be killed so that others may survive, we have a duty to "humanely" raise and slaughter those animals in order to prevent unnecessary suffering.

Whatever the merits of such claims and arguments, it is clear that they are not directed at Regan alone. Anyone who believes that we ought to prevent unnecessary suffering or death must come to terms with them.<sup>8</sup> But if we take the second strategy that I have suggested, the one which holds that we have duties to assist that are not duties of justice, Regan will have many of the same problems with predation that Singer and other utilitarians have.<sup>9</sup> One clear advantage of Regan's theory will have been lost.

A second problem with this second strategy is that Regan's theory does not recognize nondiscretionary duties of assistance that are not duties of justice. If such a class of nondiscretionary duties is to be added, some independent motivation must be supplied. For it would be ad hoc to postulate such a class of duties simply to circumvent problems posed by the boulder cases. If we are to admit such a distinction among nondiscretionary duties, then it must be shown that there is some work for the distinction to do: it must mark some important difference between duties of justice and other nondiscretionary duties.

7. Regan discusses "innocent threats" and claims that we are permitted to defend ourselves against them (pp. 293–94). He does not discuss third-party intervention in such cases, however. On the general subject of third-party permissions in "innocent threat" cases, see Nancy Davis, "Abortion and Self-Defense," *Philosophy and Public Affairs* 13 (1984): 175–207.

8. For an argument that in principle we have a duty to prevent predation, see S. F. Sapontzis, *Morals, Reason, and Animals* (Philadelphia: Temple University Press, 1987), chap. 13.

9. For Peter Singer's views regarding animals, see *Animal Liberation* (New York: Avon, 1975), *Practical Ethics* (Cambridge: Cambridge University Press, 1979), chaps. 4 and 5, and "Animal Liberation or Animal Rights?" *Monist* 70 (1987): 3–14. Ironically, the most searching critique of Singer's views is Regan's *The Case for Animal Rights*. See also Regan's *The Struggle for Animal Rights* (Clarks Summit, Pa.: International Society for Animal Rights, 1987); and R. G. Frey, *Rights, Killing, and Suffering* (Oxford: Basil Blackwell, 1983).



One way to distinguish among nondiscretionary duties would be on grounds of their relative stringency. Duties of justice, it might be said, are more stringent than other nondiscretionary duties. This view is problematical, however. In the boulder cases I have a duty to warn the man. How could I reasonably argue that some competing duty would relieve me from warning the man when the boulder is set in motion by a sneeze, but the very same duty would not relieve me from warning the man when the boulder is intentionally set in motion by an agent? The same reasons for supposing that I have a duty to warn the man in all five cases are also reasons for supposing that in these cases the duty is equally stringent.<sup>10</sup>

It might be admitted that although duties of justice cannot be distinguished from other nondiscretionary duties on grounds of their stringency, there are still good moral-theoretical reasons for distinguishing duties of justice from other nondiscretionary duties. Consider again Case 5. If I had decided to stay home and tend my garden instead of going hiking, then the man would have been killed by the landslide. A tragedy would have occurred, but not an injustice. Had I been tending my garden in Case 1, however, an injustice would have occurred: the woman would have succeeded in killing the man.<sup>11</sup> In Case 5 my duty to warn the man arises because I am in a position to prevent a tragedy; in Case 1 it arises because I am in a position to prevent an injustice. It might be thought that my failure to warn the man in Case 5 cannot be an injustice since no injustice would occur were I not in a position to warn him. If my failure to warn the man would not be an injustice, then my duty to warn him cannot be a duty of justice. Thus, if I have a nondiscretionary duty to warn the man in Case 5, then it must not be a duty of justice.

Although this argument has some plausibility, it is problematic. First, it rests on a certain view about the nature of moral theory: that there is some point in making theoretic distinctions that may have no practical purchase. Second, it rests on the premise that, at least in this case, we cannot appeal to a notion of "natural injustice." If it could be maintained that the man's death would be an injustice even if no one were in a position to warn him of the landslide, then the crucial ground for distinguishing Case 1 from Case 5 would disappear. Third, the argument presupposes that what would happen were I not present is directly relevant to the ground of my duty when I am present. But this seems to confuse

10. Of course we can imagine circumstances in which duties of justice are more stringent than other nondiscretionary duties. For example, we could agree to regard them as such. But this possibility does not show that as a matter of fact, here and now, duties of justice are more stringent than other nondiscretionary duties.

11. Throughout my discussion of Case 1, I assume that the appropriate conditions are satisfied such that the woman violated a duty of justice in killing the man. Case 1 is not a case of self-defense, e.g., nor is the woman ignorant of the presence of the man below when she intentionally sets the boulder in motion.

the circumstances in which I must act with some other, different, set of circumstances. That the man's death in Case 1, were I not to warn him, would involve two injustices does not show that my failure to warn him in the other cases would not involve any injustice. The case for distinguishing equally stringent duties of assistance on moral-theoretic grounds is not convincingly established by this argument.

The final possibility open to Regan that I shall consider involves the claim that in all five cases my failure to warn the man would constitute failures to discharge duties of justice. The ground of this claim might involve the view that my failures to warn in these cases would not merely be failures to provide assistance but would also in fact constitute my harming the man. In arguing for this claim Regan could appeal to the view that in some circumstances omissions can be viewed as causes of outcomes.

However plausible such a view may be in its own right, it is problematical as a defense of Regan's theory. For appeal to such a conception of causation, and such views about the relations between causation, harm, and injustice, threatens to undermine Regan's antiutilitarian position. Principles of justice in antiutilitarian theories such as Regan's are intended to constrain the means that we may use to produce benefits and prevent harms. If failure to prevent harm in itself may constitute an injustice, then appeals to justice cannot play this role. Moreover once we have accepted the view that failure to prevent harm sometimes constitutes injustice, it may be difficult to resist a thorough-going consequentialist conception of justice.<sup>12</sup>

In this section I have argued that Regan's own views concerning duties of assistance are inadequate and incomplete. They are incomplete in that he does not tell us under what conditions we have duties to assist those who are threatened by agents. They are inadequate in that, contrary to Regan, we sometimes have duties to assist those in distress even if they are not threatened by agents. If we try to supplement Regan's theory with a class of nondiscretionary duties that are not duties of justice, then Regan's response to the argument from predation will no longer be available to him. In addition, the resulting theory is likely to be ad hoc, since there is no obvious independent motivation for supplementing Regan's theory in this way. Moreover the resulting theory would be closer to some versions of consequentialism than to Regan's current views. It appears that Regan faces a dilemma: either rest with an inadequate account of duties to assist or move to a more consequentialist account of when we have such duties. Neither horn is attractive for someone who seeks a dramatic alternative to utilitarian moral theory.

12. Here I stand on the edge of some murky waters. Although I cannot develop my views on the issue here, it seems clear that there are some important relations between our views about causality and responsibility and the plausibility of various normative theories. See Williams; Nagel, *The View from Nowhere*, and "The Limits of Objectivity"; and Nancy Davis, "Utilitarianism and Responsibility," *Ratio* 12 (1980): 15–36.



## OVERRIDING RIGHTS

Regan believes that in some circumstances we are permitted or required to override the rights of innocent creatures. He distinguishes the following cases in which this is so: "self-defense by the innocent," "punishment of the guilty," "innocent shields," "innocent threats," and "prevention cases."<sup>13</sup> Regan has two principles for overriding rights in these cases: the Miniride Principle which, when harms are comparable, requires us to save the greatest number of innocents; and the Worse-Off Principle which, when harms are not comparable, requires us to bring about the outcome in which the worst-off are less worse-off than in any alternative outcome. I will argue that the Worse-Off Principle is unacceptable both in its own terms and as an expression of Regan's moral theory and that his use of the principle is inconsistent with his own normative views.

Regan characterizes prevention cases as those in which we can prevent some innocent creatures from being harmed only by harming some creatures who would be harmed even if we were to do nothing. One of Regan's examples is a case in which fifty-one miners are trapped in a cave-in. All will die unless we kill one to save fifty, or kill fifty to save one. Regan believes that we should kill one so that fifty may live. This is sanctioned by the Miniride Principle, which he states in the following way: "Special considerations aside, when we must choose between overriding the rights of 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" (p. 305). Although Regan spends considerable time arguing that in the case of the trapped miners we should save fifty rather than one, he says very little about what entitles us, on his theory, to do anything at all. We should wonder why the rights of innocents can be overridden in such cases.

In the other cases in which we may override rights, there are possible justifications that are not available in prevention cases. In the cases of punishment and self-defense, those who are harmed are not innocent. In the cases of innocent shields and innocent threats, we act to preserve our own lives. In prevention cases we may kill one in order to save fifty, even if our lives are not at stake. Indeed, in such cases we may harm innocent creatures even if no lives are at stake.

This is difficult to reconcile with Regan's commitment to the equal inherent value of all moral agents and patients. If each miner is of equal inherent value why should one innocent miner be killed so that others may live? It might be said that since all will die if we do nothing, the one we kill cannot complain; for that miner would die no matter what

13. I assume that Regan's view is that in prevention cases we are required, rather than merely permitted, to override rights. What he says about this is not altogether clear, however. Compare, e.g., pp. 305 and 287.

we did. But, as we saw in the previous section, Regan believes that there is a moral difference between deaths that are caused by agents and deaths that are caused by natural forces. The threat of the former often involves injustice and generates duties to aid; the threat of the latter involves no injustice and does not generate duties to aid. Indeed it would seem that, on Regan's view, if the cave-in is caused by natural forces rather than agency, then we have no duty at all to assist the threatened miners—much less a duty to kill an innocent miner in order to save fifty others.

The most plausible reason for believing that we should kill one so that fifty may live rests on an appeal to consequences. All fifty-one will die unless we act. The outcome would be better were we to kill one (or even fifty). This is certainly true, but it cannot be Regan's reason for telling us to kill an innocent miner. For he explicitly rejects appeals to the value of consequences in deciding what to do in prevention cases. "The reason the rights view gives for choosing to override the rights of the few is that this is what we must do if we are to show equal respect for the equal inherent value, *and* equal prima facie rights, of the individuals involved. It is, in a word, not the aggregate consequences for all affected by the outcome that matter; it is respect for the equality of the involved individuals that does" (p. 307). What Regan doesn't tell us is why "respect for the equality of the involved individuals" should lead us to kill one so that fifty may live. Why shouldn't this respect lead us to kill none, rather than one or fifty? Of course it would be tragic if all the miners were to die but, as antiutilitarians often say, the price of respecting rights is sometimes very high.

A further problem in reconciling the notion of equal inherent value with Regan's conviction that we have a duty to act in prevention cases is highlighted by his treatment of a lifeboat case. Imagine that there are four normal humans and a dog on a lifeboat. All will die unless one of the five is thrown overboard. Regan believes that it is the dog who should be thrown overboard. This is what we are required to do by the Worse-Off Principle. He states this principle in the following way: "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" (p. 308).<sup>14</sup> The dog should be thrown overboard since, although each creature in the boat is of equal inherent value, "death for the dog . . . though a harm, is not comparable to the harm that death would be for any of the humans" (p. 324). Regan defends this judgment by appeal to the following account of the harm of death. "The magnitude of the harm that death is . . . is a function of the number and variety of

14. Because it is formulated in terms of "the many" and "the few," the worse-off principle is stated in a misleading way. As Regan point out, "unequal numbers are not essential to the worse-off principle" (p. 308).

opportunities for satisfaction it forecloses for a given individual" (p. 351).<sup>15</sup>

This should make us wonder exactly what work is done by the claim that dogs and normal humans are of equal inherent value. Animals in lifeboats, like animals on farms, are all equal; but some are more equal than others. Recall the governing metaphor: inherent value is the value of the receptacle rather than the value of the contents. If inherent value is to play any well-motivated role in Regan's theory, it would seem that it must block inferences from the content of a creature's life to conclusions about the creature's moral entitlements. Yet despite his denials it appears that Regan makes exactly this sort of inference in his discussion of the lifeboat case.

Even if we put aside this problem of motivating duties to act in prevention cases, there are other difficulties that are as serious. It appears that Regan uses the Worse-Off Principle in a way that is inconsistent with his own normative views. Regan believes that his moral theory, unlike any version of utilitarianism, supports an "abolitionist" position on animal experimentation. He writes: "Singer's position is not anti-vivisectionist. The rights view is. . . . The rights view offers a categorical condemnation of the harmful use of animals in science . . . calling for its total abolition."<sup>16</sup> But recall what Regan says about the lifeboat case. His reasoning there is very much like that of those who try to defend harmful experiments on animals. They often claim that the life of a single normal human is worth more than the lives of any number of other animals.

There is a close analogy between some cases of animal experimentation and the lifeboat case.<sup>17</sup> Consider a case in which a population of humans and dogs will perish unless we experiment on some members of a population who are at risk. Regan seems committed to the view that we should experiment on any number of dogs in order to save the humans. As in the lifeboat case, all will perish unless some are sacrificed. Since, on Regan's view, death is less of a harm for a dog than for a human, it is the dogs who should be sacrificed. Regan has tried to break

15. There are well-known difficulties with the view that death is a harm. There are further difficulties with supposing that it is a harm of the sort that Regan specifies. On the first point, see Feinberg, chap. 2. On the second point, see my "Utilitarianism and the Morality of Killing."

16. Peter Singer and Tom Regan, "Dog in the Lifeboat: An Exchange," *New York Review of Books* (April 25, 1985), p. 57. The quote is from Regan.

17. This point is also made by Rebecca Dresser, "Respecting and Protecting Nonhuman Animals: Regan's *The Case for Animal Rights*," *American Bar Foundation Research Journal* (1984), pp. 831–50; H. J. McCloskey, "The Moral Case for Experimentation on Animals," *Monist* 70 (1987): 64–82; Peter Singer, "Ten Years of Animal Liberation," *New York Review of Books* (January 17, 1985), pp. 46–52; and L. W. Sumner, "Tom Regan, *The Case for Animal Rights*," *NOÛS* 20 (1986): 425–34. Sumner and I also agree that "many of the uncompromisingly abolitionist commitments of animal rightists simply cannot be supported by the rights framework which Regan has constructed" (Sumner, p. 434).

the analogy between the lifeboat case and animal experimentation by appealing to the importance of noncoercion. He writes:

It is wrong—categorically wrong—coercively to put an animal at risk of harm, when the animal would not otherwise run this risk, so that others might benefit; and it is wrong to do this in a scientific or in any other context because such treatment violated the animal's right to be treated with respect by reducing the animal to the status of a mere resource, a mere means, a thing. It is not wrong, however, to cast the dog on the lifeboat overboard if the dog runs the same risk of dying as the other survivors, if no one has violated the dog's right in the course of getting him on board, and if all on board will perish if all continue in their present condition.<sup>18</sup>

Even if Regan is correct in attaching such importance to noncoercion, the analogy between the case of animal experimentation which I have described and the lifeboat case still stands. For in the case described, the dogs who are experimented on have not been coerced into the risk pool: they are there from the beginning.

Of course there may not be many actual cases like the one described, but neither may there be many actual cases of animal experimentation that are defensible from a utilitarian perspective. Moreover, as a matter of ultimate ends, it appears that both Regan and a utilitarian should work toward the same kind of world—one in which the interest of humans and other animals never come into conflict; or if that is not possible, one in which they come into conflict as seldom as possible.<sup>19</sup> The dispute between Regan and his utilitarian opponent is not a dispute between an abolitionist and a moderate. Both have abolitionist goals, but in present circumstances their theories sanction some harmful animal experimentation.<sup>20</sup>

This problem of internal consistency is in itself not sufficient reason to give up the Worse-Off Principle. Regan could instead give up the claim that his theory entails an abolitionist position on animal experimentation; or he could revise his views about the comparative harm of various deaths. There are other reasons, however, for giving up the Worse-Off Principle.

18. Singer and Regan, "Dog in the Lifeboat," p. 57.

19. Singer makes this point in his contribution to "Dog in the Lifeboat."

20. Elsewhere I have argued for a moderate stance on animal experimentation that, in present circumstances, has radical implications. See Dale Jamieson and Tom Regan, "On the Ethics of the Use of Animals in Science," in *And Justice for All: New Introductory Essays in Ethics and Public Policy*, ed. Tom Regan and Donald VanDeVeer (Totowa, N.J.: Rowman & Littlefield, 1982), pp. 169–96; Dale Jamieson, "Experimenting on Animals: A Reconsideration," *Between the Species* 1 (1985): 4–11; Dale Jamieson and Jacqueline Colby, "The Ethics of Experimenting on Humans and Non-Humans," Working Paper (Center for Values and Social Policy, University of Colorado, Boulder, 1988); Marc Bekoff, Dale Jamieson, and Thomas J. Daniels, "Reflective Ethology, Applied Philosophy, and Animal Rights," in *Perspectives in Ethology*, vol. 9, ed. Peter H. Klopfer and P. P. G. Bateson (New York: Plenum, in press).

Consider some of its normative implications. The Worse-Off Principle does not commit us to choosing the lesser harm over the greater harm. It commits us to bringing about that outcome in which the worst-off creature is least worse-off, relative to the alternative outcomes. When not everyone is in the same position prior to our action, the Worse-Off Principle may have radically unsettling implications. On some occasions it will instruct us to harm more creatures more, rather than fewer creatures less.

Consider two cases.<sup>21</sup> In the first case John is crippled and Mary is not. We must either cripple Mary or cause John a slight headache. The Worse-Off Principle tells us that we must cripple Mary, since John crippled with a headache would be worse off than either John or Mary would be if both were crippled. Consider next a case in which there are a million people who are not crippled and one who is. We must either give the crippled person a headache, or cripple the million. The Worse-Off Principle tells us to cripple the million.

The Worse-Off Principle can also come into conflict with the Miniride Principle. This is because the Miniride Principle is framed in terms of comparative harms and the Worse-Off Principle is framed in terms of comparative positions. Imagine a case in which we must either blind six people or one. Since the harms are comparable and therefore the numbers count, the Miniride Principle instructs us to blind the one. But suppose that the one is also deaf. If she were blinded, she would be worse off than any of the six would be if they were blinded. The Worse-Off Principle would thus tell us to blind the six.

We can make these principles consistent by recasting the Worse-Off Principle in terms of comparable harms rather than in terms of comparative positions. But if we do this, the Worse-Off Principle will still have unacceptable implications. It would imply that if we must choose between a million people each losing an arm or a single person losing two arms, we should cause a million people each to lose one arm. If we must choose between everyone alive having a life that is barely worth living, or everyone alive having an extremely good life, except one person who must be sacrificed, we should prefer that everyone now alive have a life that is barely worth living.

In cases in which creatures' initial positions are significantly different, the Worse-Off Principle has even more implausible implications. Consider again the case in which we must choose between one million people each losing an arm and one person losing two arms. Even if each of the million had already lost both legs and an arm and the one person was intact,

21. In order to save space, in what follows my treatment of a number of different cases is very brusque. All of the cases considered are prevention cases in which, by hypothesis, if we fail to select one of two offered alternatives then the bad consequences associated with each will obtain. In discussing these cases I make a number of idealizing assumptions (e.g., that limbs do not have diminishing marginal utility). I believe that these idealizations do not obscure any counterclaims or arguments that are important for present purposes.

the Worse-Off Principle would still tell us to take an arm from each of the million.

Though these examples are oversimplified and unlikely, they give reason to believe that the Worse-Off Principle is an implausible candidate for an acceptable moral principle.

In this section I have argued that Regan fails to defend the view that in prevention cases we are required to override the rights of innocent creatures. I have also argued that it is difficult to see how such a requirement could be motivated from the perspective of his moral theory. But even if such motivation can be found, the Worse-Off Principle is not a principle which is likely to figure in any plausible moral theory, especially in conjunction with the Miniride Principle. The natural response to these difficulties is to move in the direction of an absolutist deontology, or in the direction of a more consequentialist theory. At least for the cases I have considered, an opening to consequentialism seems most attractive.

## CONCLUSION

I have argued that there are serious problems with Regan's account of duties to provide assistance and with his principles for resolving conflicts of rights. It may be that some of these problems are endemic to any theory which rejects both consequentialism and absolutist deontology while working within the conceptual framework of rights, duties, and consequences. Whether or not this is true, despite the impressiveness of Regan's achievement, his moral theory in its present form is not compelling. If the theory were plausibly amended in order to deal with the difficulties I have raised, it is likely that the resulting account would be less clearly in conflict with consequentialist morality.