

## COMPARING LIVES AND EPISTEMIC LIMITATIONS

### A CRITIQUE OF REGAN'S LIFEBOAT FROM

#### AN UNPRIVILEGED POSITION

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**Abstract:** In *The Case for Animal Rights*, Tom Regan argues that although all subjects-of-a-life have equal inherent value, there are often differences in the value of the lives of beings with inherent value. According to him, lives with the highest value are those lives with the opportunity for "impartial, moral satisfaction." I argue that Regan's account of comparable value is problematic for two reasons. First, it embodies a masculine idea of what it means to have a morally significant life, while marginalizing the lives of those who use emotion and feeling in moral deliberation. Second, it leads to a hierarchical view of which lives matter, whereby the lives of the privileged will always turn out to have greater value than the lives of the oppressed, since the oppressed do not always have equal opportunities for "higher satisfactions." To avoid such counter-intuitive implications, I suggest that Regan should abandon the idea that we can make comparable judgments about the value of the lives of beings with inherent value.

#### I. INTRODUCTION

In *The Case for Animal Rights*, Tom Regan argues that although all subjects-of-a-life have equal inherent value, there are often differences in the value of lives. According to Regan, lives that have the highest value are lives that have more possible sources of satisfaction. Regan claims that the highest source of satisfaction, which is available to only rational beings, is the satisfaction associated with thinking impartially about moral choices. Since rational beings can bring impartial reasons to bear on decision making, Regan maintains that they have an additional possible source of satisfaction that nonrational beings do not have and, consequently, the lives of rational beings turn out to have greater value than the lives of nonrational beings.

In cases of conflict between right holders, Regan maintains that we ought to preserve lives that have the most value, even if this means harming some other being(s) with inherent value. For instance, Regan argues that, in a genuine conflict situation, we are morally required to harm a nonhuman animal, such as a dog, in order to preserve the lives of rational human beings. While Regan's discussion of comparable value has been criticized for prescribing inconsistent resolutions to conflict situations involving nonhuman animals and humans (Edwards 1993; Finsen 1988; Sumner 1986; Dresser 1984; Jamieson 1990; Singer 1985), there has been the scantest amount of criticism afforded to the troubling fact that this part of Regan's philosophy of animal rights promotes a masculine and elitist bias, as it prescribes problematic resolutions when the lives of privileged, masculine beings are in direct competition with the lives of the underprivileged or those who make ethical judgments in accordance with feminine values.<sup>1</sup>

Perhaps the lack of criticism regarding this aspect of Regan's theory can be attributed to the fact that Regan's bias toward privileged, masculine lives is most transparent in the preface of the 2004 edition of *The Case for Animal Rights*, where he clarifies his position on evaluating lives. It is here, and not in his original 1983 publication, that Regan puts forth his claim that the highest satisfaction is the satisfaction that flows from bringing impartial reasons to bear on moral decision making.

In this essay, I will draw attention to the passages of the 2004 preface of *The Case for Animal Rights* that highlight the elitist, masculine bias of Regan's theory. In doing so, I will first argue that Regan's theory embodies a masculine idea of what it means to have a morally significant life, while marginalizing the lives of those beings (often women) who find it satisfying to appeal to emotion and feeling in moral deliberation. Second, I will argue that Regan's discussion of comparable value reinforces the position of the powerful by granting special protection to the lives of the privileged over the lives of oppressed individuals, who often do not have equal opportunities or capacities for "higher satisfactions." I conclude by suggesting that Regan should abandon the idea that we can make comparable judgments regarding the lives of beings with inherent value.

## **II. REVIEW OF 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 inherent value.<sup>2</sup> As 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." A being who has inherent value, then, has value in-and-of herself; her value remains even if she provides little or no use to society. Furthermore, Regan contends that all beings who have inherent value possess it equally; inherent value is a categorical notion that does not admit of degrees (Regan 1983, 240). Thus, he concludes that all subjects-of-a-life have equal inherent value, regardless of their varying characteristics like race, species, sex, and intellectual capacity.

To say that a being has inherent value is to say that we should respect that being as a morally important individual and that we should refrain from treating that being as if it were a mere tool, instrument, or means of achieving some further end. Thus, Regan concludes that beings with inherent value, that is, subjects-of-a-life, have an equal right to respectful treatment, which entails an equal right not to be harmed merely on the grounds that others will benefit (Regan 1983, 324). Regan's moral theory, like most theories of animal rights, such as Steiner's (2008), entails the dissolution of all industries and practices that instrumentalize nonhuman animals by using them as mere resources. A strong animal rights theory, like Regan's, demands that we, as moral agents, employ a "hands off" policy of noninterference in our dealing with nonhuman animals. This entails that we not "trespass" into their lives and that we just let nonhuman animals be (Regan 1983, 357).

## **III. COMPARING LIVES AND COMPARING DEATHS**

Although we have a prima facie duty not to harm subjects-of-a-life, Regan acknowledges that there might be exceptional cases of conflict, which he refers to as "prevention cases," where we are permitted to override our prima facie duty of nonharm. 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 2004, 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 prevention cases is that "causing harm to the innocent cannot be prevented" (Regan 2004, xxviii).

This brings us to Regan's most discussed example of a prevention case: the lifeboat thought-experiment. Imagine there are four rational human beings and one dog in a lifeboat. The carrying capacity of the lifeboat can support only four of the passengers and, consequently, all will die if one is not removed

from the boat. The question, then, is this: are we justified in harming one of the passengers by throwing him overboard in order to save the lives of the other four? If so, how do we decide who we should throw overboard?

In answering this question, Regan instructs us to appeal to what he refers to as 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 the few who are innocent, and when the harm faced by the few would make them worse-off than any of the many would be if any other option were chosen, then we ought to override the rights of the many (Regan 1983, 308).

The central idea behind the worse-off principle is that, in certain scenarios, the harms faced by innocents are not *prima facie* comparable. According to Regan, “not all harms are equal” and furthermore, “they [harms] may also be unequal when different individuals are harmed in the same way” (Regan 1983, 303). For example, Regan maintains 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). 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). When applying this discussion of comparable harms to the lifeboat scenario, Regan informs us that we will find that we are obligated to throw the dog off the lifeboat in order to save the four rational human beings because a rational human being and a dog are not harmed equally by death. According to him, the harm of death for a rational human being would be a greater harm than the harm of death would be for a dog because the loss of opportunities death marks is assumed to be different for the two cases.

So what is it that makes the death of a rational human being a greater *prima facie* loss, that is, a greater *prima facie* harm, than the death of a dog? The answer can be found in Regan’s discussion of why death is a harm for *any* subject-of-a-life: it forecloses opportunities for satisfaction (Regan 1983 324, 99–120).<sup>3</sup> Death, according to Regan, is the ultimate, irreversible harm because death is the “ultimate, the irreversible loss, foreclosing every opportunity to find satisfaction” (Regan 1983, 117).

If the loss of the opportunity to find satisfaction is what makes death harmful, it would follow that those beings who have more opportunities to find satisfaction in life would be harmed more by death than those beings with limited opportunities to find satisfaction. Regan seems to state just this when he claims that “the loss that death represents is a function of the number and variety of possible sources of satisfaction it forecloses” (Regan 2004, xxix). This discussion about the harm of death enables Regan to argue that, although all subjects-of-a-life have equal inherent value, “the value of the life subjects lead need not be equal, and in many cases, it seems to me, it clearly is not” (Regan 2004, xxxiv). The consequence of this view is that certain lives can have more value or worth than others. This is because Regan believes that there can be unequal intrinsic value, which refers to the pleasures and satisfactions of preferences one can experience in her life. As Edwards (1993, 233) points out, when Regan compares the value of lives, he “focuses exclusively on the loss of opportunities for the realization of intrinsic value (satisfaction).” After we determine the level of intrinsic value two lives have, we are in a position to make comparable judgments about their worth, whereby the life of the being with greater opportunities for intrinsic value will turn out to have more value.

In the preface to the 2004 edition of *The Case for Animal Rights*, Regan provides additional support and clarification for his claim that, in prevention cases, the lives of rational beings should be preserved, even when this requires that some other being with inherent value be harmed. As mentioned, Regan maintains that lives with the highest value are those lives that have more possible sources and varieties of satisfaction. While Sapontzis (1995) argues that nonhuman animals, like dogs, have the same possible sources of satisfaction as rational human beings, Regan responds to this objection in the preface of the 2004 edition of his book by claiming that there is a higher source of satisfaction that is available *only* to rational beings: the satisfaction that flows from thinking impartially about moral choices (Regan 2004, xxxiv–xxv). Since rational beings can bring impartial reasons to bear on decision making, Regan maintains that they have an additional possible source of satisfaction that nonhuman animals, like dogs, do not possess. Consequently, the lives of rational beings turn out to have greater value than the lives of nonrational animals (nonrational human and nonhuman animals). This, then, is ultimately why Regan maintains that the life of a rational being has greater value than the life of a dog. Furthermore, this explains why Regan concludes that we are justified in throwing the dog overboard in the lifeboat scenario: rational beings have the opportunity to achieve the greatest varieties of satisfaction and thus they are harmed more by death than a dog.

To be clear, Regan maintains that “only in extreme cases would differences in the value of different lives matter” (Regan 2004, xxxiv). So, despite the claims of critics like Sumner (1986), Carruthers (1992, 9), and Singer (1985) who argue that Regan’s resolution of the lifeboat dilemma is not consistent with abolitionist principles and permits the exploitation of nonhuman animals in order to benefit human beings, Regan’s account does not permit us to routinely harm subjects-of-a-life as is done in institutionalized animal exploitation, even if the lives of the harmed beings have lesser value than the lives of those who are benefited. However, comparing the value of lives does become important in exceptional cases, like the lifeboat scenario, where we find ourselves in a situation in which we must harm one being if we are to save *anyone*.

#### **IV. COMPARING LIVES AND MASCULINE PRIVILEGE**

Regan’s theory of animal rights has been the subject of criticism by a number of feminist ethicists, including Donovan and Adams (2007), Donovan (1993), George (2000), Kheel (1985), Slicer (1991), and Luke (1995; 1992). Their central claim is that Regan’s philosophy of animal rights is developed within a framework of patriarchal norms; it privileges reason and abstract principles of conduct while discounting the value of emotion in ethical decision making (Luke 1995, 292). These feminist critiques of Regan’s animal rights theory stem from the ethics of care, traditionally identified with feminist theorists such as Gilligan (1982; 1987) Noddings (1984), Held (1987), Tong (1993), Tronto (1993), and Jaggard (1995), who advocate for the view that the emotions ought to play an integral role in moral decision making and that they should not be continually subordinated to reason or abstract moral principles, as they have been in the history of western ethics. Regan’s philosophy of animal rights is said to fall right in line with traditional masculine models of morality, also referred to as “justice approaches,” which downplay the role of the emotions and valorize unemotional, rational, and impartial moral deliberation. According to Donovan (1993, 170–73), Regan’s view excludes the sentiments and “privileges rationalism and individualism.”

Despite that care ethicists have implored animal rights theorists to take the feminine experience into consideration when developing an animal liberation ethic, Regan has refined and clarified his theory of

animal rights by making it considerably more masculine in nature. While it has been noted that Regan has developed an ethical theory overflowing in male biases that prioritizes masculine thinking, Regan's philosophy of animal rights, as it is described in the preface to the 2004 edition of *The Case for Animal Rights*, embodies patriarchy in a further, perhaps more troubling, way: it appeals to "male excellence" in attributing value to lives.<sup>4</sup> In particular, Regan's worse-off principle is committed to resolving every conflict between masculine and feminine beings in favor of the masculine being because his discussion of comparable harms implies that masculine lives have higher value than feminine lives.

In considering how Regan's theory has become increasingly masculine, let us return to Regan's statement that the lives of individuals who can bring impartial reasons to bear on moral decision making have greater value than the lives of beings who act "virtuously"—with sympathy, self-sacrifice, empathy, compassion, and so forth. While this claim seemingly guarantees that the lives of all rational human beings will reign over the lives of nonhuman animals, it also entails that the lives of "masculine" people will reign over the lives of "feminine" beings. This is because, as many care ethicists and psychologists point out, such as Holstein (1976), Chodorow (1978), Gilligan (1982), Noddings (1984), Lyons (1983), and Tangney et. al (2002), there is compelling evidence that a significant number of women have a conception of moral reasoning that is different from the traditional, masculine ethical framework, whereby the basic moral orientation of these women is said to be one of caring and not of using impartial reasoning in decision making. As Noddings (1984) once wrote, women "enter the practical domain of moral action...through a different door."<sup>5</sup> While Regan's masculine conception of morality is focused on abstract principles, general duties, individual rights, impartial judgments, and deliberative reasoning, feminine morality is said to be concerned primarily with contexts and relationships and those virtues and feelings that are central to relationships, such as empathy, compassion, love, and sympathy.

If we take seriously this descriptive thesis about the moral development of those who embody the feminine, we will find that according to Regan's account of comparable harms, the interests of these feminine beings will never prevail in cases of conflict with masculine beings, because the satisfaction that Regan has identified as the highest satisfaction, which confers the highest value on life, is a satisfaction that is experienced primarily by those who embody masculine models of moral deliberation. Thus, Regan's philosophy of animal rights not only valorizes masculine frameworks of ethics and moral epistemology, but his account of comparable harms also prioritizes the lives of masculine beings as being more valuable than feminine lives.

Two responses are available to Regan. First, he might point out that the descriptive thesis of care ethics (that a significant number of women think in terms of relationships, feelings, and emotion rather than in terms of abstract moral principles) is a point of contention itself and a substantial amount of research, such as that of Jaffee and Hyde (2000), Rest (1979; 1982), Walker (1984; 1989), Robinson (1999), and Hekman (1995), all suggest that the care orientation is not as widespread in the moral deliberation of women as it is commonly assumed and, as a result, there are small gender differences for both types of moral orientations. Since there are conflicting conclusions regarding whether gender has an effect on moral reasoning, we cannot, with certainty, endorse the descriptive thesis of care ethics. Thus, we are not justified in assuming that even those who embody the feminine do not think in terms of justice.

Second, Regan might point out that, even if the descriptive thesis of care ethics is true (women's moral deliberations are centered upon care), both genders still have the ability to access both types of moral reasoning. So, even if we grant that those who embody the feminine tend to focus on emotion and

responsibilities, it can be argued that they still have the ability to exercise impartial reasoning. Thus, the opportunity to achieve satisfaction that flows from thinking impartially about moral choices is available to all rational beings, even if they do not actualize their potential for impartial moral reasoning.

Regan would be right to point out that those who embrace feminine morality (which refers to many, if not most, women and also males who foster feminine character traits) do in fact have the ability to speak the language of a justice-oriented morality, even if their biology or social conditioning steers them toward an ethic of caring. It is a safe assumption that most feminists would agree that denying that those who embody the feminine have the capacity to act in accordance with rational principles would do a disservice to women, who are traditionally identified with the feminine. But a question still remains: even if those who embody the feminine have access to impartial moral reasoning, would it bring them satisfaction, or the same amount of satisfaction that masculine beings experience, if they were to adhere to these impartial, unemotional, rational principles in moral decision making?

Noddings (1984) points out that although women can speak the language of justice, this is not their native tongue. As she explains, since most women tend to participate in active encounters with specific individuals, like their children, many women grow to find satisfaction from maintaining relationships and they satisfy their own interests by fulfilling the needs of others. According to Noddings (1989, 91), since most women are predisposed to act in accordance with a relational ethic, they fulfill their “fundamental and natural desire to be and to remain related” when they act in a way motivated by caring.<sup>6</sup> If this is so, then, as Held (1987) points out, the justice approach to morality will not provide those who embody the feminine with suitable moral principles for governing the relationships of care they commonly involve themselves with, such as with their children, aging parents, ailing siblings, and distraught friends. For instance, someone who is a mother to a child is unlikely to find satisfaction in applying abstract moral principles to her interactions with this child; rather, she will find satisfaction from feeling and caring appropriately for that child.

Yet, it is not just a woman’s interaction with her children that is better served by feeling and emotion. For many women, embracing the emotions and cultivating sensitivity to the feelings of others is what makes all relationships fulfilling; it is what provide satisfaction to them. Since many women are said to have a sense of self as interconnected, while it is claimed that men often develop a sense of self that is separate, women are assumed to perceive relationships in a different manner than men (Chodorow 1978; Lyons 1983). As Pettersen (2008,11) points out, while “a separate self tends to regard relationships as an interaction between separate and equal autonomous individuals...the connected self tends to perceive relationships as an interaction between connected and interdependent persons.” From this, we can conclude that, as beings who feel interconnected with others, a significant number of women do not find it satisfying to act in accordance with impartial, abstract principles, which often create distance from others, especially when interacting with their children, parents, and friends. These women have relational needs that would be frustrated if they primarily act in accordance with impartial and disconnected masculine models of morality. If this is true, then it presents a troubling consequence for Regan’s theory: the lives of those who prioritize emotional interconnectedness will turn out to have less value than the lives of the masculine due to the fact that they derive less satisfaction from acting in accordance with abstract moral principles.

In order to avoid commitment to the troubling conclusion that the lives of people who make ethical judgments, at least in part, in terms of emotional interconnection have less value than the lives of

people (mostly educated men) who allegedly derive satisfaction from thinking in impartial, moral terms, Regan might retract his claim that the opportunity for satisfaction that flows from impartial moral reasoning is what confers the greatest value on one's life. He might then argue that the highest source of satisfaction is that which comes from acting morally, whereby morality includes both the justice and care approach.<sup>7</sup> This appears to be the most responsible and cautious response to the problem at hand, even when acknowledging that there is significant debate surrounding the descriptive thesis of care ethics. If we want to ensure that the interests of all rational individuals are afforded equal protection in cases of conflict, and this protection depends on the level of satisfaction in one's life, caution requires us to grant that the satisfaction derived from acting from care is just as significant as the satisfaction that flows from acting from impartial moral principles. This move prevents one from justifying the continual sacrificing of feminine lives for the sake of saving masculine lives in cases of conflict by appealing to the considerable amount of psychological research which indicates that not all individuals derive an equal amount of satisfaction when acting in accordance with impartial moral principles.

## **V. COMPARING LIVES AND PRIVILEGE**

Beyond giving preferential treatment to masculine lives, Regan's account of comparable harms is committed to granting special treatment to those in privileged positions while marginalizing the lives of the oppressed (often the poor or working class). If we recall, Regan explicitly states that lives with greater possible sources of satisfaction (especially moral satisfaction) have greater moral value than some other life that has fewer possible sources of satisfaction. Yet, it is pointed out that one's moral and rational development is often a product of one's social circumstance, upbringing, and history (Benson 2004, 191). Those who grew up without intellectual and moral education, were neglected, or were subject to trauma might not develop the theoretical, analytical, and rational capacities required for "justice-based" ethical reasoning. Furthermore, they might not have "the rational motive to exert themselves in reflection about that possibility" (Benson 2004, 191). If one's ethical capacities are, in part, dependent on one's formal education and upbringing, we might find that, for the most part, the lives of the well-off, educated, and intelligent—that is, the lives of the privileged—have the highest level of moral development. Thus, the privileged will have the greatest possible sources of moral satisfaction, and consequently, their lives will have the greatest moral worth according to Regan's philosophy.

Regan's theory fails to acknowledge that, for some unlucky people, there are systemic barriers to moral development. For instance, there are some human beings who will never be able to achieve high levels of satisfaction, especially the moral satisfaction Regan prioritizes, because their moral and rational competency might either be impaired or constricted due to the damage inflicted by oppression (Card 1996; Tessman 2005; Conly 2001; Benson 2004). In her book, *Burdened Virtues*, Tessman (2005) introduces the idea of "constitutive bad luck," which produces adverse conditions for some unfortunate people and interferes with their moral development, hindering their capacity to develop a good or virtuous character (Tessman 2005, 12). This sort of bad luck is a result of systemic oppression and barriers, whereby a self "under oppression can be morally damaged, prevented from developing or exercising some of the virtues" (Tessman 2005, 4).<sup>8</sup> Victims of this unnatural lottery include those who suffer from the deprivation of poverty, those who are subjected to slavery, women who suffer from patriarchal oppression, and other victims of systematic subordination who lack adequate resources, such as housing, education, health, and so forth.<sup>9</sup>

Those who suffer from oppression might be unable to develop morally because, for one, they might not have their basic needs met. If one does not have a roof over one's head, food to eat, and access to an adequate education, it is highly improbable that she will have the opportunity to pursue and obtain higher satisfactions, such as aesthetic or intellectual satisfactions. It is even more unlikely that she will receive the sort of moral education required to act in accordance with Regan's account of morality. As Stack (1986) points out, conditions of economic deprivation "produce a convergence also in women's and men's vocabulary of rights, morality, and the social good." For example, in poor African American communities, care reasoning appears to be favored over justice reasoning (Collins 1990; Stack 1986; Cannon 1988). Hay (2011) and Anderson (2002) point out that oppression can severely harm one such that her rational capacities are permanently compromised and the impairment of one's rational capacity can impede one's moral development (assuming Regan's claim that rational and impartial reasoning is an integral component of morality). Hay (2011 26–27) points out that oppression can make one "weak-willed" in the sense that oppressed persons might internalize stereotypes that they are lazy, impetuous, or irresponsible, leading them to hold themselves to a low standard of rationality.

More importantly, as Tessman (2005) has described in detail, those who are victims of constitutive bad luck can neither develop certain virtues nor can they live a flourishing life, because certain satisfactions and virtues are off limits to them. For example, Tessman points out that a political resister might be incapable of certain virtues when responding to unjust circumstances. Someone who has devoted her life to combating systemic injustices might foster traits like hatred, anger, and rage while failing to cultivate virtues like compassion or sympathetic forms of attention (Tessman 2005, 113–20). To see how this poses a problem for Regan's account of comparable harms, consider the following scenario:

Five rational human beings are in a lifeboat that will tip over if one is not thrown overboard. Four of the passengers are academics who live a comfortable life and they all have studied ethical theory for years, thus they have come to associate acting ethically (by exercising both impartial principles and the virtues) with satisfaction. The other life-boat passenger is a woman who has dedicated her life to fighting against the system of patriarchy that oppresses her. Because of her devotion to liberatory struggles, she does not have much time for other aesthetic or intellectual pursuits. Furthermore, because of her oppression, she fosters a sense of anger and rage, while being unable to cultivate certain virtues like compassion or sympathy.

Who should we throw overboard? In answering this question, Regan's account requires us to consider whether all of the passengers would be harmed in the same way by death. This, in turn, requires us to question whether death would bring about a greater loss of opportunities for satisfaction for the academics or for the woman. Let us first consider how the academics fare in regard to death as opposed to the woman. To start with, the academics would lose out on the opportunities to partake in the following satisfactions: satisfaction that flows from thinking impartially about moral choices, satisfaction from acting virtuously, aesthetic and intellectual satisfactions from going to plays, reading novels, and so forth. Now, consider how death would harm the woman. Let us assume, for argument's sake, that the woman does in fact approach morality through a masculine framework and that she derives satisfaction from employing impartial reasoning in moral deliberation. If this is the case, then death would also cause her to miss out on the satisfaction that flows from thinking impartially about moral choices. However, death would not cause her to miss out on the satisfaction that flows from acting in accordance with certain virtues, because her disadvantaged position has fragmented her character and has made her incapable of cultivating certain virtues. Furthermore, death would not cause her to miss out on

aesthetic or intellectual satisfactions, like going to a play or reading a book, because her time is devoted to political resistance, thus she does not even have the opportunity to participate in these intellectual pursuits. It seems, then, that we ought to throw the woman overboard in order to save the four privileged academics who have more opportunities for satisfaction: they have opportunities for satisfaction that flows from using impartial moral principles and they have an opportunity for satisfaction from acting virtuously and they have the opportunity for intellectual and aesthetic satisfactions.

If we were to revisit this scenario by substituting the woman for a black man, lesbian woman, impoverished man or woman, or any other member of a systematically oppressed group who likewise is victimized by and/or devotes his or her life to fighting against systemic injustices, Regan's account would provide us with the same troubling answer: throw the oppressed individual overboard and save the four privileged academics, since the privileged academics have a greater opportunity for moral, intellectual, and aesthetic satisfactions.

## **VI. A POSSIBLE DEFENSE**

Regan might defend his account by claiming that the most valuable lives are those that have the greatest possible sources of satisfaction. Although the systematically oppressed do not, at this time, experience a high level of satisfaction, there is still a possibility that they will one day achieve higher satisfactions, including moral satisfaction, if they could be supplied with the proper external goods. Thus, Regan could maintain that all rational agents, in theory, have the capacity to enjoy an unending amount of satisfaction, to include moral satisfaction. The fact that one might presently be deprived of external goods that are needed to actualize potential satisfactions does not entail that he will never have a future opportunity to achieve the external goods that are requisite for higher satisfactions. In fact, oppression could end tomorrow, granting all individuals the immediate opportunity to pursue a wide variety of satisfactions.

This line of response denies the reality of social existence: some people, such as those living in extreme poverty, child soldiers, and women sold into prostitution, are subject to inescapable oppression and we have no plausible reason to believe that such oppression will ever be eradicated. Furthermore, as Bartky (1990, 58) points out, "one of the evils of a system of oppression is that it may damage people in ways that cannot always be undone." Tessman (2005, 26) likewise points out that some individuals who have suffered irreversible damage will suffer the effects of being oppressed long after they are "liberated" from oppression. For instance, a woman might so deeply internalize the idea that her interests are subordinate to the interests of men that, even after the formal conditions of oppression are lifted, she might still continue to forgo opportunities for achieving self-satisfaction in order to further the interests of the men around her. Severe, long-term malnutrition, trauma, complete dependency on another, or language deprivation in early childhood might also cause long-term cognitive impairment, which, consequently, might frustrate one's capacity to act rationally and impartially on moral principles (Hay 2011, 25). If one has been completely dependent on someone else for the majority of her life, such as an abused woman who has always been told what to do, her ability to think rationally might be permanently impaired. In all of these examples, the damage to the individuals is so severe that we are left without a compelling reason to believe that they could "graduate" from their oppressed state, even if they happen to be liberated from their oppressors in the future.

As it currently stands, according to Regan's account of comparable harms, the extent to which one will be harmed by death in a "prevention case" depends, in part, on one's virtues, which are often out of the control of the agent. Furthermore, the value of one's life will also depend, in part, on one's virtues, whose cultivation depends, in part, on the external circumstances of one's life. When all is said and done, if Regan's theory is correct, then the systematically oppressed will be continually sacrificed in order to save the lives of the privileged in every "prevention case" and, furthermore, the lives of the privileged will always be said to have more value than the lives of the oppressed. We, then, are left with yet another theory of ethics that reinforces the positions of the privileged. One must wonder: if an animal rights theory cannot succeed in protecting the lives of the most vulnerable humans, can it really succeed in protecting the lives of nonhuman animals?

## VII. ABANDONING THE WORSE-OFF PRINCIPLE

If Regan's philosophy of animal rights is to avoid a theory of value that prioritizes the lives of both the masculine and the privileged, I suggest that he altogether abandon his claim that we can make comparable judgments about which lives are most valuable. If Regan insists on providing a conflict-solving principle that can be used to resolve "prevention case" conflicts, I suggest that he introduce a completely new principle, such as one that encourages moral agents to save the lives of those who are victims of injustice. After all, Regan has argued that these are the beings to whom we have special duties to assist (Regan 1983, 273). If Regan were to adopt this principle, his theory would successfully protect the lives of the most vulnerable, rather than offering special moral protection to those who have already enjoyed a life overflowing with privilege.

With the varying experiences of individuals, it seems unlikely that we can determine which lives are the most valuable or which are the most satisfying. As Sapontzis (1987, 219) points out, humans can experience things that animals cannot, but animals can also experience things that humans cannot, thereby they can derive satisfaction from things that humans cannot. Likewise, as gendered beings, masculine people cannot understand the moral experience and satisfaction some individuals derive from acting in caring ways. Finally, Regan's theory leaves us wondering whether having the opportunity for a wide variety of satisfactions is really what confers value upon a life. Someone working endlessly to resist oppression might have few opportunities for satisfaction, yet our intuition informs us that her life has no less value than the life of an academic who studies ethical theory.

## VIII. CONCLUSION

Critics of Regan's life-boat scenario have often speculated as to why Regan even included the worse-off principle in *The Case for Animal Rights*, since it is seemingly unnecessary to his theory, which has two primary aims: (1) to include nonhuman animals in the class of moral right holders, and (2) to illustrate how the institutionalized use of nonhuman animals violates their rights and thus needs to be abolished. Edwards (1993, 233) speculates that the discussion of comparable harms is Regan's attempt to provide us with a principle that would "save the day for the human." Essentially, it appears to be a subtle way of reinforcing the dominant view that the lives of humans will always outweigh the lives of nonhumans. Ironically, Regan's attempt backfires on him when his proposed resolution is applied to conflicts between rational human beings. If we take seriously the worse-off principle in cases of human conflict, we will find that Regan's theory entails an unsatisfactory conclusion: when the lives of the privileged come into conflict with the lives of the oppressed, the lives of the privileged will always have priority. By abandoning the idea that we can compare the lives and deaths of others, Regan can advocate for an

account of morality that protects the most vulnerable in cases of conflict: nonhuman animals, women, and other victims of systemic oppression.

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## NOTES

1 I am using the term «masculine beings/lives» or «feminine beings/lives» throughout to refer to those humans who think or behave in traditionally masculine or feminine ways, not necessarily to those who are gendered male or female.

2According to Regan, subjects-of-a-life are 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). Regan maintains that while we can know that all normal mammals over the age of one are subjects-of-a-life, we should leave open the possibility that other beings might also be subjects-of-a-life. He argues that we should err on the side of caution in cases of uncertainty and grant that certain animals, like fish, birds, and mammals under the age of one, are bearers of moral rights (Regan 1983, 416–417).

3Harms, according to Regan, need not hurt; harms can also take the form of deprivations (Regan 1983, 117).

4Note that the phrase “male excellence” is not used by Regan. This is my own coinage.

5There is a lingering question: if women have a tendency to think in terms of care, what explains this caring perspective that occurs, for the most part, in women? One contested position is the essentialist stance which claims that women are biologically predisposed to approach ethics in terms of care. Note that Gilligan (1993, 209) does not claim that women are biologically determined to care; rather, she maintains that early childhood development and experience of attachment and detachment gives rise to the different ways men and women approach relationships and care perspectives. For the purpose of the paper, I will set aside the question of whether or not women are biologically predisposed to care and I will take for granted that many women do in fact approach morality through a care perspective while leaving open whether this is a result of biology or social conditioning.

6Note that Bartky (1990) argues that the subjective feeling of empowerment women often experience as a result of caring does not entail an objective reality. In fact, caring, in unreciprocated relationships, has detrimental consequences for women. Puka (1990), Tronto (1995), and Held (1995) also suggest that the voice Gilligan speaks of might be an expression of false consciousness or the result of sexist and

oppressive conditions, whereby women embrace models of caring as a mechanism for surviving their oppression and subordination.

7Note that this resolution might entail that the lives of most nonhuman animals would have the same worth as the lives of rational humans since, as Sapontzis (1995, 25) points out, “we commonly attribute to animals such moral virtues as sympathy, self-sacrifice, loyalty, and courage.” This might pose a potential problem for Regan, who can no longer claim that nonhuman animals, like dogs, cannot derive the same level of “moral satisfaction” as rational humans. Although, he might very well argue that humans have other sources of satisfaction that are unavailable to dogs, such as the intellectual satisfaction of reading a Victorian novel.

8Note that one of the reasons why Regan rejects the “ethics of care” as a suitable framework for an animal ethic is because it entails a “chance basis” for morality (Regan 1985, 95). Yet, if we take the idea of constitutive bad luck seriously, we will find that important aspects of morality are left up to chance: whether or not an individual has an opportunity for satisfaction is completely up to chance, which entails that the value of one’s life is also left up to chance.

9An “unnatural lottery” refers to circumstances that are systematically arranged and are not a result of natural causes, such as a natural disease, illness, and so forth (Tessman 2005, 13).

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