
Commentary

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Undoubtedly, no passage in Regan's book has been discussed more extensively than the case of the dog in the lifeboat. Peter Singer had it out with Regan about the lifeboat in the *New York Review of Books* a few years back, Singer claiming that the handling of the lifeboat case showed that Regan could not be an abolitionist regarding vivisection.¹ Dale Jamieson has published an article in which he shows that a number of very strange consequences can be drawn from the principles—such as the worse-off principle—used to resolve the lifeboat case.² I have published an article myself in which the lifeboat appears prominently,³ and Gary Larson, the cartoonist of "Farside" fame, featured a cartoon based, apparently, on the dog in the lifeboat.

It is ironic that the very passage in which Regan appears to be on the side of ordinary intuitions, namely, to prefer humans to dogs, is the very one which has gotten him into such hot water. Having established a thoroughgoing basis for the rights of animals, does Regan really give it all away in this passage, and lapse into speciesism? I think that the answer is no. The relevant passages are not as clear and emphatic as they could be, but a close examination reveals Regan's true intent. Let us examine the relevant passage:

There are five survivors: four normal adults and a dog. The boat has room enough only for four. Someone must go or else all will perish. Who should it be? Our initial belief is: the dog. Can the rights view illuminate and justify this prereflective intuition? The preceding discussion of prevention cases shows how it

can. All on board have equal inherent value and an equal *prima facie* right not to be harmed. Now, the harm that death is, is a function of the opportunities for satisfaction it forecloses, and no reasonable person would deny that the death of any of the four humans would be a greater *prima facie* loss, and thus a greater *prima facie* harm than would be true in the case of the dog.⁴ (p. 324)

Now, before we go on, I would like to call your attention to the liberal use of "*prima facies*" in the above passage. Regan says that the death of any of the four humans would be a greater *prima facie* loss, and thus a greater *prima facie* harm, than would be true in the case of the dog. The use of *prima facie* is meant to signal that this is only what we would assume, on the face of things, if we have no additional information. Additional information can reverse the situation in such a way that it would be the life of one of the humans which should be sacrificed, rather than the life of the dog. As Professor Barad says, it is quite possible that for particular pairs of humans and dogs, death will be a greater harm for the dog than the human. People near death, in pain, and with severe brain damage clearly have less to lose by dying than a healthy, intelligent, young puppy has. It is no part of Regan's intent in this passage to say that all humans have more to lose by dying than any dog. It is unfortunate that he does not clarify this more fully rather than relying on the "*prima facies*" to signal his meaning. I myself found the passage quite puzzling on this account, when I first read it. I developed the interpretation which I have just given, and asked Regan whether this is what he meant, and he said that it was.

I think it is fair to say that Regan should have elaborated on the point to make it clearer. In a further passage, he says,

The lifeboat case would not be *morally* any different if we supposed that the choice had to be made, not between a single dog and the four humans, but between these humans and any number of dogs. Let the number of dogs be as large as one likes; suppose they number a million; and suppose the lifeboat will support only four survivors. Then the rights view still implies that, special considerations apart, the million dogs should be thrown overboard and the four humans saved. (p. 325)



DISCUSSION

One could well assume from this passage, as Professor Barad does, that Regan is applying the notion of comparable harm not to individuals but to whole groups: old groups, dog groups, normal human groups etc. But once again, notice that Regan says, "*special considerations apart*, the million dogs should be thrown overboard and the four humans saved" (*italics mine*). In other words, unless it can be shown that death would indeed be a greater harm for some of the dogs than for any of the four humans, the dogs should be thrown overboard. It is only if, as individuals, each of the dog's deaths would be less of a harm to it than to any of the four humans, that the million dogs can be sacrificed. In the passage immediately following the one just read, Regan clarifies this further:

To decide matters against the one or the million dogs is not speciesist. The decision to sacrifice the one or the million is not based on species membership. It is based on assessing the losses *each individual faces* and assessing these losses *equitably*....

This passage makes it abundantly clear that Regan does not intend to judge dogs as a group. The emphasis on the million dogs as opposed to the four humans is intended to draw attention to the idea that we *cannot aggregate harms* across individuals in Regan's system. Remember that Regan is a very determined anti-utilitarian. The message emphasized by the million dogs is simply this: If death is less of a harm for each dog than it is for any of the humans, then there is no way to aggregate those lesser harms in order to counterbalance the greater harm to the humans. Regan would say exactly the same thing if we were to compare a million human beings with headaches to a single person with a more severe harm, such as death or severe injury. There is no way for a number of lesser harms to "add up" and outweigh a greater harm.

If my analysis is correct, then I think that Professor Barad has not isolated a serious difficulty for Regan's theory. Nevertheless, I think the passage is troublesome in some other ways, which are quite interesting, and I would like to briefly mention them.

1. First, even though Regan does not commit himself to the claim that death is a greater harm for any and all humans than for any and all dogs, he does seem to assume that death is a greater harm for *most* humans

than it is for most dogs. It is possible to interpret him as merely explaining the common intuition that we should throw the dog overboard in terms of the common intuition that death is a lesser harm for dogs than it is for humans, without himself endorsing this view. Nevertheless, I think Regan does hold this view, and it is one which, if not speciesistic, is certainly anthropocentric. It assumes that our interests in rational reflective thought, in attending theatre, planning for our future, regretting our past, and so on, are the sorts of things that elevate our lives above that of other animals. But, as Steve Sapontzis has pointed out,⁵ the more immediate pleasures of dogs may be intensely enjoyable to them, and death may be a profound loss to a dog.

2. Second, the worse-off principle, as a principle of conflict resolution, does have some peculiar consequences. As Dale Jamieson has pointed out,⁶ the principle implies that if we must choose between harming one person a great deal and harming a million persons less, we should choose to harm the million. But without any further qualification, this would imply that if we must choose between cutting off both arms from a single person, or amputating one arm from each of a million people, we should choose the latter. And this is manifestly counterintuitive. The insistence that we cannot ever aggregate harms appears to have some unwanted consequences; in particular in cases where we are comparing the severe harming of one individual with the less extreme but still severe harming of many individuals.

It might be countered that such bizarre cases involving chopping off arms are too artificial to take seriously. Can we construct a realistic sort of case where the worse-off principle leads to intuitively wrong conflict resolution? I confess that I have a difficult time thinking of any convincing cases. The way in which Americans handle health care decisions might be such a case. Sometimes, health care decisions involve spending tens of thousands of dollars to save a single life—for example, with dramatic organ transplant operations—while the general health of thousands of people is not attended to. These people may not die immediately because of such choices, but their general health and life span may be seriously compromised.

While this may be an example of the use of the worse-off principle, it is not a case which shows that the worse-off principle is just wrong, however. If anyone can come up with a realistic counterexample to this principle, it would be most instructive.

3. A further sort of criticism of the worse-off principle, once again offered by Jamieson, hinges on the fact that the worse-off principle commits us to bringing about that outcome in which the worst-off creature is least worse-off, relative to alternative outcomes. When not everyone is in the same position prior to our action, the worse-off principle may have unsettling implications. On some occasions it may instruct us to harm more creatures more, rather than fewer creatures less. Here are Jamieson's examples:

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. Further, if we have a million people who are not crippled, and one person who is, and we must either give the crippled person a headache, or cripple the million, the worse-off principle tells us to cripple the million.⁷ (p. 361)

Once again, these examples are highly artificial, and I am not certain myself how seriously we should take them. As Jamieson himself says, whether we are rights theorists or utilitarians, we should work to avoid conflicts, rather than basing our ethics on ways of adjudicating them.

4. Having mentioned these strange consequences of the worse-off principle, I think it is important, for the sake of perspective, to add that utilitarian approaches also have weird consequences, so that merely insisting that we must aggregate harms across individuals is not going to solve the problem. Notoriously, utilitarianism suggests that if we can maximize the happiness of many people by severely harming a few, this is acceptable, and if it increases the aggregate utility, it should be done. Thus, if the collective pleasure of several million people watching an innocent person being tortured on television outweighs the negative utility of the suffering endured by the innocent person, then utilitarianism suggests that the torture should go forward. And if the aggregate negative utility of a million people with headaches outweighs the negative utility accruing to the killing of one person, the person should be killed.

It seems that developing adequate principles of conflict resolution requires more than either Regan or standard utilitarianism has offered so far.

Notes

¹ Peter Singer and Tom Regan, "Dog in the Lifeboat: An Exchange," *New York Review of Books* (April 25, 1985).

² Dale Jamieson, "Rights, Justice, and Duties to Provide Assistance: A Critique of Regan's Theory of Rights," *Ethics*, 100 (January 1990).

³ Susan Finsen, "Sinking the Research Lifeboat," *Journal of Medicine and Philosophy*, 13, (1988).

⁴ Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 1983).

⁵ Steven F. Sapontzis, *Morals, Reason, and Animals* (Philadelphia: Temple University Press, 1987).

⁶ Jamieson, *op. cit.*

⁷ *Ibid.*

