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

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In *The Case for Animal Rights*, Regan (1983) argues that all nonhuman animals who are subjects-of-a-life have inherent worth and are thus entitled to the right to respectful treatment. Having the right to respectful treatment, according to Regan, entails that one should “never be treated *merely as a means* to securing the best aggregate consequences” (Regan 1983, 249). Although Regan maintains that the right to respectful treatment, in its most basic form, confers on moral agents a *prima facie* negative duty not to harm subjects-of-a-life in order to maximize social utility, he also acknowledges that there are certain conditions under which the right to respectful treatment imposes positive duties on moral agents, such as the duty to assist those who are the “victims of injustice at the hands of others” (Regan 1983, 249).

In this essay, I draw attention to instances where our obligation to assist nonhuman animals who are victims of injustice appears to conflict with our *prima facie* negative duty not to harm nonhuman animals. This is because, in a number of cases, assisting a victim of injustice necessitates that we harm some other nonhuman animal. I illustrate this conflict through the all too familiar scenario where we are required to kill a number of nonhuman animals in order to fulfill our duty to assist obligate carnivores who are under the direct support, control, and mercy of human beings, such as in wild animal sanctuaries. In defending Regan’s account against this apparent inconsistency, I will introduce an additional principle, the *guardianship principle*, which can be used to illustrate how we can be justified, under certain conditions, in overriding
our *prima facie* duty not to harm nonhuman animals in order to fulfill our obligation to assist those nonhuman animals who are victims of injustice.

1 Review of Regan’s Animal Rights Position: An Account of Noninterference

Perhaps the central tenet of Regan’s theory of animal rights is the claim that all experiencing “subjects-of-a-life,” which includes at least every normal mammal over the age of one, have equal *inherent value* and thus have an equal *prima facie* right to be treated with respect (Regan 1983, 247). 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.” Positing inherent value, then, can be viewed as a defense against the following unacceptable commitments of utilitarianism: individuals are valuable only insofar as they are instrumental in maximizing utility and once an individual no longer contributes to making the world a better place, she can be killed.

The fundamental normative principle of Regan’s theory of animal rights which guards against utilitarian commitments is the *respect principle*, which demands moral agents to “treat those individuals with inherent value in ways that respect their inherent value” (Regan 1983, 248). According to Regan, the most general form of the respect principle can be described in negative terms: we violate the respect principle when we treat subjects-of-a-life as if they lacked inherent value, such as by using them “merely as a means to securing the best aggregate consequences” (Regan 1983, 249). Treating subjects-of-a-life, like nonhuman animals, as ends-in-themselves, and not merely as means, requires that we “respect their basic moral rights, including their rights to life, liberty, and bodily integrity” (Regan 2001, 37). Acting with respect requires that we recognize that we have prima facie duties not to kill nonhuman animals, not to
confine them, and not to cause them bodily harm, pain, or suffering: it entails a prima facie duty not to harm nonhuman animals.

This is known as the harm principle, which prohibits the harming of subjects-of-a-life when the harmed individuals are treated as “mere receptacles of value or as things whose value if reducible to their utility relative to the interests of others” (Regan 1983, 265). Thus, moral agents are never justified in harming a subject-of-a-life “merely on the grounds that others will benefit,” whereby harm can take the form of either a deprivation or infliction (Regan 1983, xxviii).

According to Regan, the most fundamental and irreversible kind of deprivation is death, making death the “ultimate harm because it is the ultimate loss—the loss of life itself” (Regan 1983, 100). Contrary to Cigman (1980, 57), McMahan (2008, 66-76; 2002, 199), Hare (1993, 226) and Singer (1979, 104), who argues that a painless death is not a misfortune for nonhuman animals, Regan maintains that all subjects-of-a-life, including nonhuman animals, are harmed by death because an untimely death cuts an individual’s life short in the sense that “a particular psychological being ceases to be” (Regan 101-102).

A logical consequence of the principle of respect and the harm principle is that subjects-of-a-life have two fundamental rights: the right to respectful treatment and the right not to be harmed, neither of which can be overridden “in the name of achieving some greater good for others” (Regan 2001, 16). If nonhuman animals have a prima facie right not be harmed in order to produce the best aggregate of consequences for all involved, we should immediately cease the harming of nonhuman animals for societal gain, such as when we cause them to suffer and/or die in order to use them for food, medical advancement, entertainment, and so forth. Regan’s moral theory, then, like most strong cases of animal rights such as Francione’s (2000, 1996) and Steiner’s (2008), entails the abolition of the use of animals; it advocates for a “hands off” policy
of noninterference in our dealing with nonhuman animals. It entails that, first and foremost, we should not “trespass” into the nonhuman animal world; we should keep our exploitative hands to ourselves and just let nonhuman animals be (Regan 1983, 357).

2 The Duty to Assist

While Regan clearly maintains that we have negative duties of nonharm to all nonhuman animals who are subjects-of-a-life, he briefly acknowledges that, under certain conditions, the respect principle requires more than just not harming nonhuman animals: the respect principle also imposes the prima facie duty to assist subjects-of-a-life who are “victims of injustice at the hands of others,” i.e., individuals who have had their rights violated (Regan 1983, 249). Although Callicott (1989, 45-46) accuses Regan of employing a “policy of human predator extermination,” Regan clearly maintains that the duty to assist nonhuman animals, on the grounds of justice, arises only when nonhuman animals are harmed by moral agents, since only moral agents are capable of violating rights. As a result, Regan’s theory is not committed to “saving the gazelle from the lion”; since the lion is not a moral agent, it cannot violate the rights of the gazelle. Consequently, then, the gazelle is not a victim of injustice and thus we have no obligation, on the grounds of justice, to assist the gazelle by protecting it from a predator (Regan 1983, 357). Yet, we are obligated to assist wild animals currently in captivity, such as those who reside in zoos and circuses, because they have been harmed, without justification, by moral agents.

While Regan does not specify what exactly the special duty of assistance entails, Palmer (2013) suggests that these duties include feeding, sheltering, protecting, and providing medical attention for victims of injustice. Nussbaum (2006, 375) writes that we should “adopt a type of paternalism that is highly sensitive to the different forms of flourishing that different species
pursue.” Nussbaum’s (2006) methodology of determining how we should go about assisting nonhuman animals, requires us to carefully consider the capabilities and capacities of both the individual animal and its species in order to determine what the animal requires for flourishing. After doing this, Nussbaum asks that we seek to create a habitat that is conducive to such flourishing by securing the group of core capabilities up to some minimum threshold for the animal, such as bodily health, life, play, psychological well being, the ability to move about freely, the ability to form social networks, and so forth (see Nussbaum 2006, 76-77). I will assume that our duty to assist nonhuman animals requires us to not only provide them with basic necessities, such as food, shelter, and medical protection, but it also requires us to aid them in flourishing physically, psychologically, emotionally, and socially.

3 When Helping Hurts

Although it seems unproblematic to maintain that, since we have either created or caused these nonhuman animals to be helpless, vulnerable, and dependent on us, we are therefore obligated to assist them when they are threatened by hunger, predators, disease, and so forth, there remains a troubling implication of Regan’s account of assistance: in order to satisfy the nutritional needs of injustice who are obligate carnivores, we must harm some other subject(s)-of-a-life. For sake of simplicity, let us consider just one example, which can serve as a foundation for addressing a wide variety of similar scenarios:

There is a big cat sanctuary that takes in neglected, abandoned, abused, retired, and injured large felines who cannot be released to the wild. At this sanctuary, there is a tiger named Bernie who was kidnapped from her natural habitat and forced to perform in the circus for years. While Bernie was held captive by the circus industry, she was declawed and her canine teeth were ripped out making it impossible for her to chew tough flesh. Bernie was also subjected to a number of other harms that circus animals commonly face: she was confined to a small, barren cage for most of her life and she was subjected to whips, chains, and electric prods during training. She was also prohibited from forming social bonds with other animals due to all of the moving around she was subjected to. As
Bekoff (2007, 158) points out, “the vast majority of animal form close social and familial bonds,” and when animals are unable to form these bonds, their well being is severely impaired. Because of her condition, Bernie cannot be released back into the wild since her inability to hunt would inevitably lead to a painful death of starvation. Furthermore, if released, Bernie will not belong to a social or familial group, thereby further decreasing her prospects for survival in the wild. She is thus utterly dependent on the big cat sanctuary for survival.

Cleary, Bernie is a victim of injustice: in every way possible, she has been denied the opportunity to satisfy even her most basic interests and species specific capabilities. She has been harmed through both: (1) deprivation, in the sense that she was deprived from realizing her species specific capacities, and (2) infliction, in the sense that she was subject to abuse at the hands of her circus “masters” and painful procedures like declawing and having her teeth ripped out without anesthetic. Furthermore, she now remains in an utterly dependent state: she cannot be released to the wild nor can she even hunt and kill on her own for survival due to the fact that she is missing teeth and claws. Without a doubt, a theory of animal ethics that recognizes duties of assistance would demand that we provide Bernie with care and assistance by feeding her, providing her with shelter, giving her the medical attention she requires, satisfying her social and emotional needs, and so forth. Yet, if we are to fulfill this moral obligation to assist Bernie by providing her with her basic sustenance needs, we are forced to commit a moral harm: we must kill some other subject(s)-of-a-life in order to provide her with the necessary elements of nutrition. This is because Bernie is an obligate carnivore; she must eat other animals if she is to survive. Furthermore, she cannot hunt on her own, so her care takers must provide animal flesh for her if they are to fulfill their duty to assist, which certainly entails the basic task of providing Bernie with vital nutrition.
Keeping this in mind, let us consider the common feeding protocol of wildlife sanctuaries, as described by the Wild Animal Sanctuary in Colorado (2013): “cats and wolves eat a USDA approved, special blend of raw meat that is prepared by a special company in Burlington, CO. The diet consists of beef, horse, poultry, mutton and pork—with vitamins, minerals, and health related organs added—that are ground and mixed together into 10 lbs blocks. We receive weekly deliveries of meat, as we feed about 8,500 lbs. of meat per week to the cats and wolves.” So, not only do wild animal sanctuaries like the Wild Animal Sanctuary in Colorado participate in the killing of innocent subjects-of-a-life, but they often support industrial animal agriculture which is infamous for its incredibly inhumane, confining, and exploitative treatment of nonhuman animals. As Regan puts it, “no one has a right to be protected by the continuation of an unjust practice,” such as industrial agriculture, which routinely violates the rights of others” (Regan 1983, 347). Industrial agriculture not only harms subjects-of-a-life by causing nonhuman animals harm through both deprivation and infliction, but it also treats farm animals as if they were renewable resources or mere tools for social utility: in breeding and raising animals for food, we “fail to treat them with the respect they are due as possessors of inherent value” (Regan 1983, 345).

While the current feeding practices of wild animal sanctuaries involve supporting morally problematic industries such as industrial animal agriculture, one might suggest that these sanctuaries should feed only animals who have died of natural causes to these obligate carnivores. However, this possibility has been considered and dismissed by wildlife sanctuaries because they “do not take in road-kill or any other kind of carcass animals since they are not fresh, or safe, for our animals to eat. Dead animals can bring in all sorts of fleas, ticks and other
parasites—which can cause a lot of medical problems for our animals” (Wild Animal Sanctuary, 2013). Assuming, then, that we can neither feed obligate carnivores who reside in sanctuaries a vegetarian diet nor can we feed them animals who have already died, we are left asking how, or if, we can fulfill our moral obligation to assist Bernie without violating the harm principle which demands that we not harm subjects-of-a-life in order to benefit some other being(s)?

4 Should we Euthanize Bernie?

We might conclude that the answer to the question at hand seems quite obvious: we are unable to fulfill our positive duty to provide Bernie with her basic sustenance needs, since if we were to feed her in accordance with her nutritional needs, we would harm some other subject(s)-of-a-life. Furthermore, since most animal sanctuaries feed big cats like Bernie domesticated animals such as horses, pigs, cows, and chickens, they violate the respect principle which forbids moral agents from coercively putting a nonhuman animal at risk of harm when the animal would not otherwise be just so that others might benefit. It seems, then, that since: (1) we cannot provide Bernie with her basic sustenance needs without causing harm to another subject-of-a-life and violating the respect principle, and (2) Bernie requires our assistance if she is to stay alive (remember, she cannot hunt, or even eat on her own), Bernie is condemned to a future of starvation and/or severe malnutrition. It would seem, then, that the best option would be to euthanize Bernie, since painlessly killing a subject-of-a-life is often morally preferable to subjecting a being to a drawn out, painful, and undignified death (Regan 1983, 109-114). In this case, it would seem that the overriding preference of Bernie would not be to experience relentless suffering from malnutrition; her preference would be a swift, painless death. Thus, painlessly killing Bernie
would be an instance of respecting her preference to have a swift, painless death when the alternative is a long, painful, and drawn out death from malnutrition and/or starvation.

Yet, this approach to the issue at hand is troubling. First of all, it seems counter-intuitive that after years of being exploited in the circus industry, the moral solution is to just euthanize Bernie immediately after she is released from captivity without granting her the opportunity to ever experience satisfaction in life. Furthermore, in assisting nonhuman animals like Bernie, sanctuaries are not just acting with “beneficence” or doing a “nice” thing for an innocent being when they take in these carnivores; they are acting in accordance with justice and fulfilling a duty that is demanded by the respect principle. Thus, in failing to provide Bernie with her basic sustenance needs, we fail to perform a serious moral obligation and we violate Bernie’s right to respectful treatment, which entails the right to assistance.

Perhaps though, we have overlooked a critical distinction, which if addressed, could enlighten the discussion at hand. As mentioned, the issue is the following: how can we be justified in harming a subject-of-a-life in order to satisfy Bernie’s sustenance needs. Current practices of wild animal sanctuaries involve feeding obligate carnivores animal flesh that is a product of industrial animal agriculture, which both harms subjects-of-a-life and fails to treat subjects-of-a-life with respect. Yet, we cannot forget that Regan’s account would allow for a moral distinction between harming a subject-of-a-life in order to feed Bernie and using a subject-of-a-life as a renewable resource in order to feed Bernie. While Regan’s account would never permit us to use a subject-of-a-life as a renewable resource in order to feed Bernie, it does not necessarily follow that we can never harm a subject-of-a-life in order to feed Bernie. This is because the right not to be harmed, according to Regan, is a prima facie right, which, under certain conditions, can be justifiably overridden. Thus, if we can find a way to feed Bernie
without using a subject-of-a-life as a renewable resource, even if we end up harming the subject-
of-a-life, we might be justified in causing harm to feed Bernie.

5 The Liberty Principle & Its Logical Extension

In explaining how we can, in certain circumstances, fulfill our duty to assist Bernie while justifiably causing a subject-of-a-life harm, I suggest that we turn to Regan’s liberty principle. Regan explains that the liberty principle permits an individual, subject to qualifications, “to do what is necessary to avoid being made worse-off relative to other innocents, even if this involves harming innocents” (Regan 1983, 331). Of significant importance are the certain qualifications and strict limitations to the liberty principle that are evident in the following description of the liberty principle that is provided by Regan:

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

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

While the liberty principle seems to only grant permission to individuals to protect themselves and to promote their own basic well being, it seems plausible that Regan would agree that a moral agent could exercise this principle on behalf of subjects-of-a-life who cannot actively claim such rights because their liberty has been impaired due to the unjust actions of
moral agents. After all, if all beings have the right or liberty to pursue their welfare, it seems unfair that a victim of injustice, like Bernie, is unable to exercise this right due to the unjust actions of moral agents. In such a case, it seems that moral agents have a duty to intervene on behalf of these vulnerable and dependent animals to help assist them in claiming their right. Furthermore, since we have a duty to treat all subjects-of-a-life with respect, and respecting Bernie requires that we assist her, it would seem that we would fail to treat Bernie with the respect she deserves if we were to deny Bernie the ability to achieve a minimal level of welfare by sustaining her life simply because others will be less well-off.

A logical extension of the liberty principle is a principle that requires moral agents to promote the welfare of innocent victims of injustice while also ensuring that, once rescued, they are protected from becoming worse-off than others. Let us refer to this as the guardianship principle:

Provided that all those involved are treated with respect, and assuming that no special considerations obtain, a guardian should act so to avoid making an innocent, vulnerable, and dependent victim of injustice worse-off, even if doing so harms other innocents (Regan 1983, 331).

6 What the Guardianship Principle Does and Does Not Permit

It might then be argued that we are at liberty to raise and kill domestic animals in order to feed Bernie. Yet, we mustn’t forget the fundamental moral constraint of the liberty principle: one acts within his rights “only if those who are harmed by what he does were treated with respect” (Regan 1983, 346). Since the practice of raising animals specifically for food “routinely treats these subjects-of-life in ways that are contrary to the respect that they are due as a matter of strict justice,” we are not permitted to engage in such a practice, even in order to assist a victim of injustice (Regan 1983, 346). This is because animals who are reared for food are treated as
renewable resources and “to treat farm animals as renewable resources is to fail to treat them with the respect that they are due as possessors of inherent value” (Regan 1983, 345). Since, “no one has a right to be protected by the continuation of an unjust practice, one that violates the rights of others,” we still cannot fulfill our duty to assist Bernie by feeding her domesticated animals who are reared in agriculture (Regan 1983, 347).

Although it is clearly out of the question to deliberately raise and breed animals like chickens, cows, and so forth just so that we can slaughter and feed them to big cats on animal sanctuaries, perhaps we might argue that there is another situation where we might be able to fulfill our moral obligation to ensure that Bernie is not worse-off which does not involve treating another subject-of-a-life as a renewable resource. For example, we might be justified in hunting wild prey animals, like deer, elk, rabbits, and so forth who are not coercively put at risk and who are not willfully and deliberately bred into existence for the sole purpose of being used as a mere resource. As Plumwood (2000, 300) points out, there is a significant difference between industrial animal agriculture and hunting: “in the once case [in industrial animal agriculture] an animal’s entire life can be instrumentalized and distorted in the most painful ways” while in another case, as with hunting, “an animal can be made use of responsibly and seriously to fulfill an important need, in a way that respects… both its individuality and its normal species life.” Since animals who are hunted in the wild have not had their rights violated nor have they been treated with a lack of respect, the guardianship principle would permit us to kill these nonhuman animals on behalf of Bernie only if it would avoid making Bernie worse-off than the deer.

7 Comparing Lives and Comparing Deaths

In order to determine if Bernie’s death, which would result from not killing deer in order to feed her, would make Bernie worse off relative to any of those deer who would be harmed in the
process, Bernie’s individual right not to be harmed by death must be weighed equitably against the same right of each of the deer who are killed. In order to justify killing the deer, we must demonstrate that death is not a lesser harm for Bernie than it would be for the deer who are killed. But, if we find that, in attempting to kill a deer in order to feed Bernie, we make the deer worse-off than Bernie if we were to euthanize Bernie, then we are not permitted to kill the deer.

We can, in fact, imagine many cases in which attempting to kill a deer would make the deer worse-off than Bernie if Bernie were euthanized. For example, since not all hunters are expert shots, they might end up subjecting the deer to a slow and agonizing death, which would lead us to question whether this sort of death is worse than the death Bernie might face if we were to just painlessly kill her. If Bernie is a couple of years away from dying and we kill a deer in its youth or prime, then we might conclude that the deer is made worse-off from death since his expected lifespan is longer, thus his death would deprive him of more years of opportunities for enjoyment and movement than Bernie would be deprived of if Bernie were to be killed.

In an attempt to ensure that the deaths of the deer would not make the deer worse-off than Bernie if she were to be euthanized, we should employ measures of caution when hunting on behalf of Bernie. This might entail only allowing “expert shots” to hunt while instructing these hunters to only killing deer who are sick or old. We might also only kill deer in overpopulated areas, since these deer might in fact be benefitted by a quick death if their alternative option is starvation. Regan’s theory might also demand that we instruct hunters to kill infant mammalian animals, fish, or birds since according to Regan, it is unclear as to whether these animals meet the subject-of-a-life criterion (Regan 1983, 416-417). Thus, if we must choose between killing a being who is, without a doubt, a subject-of-a-life and a being who is a “possible” subject-of-a-life, we should choose to kill the being who is a possible subject-of-a-life.
In addition to illustrating that we can kill a deer in such a way that his death would not make him worse off than Bernie if Bernie were to die, we can also illustrate that Bernie’s death, in fact, would be a greater harm than the death of most deer. To understand why this is so, recall that Regan operates under the assumption that the value of lives differ from one being to another; “the value of life….. increases as the number and variety of possible sources of satisfaction increases” (Regan 1983, xxxiv). Thus it seems that, in cases of conflict, the harm of killing less complex beings with limited sources of satisfaction is a less grave harm than killing a more complex mammal, like a tiger, who might be argued to have more possible sources of satisfaction than a deer.

Furthermore, if we consider that, prior to her rescue, Bernie has been confined to an unnatural habitat, physically mistreated, and prohibited from playing and exercising, and deprived of a social and familial network, we might find that death would make her worse off in that she never is afforded the opportunity to live a flourishing life. If our choices are between: (1) quickly and painlessly kill an animal who has been abused and subject to pain and suffering for the entire duration of its life but now has the opportunity for happiness, or (2) quickly and painlessly kill an animal who has lived a minimally decent life, it would seem that the first animal would be worse-off if it were to die because it never had a decent opportunity to flourish; it never had the opportunity to experience satisfaction and happiness. In Bernie’s case, we find that she now looks forward to a number of sources of satisfactions which she was previously deprived of which might increase her level of appreciation and enjoyment: bodily health, freedom of movement, interacting with other animals, playing, and so forth. Assuming that Bernie’s sanctuary provides sufficient care, Bernie also has guaranteed access to satisfaction that
is not always available to a wild deer, especially one who is sick, old, or lives in an overpopulated area.

8 Conclusion

While, at first glance, it appears that our duty to not harm nonhuman animals is in conflict with our duty to assist animals like Bernie, we can employ the guardianship principle in order to illustrate that, under certain conditions, we are justified in harming nonhuman animals in order to fulfill our positive obligations to victims of injustice. Yet, this permission to harm other possible subjects-of-a-life comes with important restrictions and calls for precautionary measures that, if implemented on a practical level, would result in significant changes to how animal protection organizations, like wildlife sanctuaries, operate on a daily basis. While the mission of wildlife sanctuaries is commendable, we cannot forget that we must make the effort to reduce harms to other subjects-of-a-life, even when providing assistance: we do not get a “free” pass to harm any being in whatever way we choose just because we are fulfilling our obligation to assist a victim of injustice. We must remember the unfortunate fact that, in many circumstances, it hurts to help, and the hurting aspect must never be overlooked or discounted. While justice might command us to assist victims-of-injustice, even in the face of harming other subjects-of-a-life, justice also demands that we do so while affording all subjects-of-a-life with basic respect.
Bibliography


