Animals on Lifeboats: a Defense of a Sliding Scale Model of Moral Status

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By

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Abstract

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The vast majority of moral theorists either assumes or accepts that moral status is an all or nothing concept. One either has full moral status, or one has no moral status. The problem with having an all or nothing approach to moral status becomes apparent when one wants to open the moral community to non-humans. Although many people might agree that animals deserve moral consideration, a significant majority of even those sympathetic to animals’ suffering still resist putting animals and human beings on an equal moral footing. The “dog on the lifeboat” thought experiment lays bare this pro-human moral intuition. In this essay, I explore the ways in which Tom Regan, Peter Singer, R.G. Frey, and Ruth Cigman attempt to make sense of this pro-human moral intuition without denying the need for some moral consideration for animals. All of them justify the moral intuition that we must protect the life of a human over the life of an animal if forced into such a situation. They do this by arguing, in some way or another, that death is, generally speaking, more harmful for human beings. I reject this approach to justifying the pro-human moral intuition because I favor a view of the harmfulness of death where it makes little sense to make comparative judgments of death’s harmfulness across species lines. In contrast, I argue that the all or nothing concept of moral status needs to be revised. I argue that moral status should adopt a sliding-scale model based on the distinction between moral agents and moral patients. This approach does not deny moral status of some degree to many animals, and the implications of this approach are not as wide reaching as to justify much of the current ways humans treat animal beings. This project is important because it takes on the task of making coherent a strong animal rights position that still holds on to a limited pro-human view. Many people might initially view these two views as contradictory or in tension. I am arguing that one does not have to choose either one in exclusion of the other in order to maintain a consistent ethical outlook.
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Contents

Chapter 1: Introduction ......................................................... 1

Chapter 2: Tom Regan’s Dog on the Lifeboat ............................. 10

Chapter 3: Other Solutions for the Lifeboat ............................... 22

  Peter Singer: The Hypothetical Choice Solution ...................... 22

  R.G. Frey: The Richness of Human Life ............................... 28

  Ruth Cigman: Death is no Misfortune for Animals .................. 32

Chapter 4: The Equality of the Harm of Death across Species ........... 39

Chapter 5: Moral Status and Moral Agency - The Case for Unequal Rights 46

Chapter 6: Objections and Replies .......................................... 61

Chapter 7: Implications and Concluding Remarks ....................... 76

End Notes ............................................................................. 87

Bibliography ........................................................................ 89
Chapter 1

Introduction

In this chapter I intend to set out the main problem on which I focus in this essay, survey several possible solutions suggested by others, and provide a preview to the solution I will defend in subsequent chapters. By the end of this chapter, I hope to have convinced the reader of the relevance and importance of this work as well as have introduced her to the general layout of the problem being considered.

Imagine you find yourself stranded on a small life raft in the middle of the ocean with four other individuals, three adult human beings and one large dog. The lifeboat is clearly sinking due to excess weight on board. In order to prevent the sinking of the boat and, therefore, prevent the drowning of all five passengers, one individual needs to go overboard. You, along with your four other life raft companions, will have to choose who will be sent overboard so that the four other passengers will be able to survive until rescue. This *Gedanken* experiment, originally proposed by Tom Regan, serves as an intuition pump concerning why we privilege human life over other sorts of living entities.¹

You might be reading this right now and wondering why I am treating this as some sort of vexing moral dilemma. The solution, you might think, is quite obvious. Though regrettable, the passengers ought to sacrifice the dog’s life in order to save the
humans’ lives. Choosing otherwise would be morally odious. This, I suspect, would be the most frequent intuitive response given to the above situation.

However, what if there are just enough room and food rations for all five lifeboat passengers to survive until rescue, yet not very comfortably? That is to say, all five of you will spend the next few days uncomfortably side by side, thirsty, and hungry, although not starving to death. The next few days will be quite miserable already, and you and your fellow humans would rather not spend them hungry and thirsty as well. Thus, you throw the dog off of the lifeboat so that you and your human companions can share her food rations and have a bit more elbow room. Are we morally excused to act this way in such a situation?

Once again, I suspect most people’s intuitions will be in agreement here. The human beings’ desires to avoid a bit of discomfort is morally less important than the dog’s interest in continuing to live, especially since the situation is only calling for the human beings to accept a temporary and short period of discomfort. The dog’s interest matters morally in its own right, and not merely in reference to the interests of human beings. What this shows is that a coherent and acceptable account of moral status across species lines will not be so simple as to say that some beings deserve moral consideration while all others carry no moral weight whatsoever. This thought experiment pushes us to reexamine the ways in which we conceive our moral relationships and duties towards
non-human animals and, if necessary, reconsider the morality of some customary social practices affecting animal well-being.¹

I am arguing that the above thought experiments expose a problem with how our moral intuitions work with regards to human’s proper relationship to animals. They strongly push us to take the position that it is much more important to save a human life rather than an animal life if one has to choose. Despite this, many people are still inclined to hold that animal lives do matter both for the animals themselves and for us in our moral considerations. Moreover, many are inclined to hold that protection of an animal’s life is normally more important than the satisfaction of trivial human interests. To my knowledge, most animal rights theorists (if not all) still agree with the moral intuition favoring the human over the animal. The problem, then, lies in figuring out how to account coherently for the privileging of human life over animal life without abandoning some moral consideration for animal life. How do we justify both these moral intuitions without simplifying or complicating moral status to the point of incoherency?

The goal of this essay is to provide an answer to the question posed above. There are a variety of possible solutions. For framing purposes, one can reformulate the two claims in question as such: First, animal lives matter both for the animals themselves and in our moral considerations; second, it would be worse to lose a human life than to lose an animal life if one had to choose between the two. On the one extreme, one could reconcile both intuitions by denying the validity of the first one. That is, we are justified

¹ From now on, I will use the term “animal” to denote non-human animals. This terminology is misleading in the sense that human beings are members of the animal kingdom and that there can be as much difference between any two species as there is between the human species and any other species. Notwithstanding, I will use “animal” because it is widely understood in the sense that I use and because there is no efficient alternative term of which I am aware.
in privileging the protection of human life over animal life because the value of animal life should only come into our moral considerations as it directly or indirectly affects human concerns and well-being. Animal life has no moral value in itself. This is a position upheld by Kant and Descartes, among others. On the other extreme, one could deny that we are justified at all in saying that the loss of human life is any worse than the loss of animal life. Whatever be our rationale for saving the human life on the lifeboat, this rationale will not be morally justified. Admittedly not many people have defended a view such as this. Finally, the most interesting and philosophically defensible positions will attempt to reconcile both moral intuitions through specific interpretations of what is exactly being claimed when we hold these common sense moral positions.

An examination of all proposed solutions would be impossible and not useful for the purposes and scope of this essay. With this in mind, I will focus on several writers who have attempted to reconcile the two moral intuitions with each other, albeit in different ways. For introductory purposes, I will give a short explanation of the specific positions to be explored in subsequent chapters. Specifically, I intend to look at the arguments of Tom Regan, Peter Singer, R.G. Frey, and Ruth Cigman. Since we are concerned with the controversial position of animals in the moral community, the criteria these writers use to establish moral status will be important. When one ascribes moral status to an entity, one is saying, in effect, that moral agents have obligations to consider the interests, well-being, or intrinsic value of the entity in their moral decisions.

Tom Regan holds the position that any and all individuals who meet his “subject-of-a-life” criterion have full and equal moral rights. To fit the subject-of-a-life criterion,
one must have a certain type of advanced mental life. For Regan, this means one must have mental states over and above mere consciousness. He cites the possession of beliefs, desires, perception, memory, a sense of the future, an emotional life, and preference interests as key components of the mental life of a subject-of-a-life. Regan thinks that, at least, all mammals over one year in age meet the subject-of-a-life criterion. This means that all mammals that are subjects-of-a-life have full and equal moral status and, consequently, equally strong moral rights, irrespective of their species membership.

This does not, however, lead to unsolvable moral dilemmas when these rights conflict, as they do in the lifeboat thought experiment. Regan postulates three principles with which one can arbitrate between conflicting rights and interests: the miniride principle, the worse-off principle, and the liberty principle. For our purposes we will focus on the worse-off principle, which prohibits making some individuals worse off than others in dilemma situations even if the individuals made worse off are a smaller number than the other individuals affected. According to this principle, we are justified in sacrificing the dog’s life in favor of the humans’ lives only if it is the case that the loss of life would make a human worse off than it would a dog. Regan concludes that it would because the harm of death is a function of the opportunities foreclosed by death. Human beings, on average, have more opportunities in life than do dogs. Therefore, one is justified in overriding the dog’s right to life in favor of protecting the human’s right to life. It is important to note that this maneuver, in Tom Regan’s view, does not mean we have to accord the dog a less than equal moral status. Whether or not this is, in fact, the case will be brought up later.
Peter Singer, perhaps the most well-known philosopher writing on animal ethics, affirms both that animal lives have value for themselves and that it is worse to lose a human life than to lose an animal life. In brief, Singer is a preference utilitarian. For him, the rightness or wrongness of an action is determined by the number of preferences satisfied versus the number of preferences frustrated. Thus, one ought to maximize preference satisfaction and minimize preference frustration. Now, all sentient creatures have, at least, preferences concerning the avoidance of pain and the desire for pleasure.² Many animals are sentient. Therefore, animals have moral status insofar as they have preferences.

However, Singer still maintains a qualitative distinction between certain types of preferences similar to the distinction made by the classical utilitarian John Stuart Mill. In view of the lifeboat case, Singer makes reference to a hypothetical ideal and rational judge who has had the chance to experience both the full life of a horse and the full life of a human.³ The experiences of each life were filled with the regular presence of pleasures and pains that one could reasonably expect to have from an average horse or human life. After having experienced both lives, Singer claims that the ideal and rational judge would, from a non-species specific position, prefer the experiences of the human life over the experiences of the animal life. From an inter-subjective viewpoint, this implies that it would be worse for us to lose the human life than to lose the animal life, even though we recognize the value of the animal life as one full of possible pleasures.³³

² By sentience, I mean the capacity to have subjective experiences which can be categorized as painful, pleasurable, or somewhere in between.
³ Singer talks about the life of a horse specifically. One can substitute any sentient animal here and nothing changes substantially for his argument.
Like Singer, R.G. Frey is a utilitarian who wants to defend some type of distinction between the moral statuses of intelligent agents and sentient animals. Unlike Singer, he does not use a hypothetical choice scenario to do so. Rather, he bases the moral value of lives on the difference in quality of lives between most humans and most animals. The difference in value originates in the autonomy of human beings, something that animals lack. Since the death of a human being means the loss of a qualitatively more valuable life, it is worse for a human to die than for an animal to die, in most cases.

While the other writers considered in this thesis still hold to the position that death is, normally, harmful for animals, Ruth Cigman denies this. Although she does not deny that animals can be harmed, she does not think that dying is something that harms animals. In order to have a right to X, one must possibly be the subject of a misfortune at not having X. In order to experience a misfortune at not having X, one must consciously desire X. Animals can not have a conscious desire for life because they do not have the right concepts of life, death, etc. to understand “being alive” in itself. Since animals are not truly harmed by death and, therefore, have no right to protection from death, there is no moral problem in throwing the dog overboard.

I think that all of these positions are wrong in how they conceive of death as a harm for the individual who dies. In my view, death is still, normally, a harmful event for individuals to undergo, but it makes little sense to talk about death as being more or less harmful for individuals of different species. Because of this, we can not rely on the distinctions in comparative harms of death to reconcile the competing intuitions about animals and to solve the lifeboat problem.
I propose that we reject the equal moral status view. That is to say, there is a fundamental difference in moral status between most humans and most animals. This means that, in certain restricted cases, the interests and rights of a human being ought to simply matter more than those of the animal. However, I do not think we can draw the line simply between all biological human beings and all non-humans. Using species difference, by itself, to mark moral difference amounts to basing moral status on an arbitrary prejudice. I propose that the moral status distinction be based on the distinction between moral patients and moral agents because, unlike species difference, this distinction is central to the foundation of the moral community.

I hope this has given an adequate preview of what is to come. Specifically, this is how the rest of the essay is arranged. Chapters two and three delve deeper into explicating and criticizing the ways in which Tom Regan, Peters Singer, R.G. Frey, and Ruth Cigman attempt to arbitrate between the competing interests in the lifeboat example. Chapter four gives my own account of the harm that death represents. In chapter five, I develop my sliding scale model of moral status based on the moral agent/moral patient distinction. This model is defended from possible objections in chapter 6. In the final chapter, I explore the possible implications of this model for theoretical and social practices.

In this thesis, I am putting to one side the question of whether it makes sense to ascribe animals any moral status at all. I am assuming that it is reasonable to extend some level of moral status to many non-human animals. It would be a work all its own to address this question, but I don’t think my assumption here is unreasonable. Most people
agree and support some sort of legal and humanitarian protection for animals that are pets. The real disagreement comes in how strong those protections ought to be. I see my thesis as addressing that issue in some degree.
Chapter 2

Tom Regan’s Dog on the Lifeboat

Though only occupying several pages of his original four hundred page work *The Case for Animal Rights*, Tom Regan’s treatment of the lifeboat problem has spawned much philosophical response. It is most interesting in my view because Regan’s argument preserves the pre-reflective intuition about preferring the human life over the dog life without, supposedly rescinding his anti-speciesist declarations. Moreover, he does not think that this argument conflict with his claim that all subjects-of-a-life have equal inherent value. It is my view, however, that he does fail to adequately reconcile the equal inherent value thesis with the human preference intuition.

In order to justify the decision to throw the dog off of the lifeboat, he employs what he terms the worse-off principle in conjunction with the claim that death makes human beings worse off than dogs. I will explain his worse-off principle and comment on it briefly, but I intend to focus on the claim that death makes humans worse off than other animals. His argument for this claim works like this:

1. The relative harm of death for an individual is a function of the variety and number of opportunities for satisfaction foreclosed to this individual by death.\(^4\)
2. Human beings’ lives, in general, contain a greater number and variety of opportunities for satisfaction than do animal lives.\(^5\)
3. Therefore, death ordinarily harms humans more than other animals.

\(^4\) From now on, I will refer to this account of the harm of death as the opportunities foreclosure thesis.
\(^5\) “Animal” for Tom Regan refers to non-human mammals over the age of one. Although Regan casts the arguments specifically with reference to a dog, he thinks that the argument remains sound no matter which non-human subject-of-a-life is substituted for the dog.
I will argue that there are good reasons to cast doubt on both premises of the argument. Premise #2 is weak because it makes an unwarranted epistemic assumption about our knowledge of the satisfaction of animal experiences with which we have no acquaintance. Premise #1 leads to unsavory perfectionist implications which, along with the disutility of the opportunities foreclosure thesis to help account for our intuition, provide sufficient motivation for considering other alternative approaches. In this chapter, I will summarize Tom Regan’s position on animal rights, heretofore referred to as the equal right’s view, with a view to providing more insight into his resolution of the lifeboat problem. Following this, I will consider each premise of the argument outlined above and tentatively suggest an alternative account of the harm of death.

First, it is worthwhile to note that I am not disagreeing with Regan’s solution to the lifeboat problem, but only the manner in which he justifies it. At first glance, it seems to be the case that the coherency of Tom Regan’s beliefs concerning animals is suspect. He posits equal inherent value for all subjects-of-a-life while also holding on to the intuition which accords preference to human life on the lifeboat. If I reject the premises he uses to explain why these two beliefs do not, in fact, contradict each other, then I am forced either to provide a new defense which preserves the consistency of the beliefs or to modify one of the beliefs in question. Ultimately, I will opt for modifying one of the beliefs in question.

It is partly considerations of coherency that motivate Tom Regan to posit an equal inherent worth for all subjects-of-a-life. He is looking for a moral theory that can account
for the validity of the harm principle while also avoiding possible inconsistencies.⁶ In his view, any position which denies the applicability of this principle to non-human subjects-of-a-life while still providing for full and equal moral status to any and all human beings is inconsistent because there are no morally relevant differences between human moral patients and non-human moral patients. As Regan says, concerning all moral patients, “There is no nonarbitrary way to narrow the scope of this principle to exclude moral patients.”⁴⁴ If we want to retain our beliefs about moral duties to human moral patients without committing logical errors, we must look for a new property on which to base equal inherent moral value. The property he chooses is the subject-of-a-life property.

One common property between human moral patients and human moral agents is the property of being a subject-of-a-life. From Regan’s description, the specifics of this property are unclear but the general understanding of it is clear enough. A being is a subject-of-a-life if it has a mental life which is more complex than pure sentience or pure consciousness. This means that it has beliefs, desires, memories, a sense of the future, and a psychophysical identity over time. Most important for the criterion is that a subject-of-a-life has “an individual welfare in the sense that [its] experiential life fares well or ill for [it], logically independently of [its] utility for others and logically independently of [its] being the object of anyone else’s interest.”⁵⁵ This property is also held in common between human moral agents and non-human moral patients (e.g., many animals) and, thus, does not fall prey to the problem of inconsistency. Therefore, if we are going to posit equal inherent value to all subjects-of-a-life, then many animals also deserve equal

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⁶ On page 187, Regan tells us that the harm principle is the “direct prima facie duty not to harm individuals.”
and unbiased consideration in our moral decisions. We ought to treat animal subjects-of-a-life well for the same reasons as we ought to treat human subjects-of-a-life well.

In Regan’s equal rights view, the principle of respect is central to moral theory. The respect principle states that “we are to treat those individuals who have inherent value in ways that respect their inherent value.”vi The inherent value of an individual is something that is over and above the utility value of the various experiences he or she has. To respect the inherent value of an individual means to treat her in such a way that does not reduce her to a mere receptacle of valuable experiences. According to Regan, this is what utilitarianism does because it morally allows for decisions which may sacrifice the welfare of one individual in order to bring about a greater aggregate amount of pleasure in the world. Inherent value is incommensurable with utility value. Therefore, if a particular action violates the inherent value of an individual, it cannot be justified by the valuable consequences it brings about in the world because the value of these consequences can not be measured up against the value of the individual. Also, we can see how the harm principle mentioned above derives from the respect principle. Causing harm to an individual for no good reason disrespects that individual and its concern for its own well-being. Utilitarian considerations do not count as good enough reasons for overriding the harm principle because doing so would violate the more important respect principle.

Another way to understand the respect principle is in terms of treating another individual as property. Gary Francione considers the right protected by the principle of respect to be a basic right because “in order for animals to enjoy any rights at all, it is
first necessary that they stop being regarded as ‘things’ which, as a matter of law and (some) moral theories, cannot have rights.” Tom Regan is claiming that subjects-of-a-life deserve to be treated as persons capable of having legal rights, instead of as mere things valuable only for their utility.

Are there cases in which we are morally obligated to override the harm principle in order to remain in accordance with the respect principle? Yes, there are instances in which harming an individual is necessary to respect that individual or other individuals involved. One important subset of these cases is that of prevention cases. These are cases where a moral agent chooses to override the rights of some in order to prevent harms from occurring to other innocent individuals. Regan derives two principles from the respect principle which help us to discern when prevention cases are morally justifiable: the mini-ride and the worse-off principle. I will discuss the worse-off principle in more detail because it pertains directly to the lifeboat case.7

The Worse-off principle states:

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.8

This principle is designed to protect the rights of the few against the interests of the many. Let us take an example. I am forced to choose either to radically harm individual A or to minimally harm 1,000 other individuals. Each individual affected in the present example has an equal prima facie right to not be harmed. For the sake of the example, let

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7 The miniride principle states the following: “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 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.” (305).
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us assume that I can place numerical value on the harms, the aggregate harm for A equaling -1,000 and the aggregate harm for the 1,000 individuals equaling -2,000. The utilitarian would do the calculations and determine that the moral decision is to cause the harm to individual A because it would amount in a lower total net loss of utility. The equal rights theorist, on the other hand, would choose to harm the 1,000 individuals as opposed to individual A because each one only experiences a harm equal to -2. Applying the worse-off principle, the harm faced by the few (i.e., individual A) makes her worse-off than the harm faced by any of the many. Therefore, one ought to override the prima facie rights of the many.

Tom Regan specifically evokes this principle to resolve the lifeboat case. According to him, “To throw any one of the humans overboard, to face certain death, would be to make that individual worse-off (i.e., would cause that individual a greater harm) than the harm that would be done to the dog if the animal was thrown overboard. Our belief that it is the dog that should be killed is justified by appeal to the worse-off principle.” To paraphrase Regan, we have the normative prescription of the worse-off principle, and we have the empirical claim that death makes a human being worse off than a dog. The conclusion, thus, is that the dog should be thrown off the lifeboat.

As I stated above, I am not so much concerned with rejecting the worse-off principle; rather, I take issue with the claim that death makes human beings worse off than dogs. Thus, I will spend the rest of this chapter examining the validity of that claim. Before I move on, however, I want to point out possible confusions about the connection

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8 Let us assume also that each of the 1,000 individuals is experiencing an equally harmful harm.
between Regan’s lifeboat case and the worse-off principle. The worse-off principle is presented in *The Case for Animal Rights* as a principle mainly concerned with protecting the rights of the few against the interests of the many. However, the lifeboat case is a case of conflicting rights between one human being who might be thrown off and one dog who might be thrown off. Numbers do not matter in this case, so how does the worse-off principle apply?

Regan writes, “The [worse-off principle] is given in terms of ‘the rights of the many’ and ‘the rights of the few.’ However, unequal numbers [the few, the many] are not essential to the worse-off principle; it applies in cases where we must choose between harming one innocent or harming another.” The principle is still valid if there is no actual numerical difference between “the few” and “the many.” When numbers drop out, the concern for not making some worse off than others remains. Regan’s reason for formulating the principle with “the few” and “the many” is to differentiate it from a principle which seeks merely to minimize harm. What is most important is protecting the rights of *each* individual as they are weighed against the rights of every other individual.  

Now, let us focus specifically on the second claim used to justify the sacrifice of the dog. The claim is that death makes the human worse off (i.e., causes more harm to the human) than it does for the dog. This claim is justified by two premises:

1.) “The loss that death represents is a function of the number and variety of possible sources of satisfaction it forecloses.”

2.) “Death for any one of the humans represents a greater loss of such possibility than would be true for the dog.”

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9 One can imagine the life boat case where there is a difference in numbers. If someone had to throw off one million dogs in order to save one human being, then he should do it because not one of the individual dogs is made worse-off by dying than is the individual human. Regan explicitly accepts this implication.
I will start by calling into question premise #2 of this argument. I argue that, given our lack of knowledge about what it is like to be a dog, we do not have the basis to make this claim or most any claim comparing the possible experiential satisfactions of members of different species. I will develop this line of argument below. Given this criticism, space is opened up to suggest an account of the harm of death different from the one given in premise #1. I suggest that the loss that death represents is due to the fact that life is the very condition for the possibility of satisfaction at all. We are harmed, thus, by losing the possibility to experience any satisfaction at all, numbers here no longer mattering. This would apply equally to all subjects-of-a-life, including dogs and humans. Therefore, we need a different reason for supporting the human preference intuition in the lifeboat.

I agree with Tom Regan that human beings have avenues of satisfaction open to them which are also excluded from the possible sources available to the dog. Human beings can do plenty of things that dogs simply cannot do. For example, the complexity of my cognitive capacities enables me to read works of philosophy, understand the structure of the arguments made by these philosophers, and offer my own original criticisms or reflections on the value of these arguments. Dogs cannot do this. The activity of philosophizing, open to me and not open to the dog, is an inexhaustible and central source of satisfaction for my life. This is true for satisfactions received from artistic endeavors, socio-linguistic relationships, and the exercise of moral virtues, to name only a few. Thus, it is true that there is a certain variety of experiences open to the average adult human that is not open to the average adult dog.
However, this applies equally the other way around. There are sources of satisfaction open to the dog that are not open to the human. For example, the German shepherd has around 200 million ethmoidal (olfactory) cells in the nose, compared to 5 million olfactory cells in the human nose. German canine expert Walter Neuhaus estimates that the canine capacity to smell is 1 million to 100 million times stronger than the average human. Thus, the variety in discriminations of odors open to dogs as possible sources of satisfaction is closed to human experience. Someone might reply that this does not really count as a source of satisfaction different from that of the satisfaction humans achieve through discerning smells. It is only a difference of degree in satisfaction. However, is that not essentially the same difference involved in the appeals to human distinctive satisfactions? That is to say, my cognitive capacities that are a source of satisfaction for me have a degree of complexity that greatly exceeds those of the dog, but the dog nonetheless has some cognitive capacities which serve as possible sources for satisfaction. Just as my cognitive capability opens up a realm of satisfaction to me not open to the dog, the dog’s olfactory capability opens up a realm of satisfaction to him not open to me.\footnote{In the canine’s close cousin the wolf, the importance of olfaction in communication, hunting, tracking, and social structure has been closely studied. See L. David Mech and Luigi Boitani, eds., \textit{Wolves: Behavior, Ecology, and Conservation} (Chicago: University of Chicago Press, 2003).}

I am not arguing that death harms the dog more than it does the human being. Rather, I am appealing to an epistemic humility on the part of what we can reasonably say we know about the satisfactions a dog can have. In some rudimentary sense, human beings may be able to compare satisfactions between themselves and dogs when those
satisfactions have their origin in common neurophysiological systems. I know how it feels for me to be free from physical pain, and I know the dog shares the same basic physical mechanisms which underlie pain sensations. From this, it is at least not wildly speculative to say that the dog would prefer not to be in pain just as I would. However, this does not get me to the point where I can reasonably say that the satisfaction I get from my social relationships is greater or qualitatively better than the satisfaction the dog gets from her social relationships. Due to this lack of knowledge about the satisfactions enjoyed by dogs, we are not justified in making the judgment that human satisfactions are more varied or more “satisfactory” than dog satisfactions.

Given the lack of knowledge needed to compare satisfactions across species, the opportunities foreclosure thesis seems less useful if we want to explain in a trans-specific way how death is considered as a harm. Furthermore, unsavory implications of the opportunities foreclosure thesis give us further reason to search for an alternative explanation. What are these unsavory implications? Imagine that there are only human beings on the lifeboat, and one person has to go in order to save the rest of the people. Imagine further that four of the five people are Nobel laureates and have genius level IQ’s. The other person is of average I.Q. and finds no interest or satisfaction in scholarly or intellectual pursuits. For purposes of this example then, one could argue that the Nobel laureates have satisfactions open to them due to their high levels of intelligence which are closed off to the person of average I.Q. Do we want to accept the implication that it is the moral duty of the Nobel laureates to band together and throw off the person of average intelligence because death is “less harmful” to her than it is to them? Although not
avowedly perfectionist, Regan’s account of the harm of death allows perfectionism to sneak into his theory of justice, even if only in extreme cases. Regan himself rejects perfectionist theories of justice on the grounds that they rely on such a fortuitous foundation as a “natural lottery.” Yet, human beings lucky enough to be born with the genes and environmental conditions which provide a more varied openness to satisfactions do get preference in Regan’s solution to the lifeboat case. Perhaps a very limited form of perfectionism is required if one wants to maintain the human preference intuition, but Regan’s theory admits of a stronger form of perfectionism which allows for situations like the one described above.

Pointing out this implication, by itself, does not amount to enough justification for explicitly rejecting Regan’s account of the harm of death. However, considering this implication along with the epistemic uncertainty concerning the possibility of reliably weighing different satisfactions across species boundaries, one has sufficient motivation for considering other possible accounts of why death is to be considered a harm. I suggested above that the loss that death represents is due to the fact that life is the very condition for the possibility of satisfaction at all. It is not a question of the quantity of the satisfactions being foreclosed. On this account, death would be equally harmful to any individual of whom we could say has the possibility of experiencing satisfactions. This would mean that death is an equal harm for all subjects-of-a-life, be it a dog or a human being. Death does not make a human being worse-off than a dog. Therefore, the worse-off principle does not apply in the lifeboat case. I will develop this alternative account in more depth in chapter four.
From this it does not follow that we must reject the intuition that one is morally justified in throwing the dog off of the lifeboat in order to save the human life. It only means that this intuition cannot be justified by appeals to the claim that death makes humans worse off than dogs by virtue of quantifiable difference in satisfaction opportunities between dogs and humans. We can either find another way to justify the claim that death makes humans worse off than dogs or we can try to justify the intuition without appealing to any claim asserting that death makes human beings worse-off. I favor the latter approach, but it will be worthwhile to consider other major approaches to justifying the claim that death makes humans worse-off than other animals.
Chapter 3

Other Solutions for the Lifeboat

Although it is Tom Regan who explicitly raises the example of the lifeboat dilemma, others have weighed in on how one ought to go about making decisions in lifeboat like cases. When faced with choosing between the life of a human and the life of a member of another species, be it on a lifeboat or in other contexts, the question comes down to how one ultimately justifies a rank ordering of some lives over others. In this chapter we will see alternative proposals proffered. I will focus on the arguments given by Peter Singer, R.G. Frey, and Ruth Cigman.

Peter Singer: The Hypothetical Choice Solution

Peter Singer defends a preference utilitarian account of ethical theory which stresses a principal of equal consideration for all interests. Briefly, a preference utilitarian holds that the rightness or wrongness of an act depends on the amount of preferences satisfied versus the amount of preferences frustrated as a result of the action in question. The equal consideration principle states that all preferences (or interests) are to be given equal weight when calculating the rightness or wrongness of any given action. Echoing Bentham’s dictum, “everybody to count for one, nobody for more than one,” Singer writes, “What the principle really amounts to is this: an interest is an interest, whoever’s interest it may be.” Thus, all sentient beings that have, at least, a preference in avoiding pain and receiving pleasure are entitled to an equal moral status in relation to those
preferences. One being’s preferences cannot be given less weight merely on the basis of other characteristics unrelated to the existence or strength of the being’s preferences. Just as Tom Regan has to provide extra arguments to show how choosing the human life over the dog life does not violate the equal inherent value of each being, Peter Singer has to show how the same choice does not violate this equal consideration of interests principle. Equal consideration, Singer contends, does not mean equal treatment in all cases.

In accounting for the wrongness of killing, Singer has to rely on identifying certain preferences that are normally frustrated in losing one’s life. His understanding of personhood plays a role here. Following the traditional definition given by John Locke, Peter Singer defines a person to be “a rational and self-conscious being.” He writes, “A self-conscious being is aware of itself as a distinct entity, with a past and a future . . . [and is] capable of having desires about its own future.” This makes the account for the wrongness of killing persons straightforward. “According to preference utilitarianism,” Singer writes, “an action contrary to the preferences of any being is, unless this preference is outweighed by contrary preferences, wrong. Killing a person who prefers to continue living is therefore wrong, other things being equal.”

However, this is not so straightforward for sentient non-personal life. Presumably, these beings have no conscious preferences for continued life or for any future goods, for that matter. Therefore, painless death does not directly frustrate one of their preferences. Here, Singer reverts to a classical utilitarian viewpoint. Killing these beings still prevents the possible occurrence of future pleasurable experiences. Therefore, if one is reasonably

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11 This definition includes most human beings, but it does not necessarily include all and only human beings.
sure that killing a non-personal being will prevent more pleasurable experiences than it would painful experiences, we can deem it wrong to end that life. However, the value of the pleasurable experiences is less directly tied to the non-personal individuals than it is the case with persons. It is not a question of a particular individual’s preferences, but rather of the total amount of pleasure in the world. If one thinks that increasing the number of beings with moderately pleasurable lives is as good a way to increase total pleasure in the world as is a strategy of increasing the pleasure of existing lives, then these non-personal lives are replaceable. That is to say, there is no moral problem in painlessly killing a life with a pleasurable future, as long as that being is replaced with another who will have an equally or more pleasurable life than would the deceased individual.

If on the lifeboat, the dog is replaced by an animal that Singer thinks is only sentient but not self-aware, a box turtle perhaps, then the choice is easy because ending the human life would frustrate extra preferences which are not held by the merely conscious being. This choice does not violate the equal consideration principle because the turtle’s preferences are taken into account. It is just the case that the turtle has fewer preferences here that could be frustrated. However, making this choice is harder for Singer if we stick with the dog, or any other non-human animal that Singer thinks possibly meets his personhood criteria. To do this he appeals to a hypothetical choice scenario. He asks us to imagine a situation in which we have the capacity to transform ourselves into different species. In this particular situation, you live the full and complete

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12 Peter Singer thinks that dogs are possibly persons but box turtles, while clearly conscious and sentient, are not persons.
life of a horse, having all and only horse experiences. Then you live the full and complete
life of a human, having all and only human experiences. After this, you enter into a third
species-less existence, in which you have the memories of both horse and human
experiences. You are given the choice to return to life as either a horse or a human.
Which way will you choose?

Singer thinks that one can make sense of choosing from such a position, that
beings would invariably choose to come back as a human being, and that this choice
implies that “some forms of life would be seen as preferable to others.”xix This is what he
tentatively concludes from his though experiment:

In general, it does seem that the more highly developed the conscious life of the
being, the greater degree of self-awareness and rationality and the broader range
of possible experiences, the more one would prefer that kind of life, if one were
choosing between it and a being at a lower level of awareness.xx

Therefore, the conclusions reached from this hypothetical choice scenario justify lifeboat
decisions on the basis of differing levels of self-awareness and rationality. Although this
does not give us a precise way of choosing between all possible species, it does give us
clear indication as to why the human being’s life ought to be saved over the life of the
dog.

While both Tom Regan and Peter Singer tie the justification of their lifeboat
solutions to the relative difference of degree in rationality and self-awareness, there is an
important difference. Tom Regan’s solution stresses the quantitative difference in variety
and number of satisfaction opportunities, while Peter Singer’s solution stresses a
qualitative difference in the value of preference satisfactions open to either being. Peter
Singer is not claiming that human beings will normally have a larger amount and a wider
variety of preferences (though he might hold this view as well); rather, he is claiming that the value of a beings’ satisfied preferences increases relative to the level and complexity of the beings’ rationality. This qualitative judgment of value is justified by what Singer takes to be the obvious outcome of his thought experiment.

It seems as if this conclusion violates the equal consideration of interests principle. If we are justified in valuing the preferences of some beings over the preferences of other less rational beings, then it appears that the interests being considered are not being given equal weight. Peter Singer does not adequately address this criticism, but the hypothetical choice scenario might be able to dodge this bullet. The scenario suggests that even the less rational beings whose preferences are seemingly given less weight would, if they were to have adequate knowledge of the preferences of the more rational being that are in conflict with their preferences, agree that the preferences of this other rational being are more important and stronger than their preferences. From an inter-subjective viewpoint (i.e., a viewpoint which encompasses the subjective valuations of each individual being considered), all of the preferences are measured against each other on a common scale, and the preferences of less rational beings tend to come out lower on the scale than similar preferences of the more rational beings.

Yet, Peter Singer’s argument cannot escape from criticisms of unintelligibility and inherent bias. These two criticisms are related. The species-less third state envisioned by Singer in the thought experiment demands a radical sort of neutrality that is made unintelligible by the inherent bias that such a state cannot escape. In this third state, the
being in question must have the rational capacities to evaluate the relative merits and
demerits of the horse existence versus the human existence. These choice making
capacities make this third state much closer in phenomenological similarity to the life of
the human being than to the life of the horse. Thus, before the choice is even made there
is a pro-rationality bias which already favors the conclusion reached by Singer. The
common scale referenced in the preceding paragraph is necessarily determined and set by
rational considerations, and therefore, is not a neutral scale on which to measure the value
of more rational preferences versus less rational preferences.

Singer acknowledges the imaginative stretching required to make this thought
experiment intelligible. Moreover, he also recognizes that this third species less state is
more human-like than horse-like. He writes, “In some respects – the degree of self-
awareness and rationality involved, for instance – it might be more like a human
existence than an equine one, but it would not be a human existence in every respect.”xxi I
agree with Singer that his conclusion is not reached from a speciesist viewpoint (i.e., a
viewpoint which arbitrarily favors human beings over other beings on the mere fact that
they are human beings). Singer acknowledges that some animal lives might be preferred
over some human lives. Language trained apes are more intelligent than severely
cognitively deficient human beings, and therefore, Singer would have to say that the
apes’ lives are more valuable than these humans’ lives.13 I am not arguing that Singer is
being a speciesist. Yet, the demands of equal consideration and the importance placed on

13 This conclusion in itself might be enough to turn many people away from Singer’s arguments, convinced
of the moral perniciousness of any doctrine which will favor an animal over a human. These sorts of
objections will come up against the solution I propose as well and will be considered in a later chapter.
subjective valuation of preferences calls for absolutely no bias in this third species-less state. This is impossible if such a state requires certain rational capacities for choice-making. Thus, the radical neutrality of such a state is unintelligible.14

R.G. Frey: The Richness of Human Life

While there are many similarities between Frey’s and Singer’s conclusions with respect to the connection between the wrongness of killing and the qualitative value of a life, Frey’s arguments are not based on the outcome of anything like the hypothetical choice scenario which proved problematic for Singer’s argument. Frey accounts for the wrongness of killing in terms of the destruction of something of value, in this case the value of a life. In his essay “Moral Standing, the Value of Lives, and Speciesism,” he defends “the unequal value thesis,” the thesis that “animal life is less valuable than human life.”xxii Given his account of the wrongness of killing plus the unequal value thesis, it is easy to see how the lifeboat decision to cast off the dog before the human being could be justified. Of course, defending the claim that animal life is less valuable than human life is no easy task.

In order to get this defense underway, Frey has to spell out what he means by the value of a life. The value of a life, for him, is a function of the quality of the life. The quality of a life refers to the life’s richness in terms of its “scope or potentiality for enrichment.”xxiii Frey here is appealing to the sorts of activities of which involvement provides us with satisfaction and reasons to enjoy life and desire for life to continue. Conversely, if those things which contribute to the richness of our lives were absent, then

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life would seem dull and even worthless. In terms of human beings, the list of these types of activities include “love, marriage, educating children, jobs, hobbies, sporting events, cultural practices, intellectual development and striving, etc.” These are all things which contribute greatly to the well-being of individuals. As one can see, although flexible in the way they can be fleshed out, the items on this list are generally limited to the human experience.

Thus, Frey finds a much richer quality of life for normal adult humans than is the case for normal adult members of other species. Those things listed above which play central roles in the meanings we give to our lives are simply not a part of animal lives. What gives human life this richness and what makes these activities more valuable for humans than they are for animals, to the extent that they could participate in some of them, is human autonomy. Frey writes, “By exercising our autonomy we can mold our lives to fit a conception of the good life that we have decided upon for ourselves . . . Thus by exercising our autonomy and trying to live out some conception of how we want to live, we make possible further, important dimensions of value to our lives.” It is the fact that human beings can choose to define the good life in a certain way that bestows value on such a life in a way from which non-autonomous animals are excluded.

Some of the implications of Frey’s position might be unsettling to a large number of people, but he does not back down from them. He acknowledges that his grounding for the unequal value thesis implies the possibility that some animal lives are more valuable than some human lives, for many human beings who are severely cognitively impaired lack the autonomy central to what makes many human lives more valuable than animal
lives. If, as Frey does, we view the unequal value thesis as grounds for justifying the use of animals in scientific experiments which turn out to be greatly valuable for human lives, then there is no reason why we do not also use non-autonomous human beings for the same experiments.\textsuperscript{15} There are other implications that Frey does not acknowledge. His arguments suggest that we can make distinctions in value between autonomous humans as well, to the extent that they realize their autonomous wishes. I have no problem with saying that one person who realizes her desire to work as a mechanic is living a better life in this regard than someone who allows herself to be stuck in a career path she never desired. However, Frey ties questions of the subjective value of life to the wrongness of killing. Therefore, if there are only autonomous humans on board the lifeboat and one of those humans has a significantly less fulfilling life, then this seems to be justification in Frey’s account for sacrificing her first.

Due to consideration of the preceding implication, I am inclined to reject any attempt to tie moral status so closely to the comparative well-being of different individuals. There is another reason to reject Frey’s arguments. Frey is evaluating the quality of a life in general with anthropocentric criteria. Detailing the elements necessary for a life of high quality is a monumental if not impossible task, but if we were to try to sketch rudimentarily such a picture, we must take account of the common set of capabilities available to any given kind of life-form. If the criteria for the well-being of an individual had elements of it that were specific to the species of the individual, then

\textsuperscript{15} This is only in case we are attending just to the unequal value thesis and not to secondary considerations. These secondary considerations may include psychological and social dissonance caused by such use of humans.
comparing the quality of a given life in a trans-species way makes less sense. We can say that this human being is living a qualitatively rich life relative to her kind, while this rabbit is living a qualitatively poor life relative to her kind. This is not grounds to make a trans-species value judgment as to whose life is more preferable. Let us say that the human’s life is qualitatively poorer (relative to its kind) than the rabbit’s life. This does not mean that the rabbit’s life is preferable.

There are certain elements to well-being that are important to the good life of most any individual for whom it makes sense to talk about as being able to have a good life. For example, it is good for human beings just as it is good for wolves to avoid unnecessary suffering since the capacity to suffer is shared by both humans and wolves. To the extent that suffering is viewed on its own as something of disvalue, it is of disvalue to both human well-being and wolf well-being. If we were to consider the wolf’s life in specific and generate a list of things generally important to the good life of a wolf, there would be things on that list that we would not include on the human list. We can take an example I used in the last chapter. The wolf’s sense of smell is important to its well-being. This, perhaps, is not only the case in the sense that the wolf might get much pleasure from the discernment of innumerable differences in smell, it also plays an important role in the social life of wolves. In the way we differentiate humans by how they look, the differences in smell play an important role in differentiating between individuals for wolves.\textsuperscript{xvi} It makes little sense, on the other hand, to say that a human being’s well-being is significantly harmed if she lacks the smelling capabilities of normal wolves.
Likewise, having close relationships might be quite important for a good human life, but, as David Degrazia points out, “What sense would it make to say that an animal solitary by nature is worse off for not having close relationships.”²xxvii I think the same thing can be said for autonomy. The ability to exercise one’s autonomy may be important to the well-being of human beings, but it makes less sense to say this of animals whose species typical capabilities do not include autonomy.

This criticism of Frey’s arguments opens up much more complex avenues of exploration concerning the issues of well-being and quality of life that can not be developed in depth here. Frey appears to be advocating an objective account of well-being in the sense that something like autonomy is valuable for any individual’s life, regardless of that individual’s specific subjective preferences. Although I think it is possible to give a somewhat objective account of well-being, I cannot defend this here. However, it does seem problematic for Frey’s utilitarianism to be giving autonomy related interests more value than other interests. If such a move is to be justified by some sort of hypothetical preference for autonomy over non-autonomy, then we revert back to a Singer-like argument, open to the same criticisms made against Singer earlier.

Ruth Cigman: Death is no Misfortune for Animals

So far, we have seen three attempts to resolve the lifeboat situation in ways which did not explicitly focus on denying that death is harmful at all to animals. Ruth Cigman’s argument represents a strong example of just such a tactic. In responding to her arguments, I hope to convince the readers of the weakness of her claims as well as of the opinion that other arguments like hers will need even stronger support to be adequately
defended, if even possible. Cigman claims, “Death is not, and cannot be, a misfortune for any other creature than a human; this is a reason for denying non-humans the right to life.”

This does not mean, Cigman underscores, that we can do whatever we want to animals. Cigman has not denied that suffering is misfortunate and harmful for animals. She takes it to be obvious that it is wrong to cause gratuitous suffering to them. If we import Cigman’s claims to the lifeboat case, her justification is clear. Although it is harmful for both the dog and the human being to be thrown off the lifeboat, the dog has no strong right to life as the human does. We should throw the dog off of the boat in order to protect the rights to life of the remaining human beings.

Cigman ties rights closely to misfortunes. She writes, “A right to X entails the right to be protected from certain actions which will result in the misfortune, or possible misfortune, of not-X.” Furthermore, “a condition to be the subject of a right is therefore the capacity to be a subject of the corresponding misfortune.” According to Cigman, animals (with a few exceptions) do not have the capacities necessary for being considered possible subjects of the misfortune of death because they lack the capacities necessary for having a conscious desire for life and other categorical desires.16 Having the capacity for categorical desires is a sufficient condition for having a right to life.

Cigman is borrowing the notion of categorical desires from Bernard Williams. Categorical desires are desires that do not just presuppose life as a necessary condition (e.g., a desire to feel pleasure and avoid pain). Rather, they provide an answer to the

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16 On p. 62, Ruth Cigman does acknowledge the possibility that highly intelligent mammals such as dolphins and chimpanzees might be capable of having categorical desires, but she has serious doubts about this as well.
question of the value of life, be it an affirmative or negative answer. A conscious affirmation of the desire to continue living and the suicidal desire to end life are both categorical desires. Also, “one may resolve this question affirmatively with a desire, for example, to raise children or write a book.”xxx This second type of categorical desires is counted because they provide reasons for wanting to continue to live in order to complete a goal or project set out for oneself. Although she does not clearly spell out the difference between this second type of categorical desire and simple desires, the distinction seems to rest in the fact that these categorical desires are oriented towards long-term goals which require a clear conception of the self as something continuous and yet also something growing and developing.

Cigman’s account of the harm of death is suspect on several accounts. First, it is not clear that most animals lack the categorical desires of which Cigman and Williams speak. At least, she has not said enough to rule out the empirical evidence concerning the behavior of the many animals she wishes to exclude from being considered as justification for the categorical desire capacity. Second, there are several problems with tying the harm/ misfortune of death so closely to the capacity for categorical desires. Such a move would require us to deny the meaningfulness of common conceptions of which deaths are to be considered misfortunate, fortunate, or tragic. An explication of why we commonly evaluate certain deaths in certain terms better coheres with an account of the harm of death tied more closely to the loss of possible future opportunities, be it in quantitative, qualitative, or other terms.
As regards to the first point, Cigman gives us a list of capacities necessary for possessing the concepts of life and death in a way which makes categorical desires possible: “One can only understand life and death in these ways if one possesses the related concepts of long-term future possibilities, of life itself as an object of value, of consciousness, agency and their annihilation, and of tragedy and similar misfortunes.”\textsuperscript{xxxi} This is, admittedly, a pretty stringent list to satisfy in terms of cognitive complexity, but Cigman is willing to accede that some non-human mammals like chimpanzees and dolphins might possibly possess these concepts in a way sufficient for having categorical desires. She maintains, however, that this is still highly doubtful. Although not an integral point to my criticism, I want to suggest that evidence for, at least, language trained apes and elephants indicates the possession of an abstract concept of death.\textsuperscript{xxxii}

More importantly, I want to call into question Cigman’s glib dismissal of certain fear behaviors of animals as indicative of having a basic desire for continued life. She writes, “We must ask whether, or in what sense, animals don’t want to die. Of course, in some sense this is true of virtually all animals, which manifest acute fear when their lives are threatened. Yet blindly clinging on to life is not the same as wanting to live because one values life.”\textsuperscript{xxxiii} I will concur with Professor Cigman that the behavior of animals when threatened does not necessarily convey an abstract concept of death, understood as the final end of life and all of its attendant pleasures and satisfactions. For, the fear exhibited by the animal could merely be fear of future possible pains. Yet, the second type of categorical desire does not seem to require strictly an abstract concept of death as the end of all future possible experiences. The categorical desires of type two are desires
to complete long-term goals projected into the subject’s future. This would require a conceptions of one’s life as a temporally continuous self and the capacity to conceive of oneself in the future performing certain actions. It is not clear and, in my view, improbable that certain behaviors of many animals can be explained without attributing a concept of a continuous self and a capacity to consider the future to them. Tom Regan provides the example of typical wolf behavior: “When wolves run for many hours, possibly even days, in a given direction and then, upon reaching a given place, stop and wait; and when in time the wandering herd of caribou comes into view, may we not parsimoniously describe and explain the wolves’ behavior in terms of their sense of ‘future possibilities?” If we take evidence of such behavior and combine it with the evidence from fear behavior when threatened, this gives us good reason to ascribe to the animal in question a working understanding of life and death which could provide the sort of answer to the value of life question which categorical desires require.

Of course, the criticisms I have raised against Cigman rely on appeal to empirical evidence and the best explanation that can be given for it and, thus, are subject to being thrown into question by new empirical evidence which would raise doubts on my suggested explanation. There are, in my view, more fundamental problems with Cigman’s account than these primarily empirical observations. Tying the harm of death to the capacity for categorical desires would imply an extensive rethinking of the common ways we evaluate certain deaths as tragic, misfortunate, or fortunate. If one must be able to have categorical desires in order for her to be meaningfully harmed by death, then newborn infants, young children, and many cognitively impaired human beings
would not be meaningfully harmed by death. Yet, at least for young children and newborn infants, their untimely deaths are commonly viewed as paradigmatic cases of how deaths can be harmful and even tragic. Human beings who, for whatever reason, do not yet or can never have the cognitive abilities needed to conceive of death in an even limited sense still benefit from continued life for they can still be the subjects of long term projects which bring about satisfaction and personal development. It is the loss of these possible satisfactions, and not any particular complex concept or desire, which most coherently explains how death is harmful and tragic.

Cigman could, as Regan suggests, attempt to incorporate the deaths of newborn infants and young children under her account of death’s harm by claiming that their potentiality for having categorical desires counts as having a capacity for them. However, potentiality is not the same thing as capacity. The capacity for categorical desires indicates that one can have a categorical desire, even if it is the case that one currently has none. Someone with the potentiality for having the capacity for having categorical desires, like the infant, necessarily has no actual categorical desires. Potentiality does not count as having a capacity, in this case. This defense would not take into account the harm of death for cognitively impaired human beings, either.

To briefly recap, Cigman’s account of the harm of death is weak on several levels. First, she wants to deny that her account implies that death is harmful for most animals even though she does not adequately account for much empirical evidence which suggests many animals have a conception of life and death sufficient for having some categorical desires. Second, even if no animal had categorical desires, an account of
death’s harm tied too closely to these categorical desires is strongly counter-intuitive when compared against common conceptions of tragic, misfortunate, and fortunate deaths. In my view, Cigman’s arguments are not good enough to justify our lifeboat decision
Chapter 4

The Equality of the Harm of Death across Species

In the preceding two chapters, I have criticized various writers who attempt to account for death in a way that implies that death is generally less harmful for members of some species than for members of other species. In specific, they argue that death is generally more harmful for humans than it is for other animals. In chapter three, I provided some cursory remarks on an account of the harm of death which would apply equally over species barriers. In this chapter, I wish to develop and defend such an account. I argue that the harm that death represents is the loss of the very condition for the possibility of satisfactions at all. One might be allowed to draw rough distinctions as to the harmfulness of death among beings whose satisfactions are similarly grounded (e.g., between humans). However, one cannot make such distinctions between individuals whose satisfactions and capacities are not similarly grounded (e.g., between a dog and a human).

In making qualitative distinctions between human and animal satisfactions, both Peter Singer and R.G. Frey assume that feelings and satisfactions are the types of experiences that can be easily abstracted from the subjects of those experiences and compared on an even scale. This assumption is not obvious at all. Even Tom Regan, who criticizes utilitarians like Peter Singer for treating individuals as mere receptacles of satisfactions, assumes that trans-species experience comparisons can be made to adjudicate the lifeboat dilemma. Satisfactions are such that it makes little sense to
conceive of them apart from a particular subject experiencing these satisfactions. When
making judgments as to the comparative value of experiences across species lines, one is
always judging those experiences with the prejudices and biases of the perspective of a
human subject. Steve Sapontzis makes this same point in *Morals, Reason, and Animals.*
He thinks that any attempt to decide the value of a life must depend upon the subjective
valuation of the individual living that life. “Since we cannot feel what the animal feels,”
his concludes, “we cannot determine whether a human gets more or less enjoyment and
fulfillment from his enjoyable and fulfilling life than an animal gets from its enjoyable
and fulfilling life.”

Although I think Sapontzis’ point applies as well to Tom Regan’s justification of
the lifeboat decision, it may be argued that Regan avoids the criticism of qualitative
differences because his arguments stress only quantitative differences in number and
variety of experiences. As I discussed in an earlier chapter, the empirical claim here is
dubious at best. There are, in fact, a variety of experiences open to animals that are not
open to humans. Regan might want to fall back on making qualitative distinctions similar
to the arguments of Singer and Frey, but then he definitely is subject to the same sorts of
objections raised against them earlier. In rejecting Regan’s lifeboat justification, Evelyn
Pluhar reaches a conclusion similar to Sapontzis. Regan also does not take into account
the importance of the subjective valuation of the individual about the value of its own
life. “The comparative richness of A’s and B’s experiences and interests is simply not
relevant in this context.” She argues, “The degree of harm suffered is a function of how
much what has been snatched away matters to them.”
I am arguing that the harm of death is best represented by the fact that it means the loss of the very condition for possibility of any satisfaction at all. While not completely opposed to the account of death given by Sapontzis and Pluhar, my account does differ in certain respects. Although I agree with them about their worries and reservations over doing comparative analyses of how harmful death is for various individuals of different species, it is not necessarily the case that we can do the same sorts of analyses between individuals on the basis of how much they enjoy or care about their own life. For example, we can imagine a lifeboat situation where one of the human beings on board is severely depressed and suicidal. The dog, on the other hand, is sitting there wagging its tail and exhibiting simple joyfulness in mere existence. It does not appear to be the obvious choice that since the suicidal person does not want to live his life, he should be the one to be sacrificed. His judgment about the worthiness of his own life is clouded by the mental illness and chemical imbalance from which he currently suffers. Pluhar and Sapontzis might reply that when accounting for the harm of death, they mean to stress that the individual’s valuation of his own life in normal circumstances of mental health matter and not during extreme and abnormal situations such as serious illness. If this is truly how they would respond, I would accept the addendum to their accounts, but this still ignores the fact that suicidal depression can be the mental norm for some unlucky human beings. Even in their case I do not think they should be sacrificed to save the life of the happy dog. Despite the habitually suicidal human’s own evaluation of his life, his future is not completely closed off to the possibility of new satisfactions if he undergoes possible chemical and therapeutic treatments.
Given all of this, I argue that the most salient factor in accounting for the harm of death from a trans-specific perspective is that the loss of life means the loss of the condition for having satisfactions at all. Once an individual ceases to be alive, it ceases to be an individual able to experience subjective joys. It ceases to be an individual which can even evaluate the worthiness of its own life on the basis of felt experiences. This does not mean that all living things are harmed by death. Rather, it means that only living things capable of having subjective satisfactions are subject to the harm of death. This uncontroversially rules out all plants, single celled animals, fungi, etc. This also (but perhaps with some controversy) includes all mammals and birds. More controversial is whether or not fish, insects, crustaceans, reptiles, and/ or amphibians have robust capacities for subjective satisfaction necessary to make them subject to the harm of death. It is not the purpose of this paper to explore these empirical questions.

One might object to this egalitarian account of death’s harm by pointing out the fact that we do not normally view all deaths as harmful, unfortunate, or tragic. For people in the end stages of painful terminal illnesses or severely incapacitating degenerative neurological diseases, death is often viewed as a welcomed release from a life fully consumed by pain and suffering. I do not in any way deny that death can be rightfully viewed as a benefit in situations like these. In a very real sense, people in these unfortunate situations have already experienced the same sort of harm usually brought about by death. What I mean by this is that as a consequence of the illness they suffer, life has already ceased to be that open field of future satisfaction by which it comes to
have positive value. Biological life is a necessary but not sufficient condition for having satisfactory experiences. Thus, it is possible for a life to exist in which the possibilities for future satisfactions have been irretrievably lost. This is the case with those individuals suffering terminal illnesses for which the short time left in their lives will be filled with pain and suffering.

There is another strong objection to consider. Although in normal circumstances, we might not want to make comparisons between the values of different individuals’ lives, if stuck in a lifeboat situation involving only human beings we might reasonably use some criteria for choosing one individual’s life over another. The most prominent example of such criteria is age difference. If the choice that has to be made is between a person who has lived for eighty years and a young child who is only ten years old, this seems to be a reasonable basis on which to prefer the child’s life over the elderly person’s life. This seems to suggest that death can be more harmful for some individuals than others.

I do not think that there is too great a problem with making this distinction in extreme situations like lifeboat dilemmas. I have attempted to account for the most salient feature of the harm of death and not to rule out categorically other secondary factors. Since the comparison being made here is between two individuals of the same species, the comparison does not fall so easily to the criticisms made against qualitative experiences across species boundaries. We are not being asked to make precise and fine

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17 These remarks are not meant to apply to people suffering from short term or even more profound bouts of depression. Although the future may appear significantly less rich for them in terms of future satisfactions, things can get better with psychological and pharmacological help. This is not the case for those for whom the end of life is in sight and full of pain.
grained comparisons between lives in the example raised above. Furthermore, we can make sense of the judgment by pointing to common phrases that might be used to justify such comparison. The old man, one might say, has already had the chance to live his life and experience for an extended period of time the range of satisfactions open to him. He has had the opportunity to make life plans and goals, and furthermore, to accomplish these goals. This is not to say the elderly person has no further important life plans and goals. However, the young child has not yet had the chance to realize these possibilities to any meaningful extent.

In my view, we can not say, however, that an old human ought to be thrown off to save the life of a young dog who has not sufficiently been allowed to live his life. This is because the terms being compared are not equal. That is to say, the epistemic humility about the “satisfactoriness” of possible satisfactions open to other species strongly advises us against making comparative judgments across species either way. This comparison would face problems raised by criticisms against Singer and Frey. Even if we could do the comparison, concerns over the harm of death are only secondary considerations for lifeboat decisions. The primary consideration for lifeboat cases will not work this way and will show also why we can not throw off an old man for a young dog. This justification, which will be developed in the next chapter, relies on considerations of moral agency and moral patient-hood.

In conclusion, the harm of death is best accounted for as the ultimate harm by which one loses all possibility of future satisfactions. This account resists most attempts to judge the deaths of individuals of different species as being more or less harmful.
because of concerns over applying a single measure of well-being to beings with quite different experiential ranges of satisfactions. Although such an account seems to be, at first glance, somewhat counter-intuitive, I have tried to explain why it is not in tension with our typical beliefs about beneficial deaths and age considerations in making lifeboat moves. Since, in my view, lifeboat moves between individuals of different species cannot be made on the basis of differing levels of harm, we must take an alternative route to justify our intuitive choice to save the human being over the dog. As I will argue in the next chapter, this alternative route will rely on developing a sliding scale model of moral status.
Chapter 5

Moral Status and Moral Agency: The Case for Unequal Rights

All of the writers surveyed above attempt to justify the lifeboat move by claiming important differences in the effects of death on the well-being of humans and animals. Tom Regan argues that death quantitatively forecloses more opportunities to humans than animals. Peter Singer and R.G. Frey argue, albeit in different ways, that death is worse for humans because human life is qualitatively more valuable and richer than animal life. Ruth Cigman argues that death, in itself, is of no consequence to most animals’ well-being. On the contrary, I argue that defending the lifeboat move on the basis of the unequal harms of death fails because the most cogent account of the harm of death resists making distinctions between individuals of different species.

Although there might be other novel solutions to the lifeboat problem which follow along the same lines considered by the writers above, one must consider alternative routes. Upon hearing about the lifeboat situation for the first time, many people who are less sympathetic to the animal rights and liberation movements might simply justify saving the human over the dog by claiming that human beings, morally speaking, simply matter more than do animals. I take this sort of justification to be appealing more so to a difference in moral status than a difference in the harm death brings to the individuals involved. I propose that we see how an unequal moral status position could be justified in a way that remains amenable to a view which supports stronger moral and political protection to the interests of animals than is now accorded.
My specific proposal is this: The moral status of morally considerable beings ought to be tied loosely to the moral agent/patient distinction. Since moral agency is a question of degree, moral status should account for differences of degrees in the moral agency of different individuals across species boundary. This sliding scale model of moral status does imply preferential treatment based on levels of moral agency in certain situations. In this chapter, I will first give an account of moral agency and moral patienthood in such scalar terms, taking time also to indicate where certain types of beings fall on this scale. Second, I will develop an argument for the sliding scale model of moral status. This model I am proposing is similar to and is influenced by models of moral status developed by Eric Moore and Mary Anne Warren, but it also differs from them significantly.18

There have been many suggestions within the history of philosophy as to what explains and what constitutes moral agency. However, it will be more beneficial to see what is practically and commonly meant by moral agency before exploring more complex, and often more exclusive, philosophical accounts of it. Comparing philosophical accounts of moral agency with its common understanding will help us evaluate whether or not the most strict and exclusive accounts cohere with everyday usage. Although not definitive, showing that strict philosophical accounts of moral agency do not cohere well with common intuitions on this capacity will place the justificatory burden on those favoring a more exclusive understanding of moral agency.

One can roughly characterize moral agency either in terms of what it means for an individual to exercise this capacity or in terms of what capacities are necessary for having moral agency. A moral agent is an individual who has moral obligations to act in certain ways towards itself and other morally considerable individuals. Although this delineation is not helpful in defining what it means for something to be “moral,” it works well enough for a rough characterization of a moral agent for our purposes. Whatever particular understanding of morality we agree on, a moral agent is someone who can be expected to act in certain ways to others with respect to this understanding of morality. When one investigates common examples of who or what is taken to be a moral agent, one can identify two primary sorts of capacities central to being a moral agent: rational capacities and sentimental capacities.

Since I am investigating the common understanding of moral agency, a full account of what “rationality” is is not required here. The specific rational capacities relevant to moral agency are the capacity to act morally “for right reasons” and the capacity to act in ways which override or overcome instincts and habits.\(^{19}\) By the capacity to act for the right reason, I mean the capacity to recognize and commit to the moral value of an action. This is meant to be understood loosely. I may not have a theory as to what gives an action moral value, but I can still designate an action as the morally right action and act accordingly. For example, I witness someone drowning, and I save their life because I think it is the morally right thing to do. If the people who praised my actions as courageous later find out that I have no developed theory of the moral value of

\(^{19}\) This common sense analysis of moral agency owes much to the work of Steve Sapontzis in *Morals, Reason, and Animals* and David Degrazia in *Taking Animals Seriously*. 
human life, this does not nullify the moral character of my action. My action and motivation for action can be interpreted as an expression of my courageous character.

By the capacity to act in ways which override instincts and habits, I mean the common sense understanding of what gets taken up in philosophical and religious discussion as a free will. If I am a creature completely enslaved to my physical passions who is unable to conceive of alternate ways of actions and unable to learn how to control my impulses, then I could hardly be held accountable for what I do. Animals are often viewed as creatures of instinct and passion, unable to act against their own basic desires for food, shelter, or sex. This supposed characteristic of animals is often given as a reason for denying them moral agency. We do not blame the wolf for his predatory behavior because such behavior is instinctual and impervious to rational control.

There is much anecdotal and ethological evidence of animal behavior which appears to be similar to the human behavior that is commonly perceived as moral and virtuous. We hear stories of loyal dogs saving their owners from burning houses. We even commonly ascribe to these animals adjectives of virtue like “loyal” or “courageous.” These actions have moral value independent of the status of the actor. That is to say, regardless of the moral status of the dog, the action of the dog (i.e., the action of saving a life) is still rightfully considered a morally good act. This is not commonly denied. However, the pertinent question is whether or not these animals had the right intellectual capacities for which it makes sense to ascribe to them the praise and blame of

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20 I am bypassing certain complex debates over free will as a metaphysically real concept and focusing mainly on freedom and responsibility as common sense ascriptions. I am assuming that the use of these concepts has, at least, pragmatic value in regulating human behavior for the protection of moral rights. This does not necessitate accepting the metaphysical reality of free will. This difficult debate can not be pursued here.
moral actions. Were they acting for moral reasons as opposed to only self-interested reasons, or were they merely acting out of mechanistic instincts? We will come back to this later.

Rational capacities are not the only morally relevant capacities. At least equally important are affective or sentimental capacities. What I mean here are capacities to feel the emotions of sympathy, compassion, empathy, etc. (i.e., those emotions most relevant to why we are inclined to treat other individuals in commonly perceived moral ways). The Golden Rule, perhaps the most influential and wide-spread way of understanding moral behavior, places at its foundation the capacity to feel pain and suffering from the misfortunes of others and, likewise, to feel joy at the good fortunes of others. Though put in the rationally discernible form of a universal principle, the justification and power of such a principle is primarily dependent on the claim that moral people act out of empathic and compassionate sentiments. This does not require the abstract reasoning central to rational capacities. The ability to care for others and their needs, a capacity that has been taken up as primary in moral life by care ethicists, depends on these sentimental capacities. The paradigm of care, the mothering individual, does not need to rationally justify his or her caring for his or her children.

Although some have seen rational and affective responses to situations to be often in conflict with each other, this is not necessarily the case. One can be emotionally driven to relieve the suffering of one for whom they care while also understanding that this action of relieving pain conforms to her rational understanding of morality. In practical understanding, it is the morally ideal virtuous agent who understands what sorts
of behavior are morally right as well as has the sentimental motivation to act in these morally right ways. The person of virtue has harmonized her affective drives with her rational deliberations and vice versa. That is to say, she wants to do what is reasonable, and her rational deliberations are sensitive to her emotional attachments and the emotional states of others.

If one accepts that the various capacities which are involved in being a moral agent admit of degrees, then one should accept that moral agency, itself, is a concept which admits of degrees. Human beings are not born with the capacities involved in moral agency and, hence, are not born as moral agents. We do not expect infants to act out of moral obligations, nor do we hold them morally responsible for committing what otherwise might be considered immoral acts. Yet, to the degree that a child develops the rational capacities and habits of controlling his impulses and acting for the good of others, we correspondingly hold that child accountable for acting morally or immorally. Thus, we may praise the kindergartner for sharing his toys with his classmates, or we may punish him if he steals his friends’ toys. The punishment and degree of responsibility is proportional to the degree the child has developed affectively and rationally. Likewise, the child is a developing moral agent. Given this, moral agency is not an all or nothing capacity. It is something one develops over time and, thus, can admit of different degrees. It makes sense to talk of different beings as having different levels of moral agency.

Although non-human animals do not achieve the intellectual level reached by most adult human beings in terms of rational capacities central to moral agency, many do
have these capacities to a degree sufficient for attributing to them a limited degree of moral agency. Degrazia writes, “Mammals provide many examples. Mothers care tenderly for their babies. Orphans are adopted by other members of a group. Sometimes animals care for old or feeble companions (even though the adaptive value of doing so is not obvious).”xxxviii There are plenty examples of the affective moral capacities. Furthermore, this behavior cannot easily be explained as rigid and mechanistic responses to behaviorist reinforcement. If some mammal mothers adopt the orphans of deceased group members and provide care for elderly and feeble group members, as Degrazia claims, then the description “instinctual” does not easily apply to such instances of animal caring. Our picture of animals as wholly instinctual beasts without rich emotional or social lives needs to be revised. It is this picture of animal life that often plays a large role in the justification of their wide-scale exploitation.

Although some may still dogmatically insist to call it instinctual, animal parents’ care for their young can be “for the right reason.” If one considers the care a human mother gives to her children to not be given “for the right reason,” then perhaps the same applies for the maternal care of non-human animals. However, given the analysis of what “for the right reason” means, maternal love is sufficient for being a moral motivator. There is no need for abstract or rational principles to be invoked here. All that is needed is the emotional attachment between the mother and the child. In fact, referring to it as a “right reason” can be slightly misleading since parental love often presents itself as no intellectual reason at all, but rather a direct emotional need.
Ethological studies exhibit that dolphins and language-trained apes have even higher degrees of the moral rational capacities. Steve Sapontzis tells an interesting anecdote about noteworthy behavior of dolphins. It has been reported that dolphins have the tendency to rescue drowning surfers and swimmers. The dolphins would save these drowning surfers by pushing them all the way back to shore. Sapontzis writes, “There is no reason to believe that porpoises have developed an instinct for saving humans, and these wild creatures certainly have not been conditioned to perform such acts through training or repetition.”xxxix This behavior suggests, rather, the rational capacity to recognize when other individuals are in danger and the affective capacity to be motivated to help these individuals in danger, regardless of species membership. The works of Jane Goodall and Franz de Waal are replete with examples of chimpanzees who exhibit a level of social awareness, self-control, and empathy that are sufficient enough to ascribe to these animals some degree of moral agency.21

These same conclusions as to what types of beings can be ascribed a level of moral agency do not hold up if we accept stricter accounts of moral agency given by moral philosophers. Immanuel Kant’s account of moral agency, for example, clearly rules out everyone but cognitively sufficient human beings. For Kant, moral agency requires the capacity to represent to oneself the categorical imperative and judge one’s maxims on their conformity to the categorical imperative.22 Although this ability can admit of degrees and goes through a process of development, it clearly involves a level of abstract

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language ability inaccessible to non-human animals. In general, moral philosophers have required abilities of abstraction to perceive universal rules and justify actions on their basis as central to moral agency. This is too strict an account of moral agency. As Sapontzis writes, “Philosophers who hold that, nonetheless, there is still something morally lacking in their acts again confuse morality with moral theory and (being capable of) being moral with (being capable of) doing moral philosophy.”xl23 Requiring such an abstract capacity to be necessary for moral agency would rule out actions done out of moral habit, done un-reflectively, or done out of sentimental reasons from the scope of moral agency. The ability to give a justification following from abstract principles for saving a person from drowning might be relevant and important in philosophical discourse. However, the person who cannot explain his decision for saving someone from drowning apart from perceiving the mere fact of someone drowning as a good enough reason to act is just as much a moral agent worthy of praise. To say otherwise requires us to stretch the meaning of moral agency and moral praise too far from common parlance.

A moral patient is any being which has moral status, any being whose interests and well-being moral agents must consider in their actions and considerations. The term is used mostly to indicate beings which have moral status but are not moral agents. Moral agents are also moral patients. That is to say, moral agents have moral obligations to at least other moral agents. This is reasonable to assume because of the importance of reciprocity in the maintenance of human social organization. Moral agents have moral obligations to other individuals. Thus, if we expect them to act morally towards us then it

23 Those to whom Sapontzis refers in this quote are people who are motivated to act morally on religious, sentimental, or intuitive bases and not necessarily justified rational principles.
would be arbitrary for us to not expect of ourselves moral obligation given that we have similar sentimental and cognitive capacities. Note that if you accept this assumption as well as the account given of moral agency above, you are beholden to the conclusion that at least some non-human animals have some moral status because some nonhuman animals can be rightly attributed some degree of moral agency. Now, it is not my intention to establish here definitively whether or not there exist strictly moral patients. This is taken somewhat as a given. It is commonly, but not universally, accepted that we have obligations to infants despite their complete lack of moral agency. They represent a paradigm case of strict moral patient-hood.

There are good reasons to be morally concerned about the treatment of beings who are not in any meaningful degree moral agents. The strongest motivation for why people should be saved from unnecessary suffering is not because they have a certain developed complex of rational capacities sufficient for moral agency. Rather, one recognizes gratuitous suffering to be bad in itself, and we endeavor to prevent it. Here, the affect of empathy on our ethical choices is paramount. One’s negative evaluation of gratuitous suffering comes from one’s negative experiences of suffering. There is no good reason to assume that other sentient individuals, given behavioral evidence, feel differently about suffering. Thus, it is reasonable to consider sentient animals that lack moral agency as strictly moral patients. They have neurophysiological mechanisms similar to those active when I feel pain, and they behave in similar ways when they are feeling suffering. To quote Jeremy Bentham:

What else is it that should trace the insuperable line? Is it the faculty of reason or perhaps the faculty of discourse? But a full-grown horse or dog is beyond
comparison a more rational, as well as more conversable animal, than an infant of a day or a week or even a month old. But suppose they were otherwise, what would it avail? The question is not, Can they reason?, nor Can they talk? but, Can they suffer?\textsuperscript{xli}

Note here that I am not yet making any argument as to whether moral status admits of degrees.

In terms of this gradualist account of moral agency, adult humans of significantly developed rational and affective capacities are clearly both moral agents and moral patients. Young human children exhibit degrees of moral agency as well as the potential to develop the full moral agency of adult humans. Higher order mammals such as chimpanzees, apes, dolphins, whales, and elephants also exhibit meaningful but limited degrees of moral agency, yet no potential to develop the full moral agency of adult humans. The question of the moral agency of many other mammals and birds is still to be decided as there has been promising ethological evidence of many of these species having very limited degrees of moral agency.\textsuperscript{24} Young infants, severely cognitively deficient human beings, and much of the rest of the animal kingdom are capable of suffering to a degree where it seems quite clear that they deserve much moral consideration. As one considers other types of beings, it becomes harder and harder to decide whether or not they have a strong enough degree of sentiency (or other morally relevant characteristic) for them to warrant moral consideration and, hence, moral patient-hood. Although questions of where to draw the line for sentiency and/or moral

\footnote{24 For an interesting and popular account of the emotional and cognitive capacities of dogs relevant to moral agency, see Masson (1997). For philosophical reflection on the ethological evidence of moral agency in animal life, see Degrazia (1996) and Sapontzis (1987).}
patient-hood are important and difficult ones to answer, they trouble every non-speciesist theory of moral status and not just this one in particular.

Given the reasonable assumption that there are certain beings to whom we as moral agents have moral obligation but yet they have no obligations toward us, the question remains as to whether these moral patients should have a moral status equal to moral agents. I argue that, if we want to maintain our intuition about who should go first from the lifeboat, we must also maintain that moral agents deserve a moral status higher than that of moral patients. It is a testament to the progression of morality in human societies that we have come to embrace, in some fashion or another, the moral considerability of those who do not share our capacity for moral agency. This should not cloud the fact that moral behavior and moral communities would not exist at all if it was not for the existence of moral agents. To reflect this fact, we should accord moral agents some privilege in terms of moral status. Specifically, we ought to accord them a stronger right to life than we do to strictly moral patients. This does not mean that moral patients have absolutely no right to life. It merely means that there must be a distinction in the strength of one’s moral claim to life between moral agents and moral patients.

An analogy might help elucidate why it makes sense to make such a distinction. Let us consider the medical community. The medical community includes both medical patients and medical agents (e.g., doctors). If we were primarily interested in preserving the medical community, then we should prefer that medical agents’ lives be protected in cases where there is a conflict in protecting medical agents’ lives versus medical patients’ lives. This is because there could be no medical community without medical agents to
administer medical treatments. On the other hand, the medical community would still exist if there were no strictly medical patients around. This is because medical agents are also medical patients, in need of receiving medical treatments and advice from other medical agents. This example is analogous to the situation of moral agents and moral patients.

That which is important in the medical community analogy and in the case of the moral community is the goal of protecting and preserving that which is the condition for the possibility of the existence of the community at all. For the moral community, this condition is the existence of moral agency. Therefore, this argument concerning the moral status of moral agents versus moral patients only works in cases where the moral agency of an individual is threatened. If the conflict between a moral agent and a moral patient concerns interests and issues that are not central to the preservation and protection of the moral agency of the moral agent, then appeals to the higher moral status of the moral agent are unjustified. Thus in most cases of conflict, equal consideration of interests as spelled out by Peter Singer and the impartiality of formal justice still hold. The morally relevant difference between me and a chicken is my moral agency, but this information is irrelevant if my moral agency is not a part of the conflict of interests giving rise to the moral dilemma. At least on the basis of moral agency, I can not justify causing suffering to a sentient creature if that suffering is in no way necessary for the preservation and protection of my moral agency.

Earlier in this chapter, I attempted to explicate moral agency as a capacity which admits of degrees and possible development. In so doing, I have suggested along with
Steve Sapontzis and David Degrazia that some non-human animals likely do have some
degrees of moral agency. Admitting this does not cause any particular problems for my
suggestion concerning the moral status of moral agents and moral patients. In the relevant
cases of conflict where moral agency is being threatened, the being with the decidedly
higher level of moral agency ought to be given preference in moral status. Our concept of
moral status should be more complex than just the two tiers of agents and patients; rather,
it should reflect all of the differing degrees of moral agency. This coheres more closely
with lifeboat dilemma intuitions as well. If the choice is to be made between an adult
chimpanzee and a gerbil, I imagine there would be almost as large of a consensus to save
the chimp over the gerbil as there is when the choice is between a human being and a
dog. This intuition is hitting on the differences in moral agency between the two
individuals.

To formalize the conclusions of these arguments, I propose a new regulatory
moral principle which takes into account the differences in moral status between moral
agents and moral patients. I call it the Protection of Moral Agency Principle:25

Special considerations aside, when we must choose between protecting the rights
of individual A versus the rights of individual B where A has a more complex
degree of moral agency than B, and when protecting the rights of B over those of
A will seriously endanger the preservation and protection of A’s moral agency,
then we ought to prefer protecting the rights of A even if that means overriding
the basic rights of B.26

Having formulated a new moral principle, we can see if this applies to the lifeboat
dilemma introduced in the first chapter of this thesis. Recall that no matter what the

25 I will refer to this principal from now on as the PMA principle.
26 The formulation of this particular principle is based off of principles formulated by Tom Regan in The
lifeboaters do or do not do, one of them is going to die. So, the human individuals on the lifeboat choose to sacrifice the large dog so that the four humans will make it long enough for rescue. Given that this decision is virtually universally the decision supported by our moral intuitions, is it justifiable given our other beliefs about the moral status of the dog, the harm of death, and the moral status of the human beings?

Here’s my argument for justifying the lifeboat move to sacrifice the dog:

2. This lifeboat situation accurately reflects the conditions set forth in the PMA Principle.
   a. The human being has a more complex degree of moral agency than does the large dog.
   b. Allowing the human being to die amounts to destroying an individual with moral agency.
3. Therefore, the large dog should be sacrificed instead of the human being.

To summarize, the situation on the lifeboat is a clear instantiation of the PMA principle. Recall the introduction to this essay where I presented another variation on the lifeboat situation. Imagine that the large dog does not need to be sacrificed in order to save the four human beings. However, if the human beings sacrifice the dog, then there will be more room, food, and supplies for them to make their stay on the lifeboat a little bit more comfortable than it would have been before. The PMA principle does not justify the sacrifice of the large dog in this lifeboat variant because the continued existence of the moral agency of any one of the human beings is not threatened. The PMA principle cannot be used to justify just any overriding of animal rights and interests.
Chapter 6

Objections and Replies

In this chapter, I intend to explore and reply to some possible objections to the sliding scale model of moral status based on degrees of moral agency. This will also help to bring to the forefront and provide more explanation of the various facets of the PMA principle proposed in the preceding chapter. Although all of these objections have been formulated by me, some have been influenced considerably from previous work done by other writers such as Evelyn Pluhar and Eric Moore. I will explore possible objections which challenge the significance of conclusions reached from lifeboat considerations in general and dispute the use of the moral agency criterion for delineating degrees of moral status. I will also reply to objections which claim the consequences of an unequal moral status position to be too pernicious to accept. These objections will be shown to be largely unfounded.

The first objection questions the value of reaching conclusions from such a fanciful hypothetical situation as the lifeboat dilemma. Any conclusion reached from such an extreme position will be itself only applicable to situations with such extreme characteristics. Lifeboat situations rarely, if ever, occur in real life. Therefore, the principle reached from consideration of the lifeboat dilemma has little if any significance for practical problems involving the moral status of agents and patients. In analyzing the
ethical moves and justifications in the lifeboat dilemma, one is merely doing academic
exercises of little interest to people facing real ethical situations everyday.

This objection does not take into account the two principal reasons for theorizing
about the lifeboat dilemma. One reason for doing this is that such an implausible situation
has the advantage of illuminating specific intuitions we have about morally relevant
differences between individuals. This is because the hypothetical situation eliminates or
reduces the influence of secondary considerations, which always affect a moral agent’s
decision in “messy” real life ethical dilemmas. Although people rarely, if ever, find
themselves in such neat ethical dilemmas as the lifeboat dilemma, real life ethical
dilemmas are, in fact, often concerned with the issues that dominate these hypothetical
situations. Being able to differentiate between the primary question of value at stake in a
certain ethical dilemma and the various secondary considerations which might cloud
one’s perception of the primary issue is one of the intended goals of theorizing about
ideal hypothetical dilemmas.

There are a number of real ethical dilemmas that do bring up the issue of the
(un)equal moral status of animals, which moral agents have faced, currently face, and
will continue to face. Evelyn Pluhar mentions the issue of innocent shields and innocent
threats.27 Emphasizing that animals can just as well be either of these two types, she
writes, “One is just as morally justified in killing an insane human brandishing a knife
who mistakes one’s head for a cantaloupe as one is in killing a rabid dog lunging at one’s

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27 An innocent shield is an individual with a prima facie right to life who is used by someone threatening
other people’s lives as a shield to protect him from retaliation. An innocent threat is an individual with a
prima facie right to life who is unknowingly or unwillingly threatening the lives of other morally
considerable individuals.
throat. One can also imagine a situation where a human becomes an innocent threat for a non-human animal. Someone might unknowingly ingest a chemical which makes him temporarily deranged. In his derangement, he goes out in his car to run over stray cats. The PMA principle implies that we are not justified in killing this innocent human threat to save the innocent cats, even if that was our only way to stop the deranged person from killing.

Pluhar also mentions scarcity of resource conflicts. These are the types of conflicts which lifeboat dilemmas most closely mirror. On the lifeboat, there is a scarcity in the resources of space or food, depending on how you set the scenario. If one is so unlucky to be caught in a village in a war torn region where supplies and humanitarian aid are cut off, the villagers have to consider how to distribute the existing supplies. This might invariably mean some individuals will not get the necessary supplies to survive. In these situations, The PMA principle implies that the moral agents in the village ought to get the necessary supplies to survive. There have been other real life situations which bring up issues raised in the lifeboat dilemma.

The second reason for theorizing about lifeboat situations concerns testing our belief systems for coherency. The beliefs we hold are not held in isolation from each other. One claim we believe to be true might imply the truth or falsity of other statements. These, in turn, might turn out to be inconsistent with other strongly held beliefs of ours. I have principally framed my motivation for examining the lifeboat dilemma in terms of a

28 In November 2008, the U.S. Supreme Court ruled in favor of lifting restrictions on U.S. Navy submarine sonar exercises that cause considerable suffering and disruption to local whales. This seems to be a relevant case of competing interests and rights between humans and animals in which the PMA principle might apply.
concern for coherency. The lifeboat dilemma isolates and brings to the surface a certain moral intuition to which most individuals would agree, the intuition being that the dog should nearly always be sacrificed before a human being in situations where both can not be saved. At first glance, this seems to be in conflict with the views of proponents for radically better treatment of animals and the views of those who criticize the myth of human superiority. If animals should have legal rights as strong as human beings and if there is no basis to the claim that human beings are morally superior to other animals, then why is it that human beings ought to be given preference on the lifeboat?

Specifically, the equal moral status thesis defended by Tom Regan seems even more problematic in the face of the lifeboat dilemma intuition. As I have argued, the two are in fact inconsistent with each other, requiring some modifications to the model of moral status.

The second objection is similar to the charge of speciesism leveled against moral theories which discount non-human animals on the basis of their not being humans. One might say to me, “You are advocating for preference in treatment of a specific subset of morally considerable individuals over and above the other members of the total class of morally considerable individuals, and this preference is based on the property of moral agency, a property which some individuals have and some do not merely due to some genetic lottery. Why should some individuals get beneficial treatment due to such a random and arbitrary factor, without having specifically done anything to deserve the beneficial treatment?”
In reply, the capacity of moral agency is not arbitrary and irrelevant to the moral distinction being made. The use of skin color, sexual orientation, gender identity, and species membership as criteria for exclusion from moral consideration is arbitrary because there is no essential connection between these attributes and one’s moral capacities. As I argued in the preceding chapter, the capacity of moral agency is, however, central to, and a necessary condition for, the existence of a moral community at all. Because of this very real connection, there is good reason to formulate a moral principle to reflect and protect the status of moral agency. There exists no such connection when racists, sexists, and speciesists use different criteria to support preferential treatment for certain groups. While moral agency is a relevant capacity for our moral theory because of the considerations raised in the preceding chapter, the color of a person’s skin is in no way related to the person’s capacity to act morally, feel pain, etc.

Eric Moore has suggested a principle similar to mine which sets up a difference in moral status between moral patients and some moral agents. The difference between his principle and mine is that it is only the morally deserving moral agents who are given preferential moral status in his theory, whereas I propose a higher moral status based only on the degree of the moral agency capacity of a particular individual, regardless of whether or not that individual can be said to have a morally deserving track record. According to Eric Moore, “The essential feature of a moral agent is his or her ability to engage in moral reflection that leads to moral action. But it seems inconsistent with the recognition of this ability to fail to recognize that when a moral agents acts from this
ability, that this affects her moral status." Moore might agree with the last objection raised, arguing further that it is moral desert which accounts for the preferential treatment of the human on the lifeboat. Moral desert is not arbitrary in the sense that some people are more morally worthy than others out of sheer chance. Rather, moral desert is tied to the autonomous self-directed efforts of individuals to exercise and apply their moral agency correctly (e.g., by making moral decisions and cultivating moral virtues).

Although I do not categorically deny that the (im)moral actions of moral agents ought to influence our obligations to them, I do not agree that moral desert ought to have an effect on the more fundamental level of moral status itself. We are obliged to hold moral agents responsible for their actions. If a moral agent breaks a law, society is obliged to mete out the consequences prescribed in the penal code. As a moral agent, he deserves to be held responsible because to not do so would be to not treat him with the respect an autonomous agent deserves. To not punish him would be to treat him as less than the moral agent he is. The convicted criminal’s track record does not give us the right to violate his most basic rights unless the restriction of some rights is necessitated by the respect of more fundamental rights. I take the right to be respected as a moral agent to be the most fundamental right of a moral agent. If not violating a moral agent’s right to respect means appropriately meting out the consequences of a penal code to which he is accountable, then so be it, even if this means overriding a right to liberty. The level of virtue of a particular individual does not make that individual any less deserving of being treated as a moral agent.
The third objection to consider is really a whole class of objections. One might object to the principle that I have proposed because certain consequences of an unequal moral status position are too pernicious to accept. I am going to address two specific subsets of this type of objection: those concerning possible consequences of systematic exploitation and those concerning possible consequences for so-called “marginal” cases. As for the first, one might object to any unequal moral status position by arguing that allowing for differences in moral status will open up the door to systematic exploitation of those with lesser moral status by those with greater moral status. If the interests and well-being of certain morally considerable beings matter less than the interests and well-being of others, those beings with lower moral status will continually and habitually be put at a disadvantage for resources and be subject to the whims of those with higher moral status. This is what occurs today concerning the plight of most animals in the world. Although there exists certain laws to protect some animals in some cases, even these slight protections are waived when it suits our “morally superior” interests as human beings.

Although this may be the case with some unequal moral status positions, the PMA principle that I have proposed does not imply anything like this and cannot be used to justify systematic exploitation of those with lesser moral status. The PMA principle only applies when there is a conflict of rights and when the protection and preservation of the moral agency of an individual is at stake. Therefore, it cannot be used to justify the enslavement and mistreatment of animals for the mere enjoyment of human beings as so often occurs in roadside menageries, circuses, and at least some badly managed zoos.
Although individuals may have a prima facie right to pursue and obtain enjoyment, this right cannot be used to override the rights of the animals to freedom of movement and freedom from unnecessary harm. This is because the moral agency of the individuals is not at stake in this conflict of interests scenario. If the moral agency of individuals was at stake with regard to certain institutions relying on systematic exploitation, then it is possible that the PMA principle might apply. However, I intend to show later the severe limitations on the application of the PMA principle with respect to two contemporary institutions which systematically exploit non-human animals: the production and consumption of animal products and the use of animals in scientific research.

The second class of pernicious consequences objections concerns so-called “marginal” case individuals. It is with these individuals that our intuitions about the proper decisions on the lifeboat begin to diverge. In the original formulation of the lifeboat dilemma, the two beings in conflict are an adult canine with canine-typical mental capacities and an adult human with human-typical mental capacities. There is a clear distinction between these two in level of moral agency. However, what do we do when the human being is not a “normal” adult but an infant, a severely cognitively deficient human being, or an elderly patient with advanced stage Alzheimer’s disease? None of these human beings clearly have a higher degree of moral agency than the dog. Does this mean that we are not obviously justified in sacrificing the dog to save their life? If one says no, then one is faced with justifying why this is the case given the PMA

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29 This is not to suggest that the human beings typically classified under the “marginal” cases description are any less human or any less deserving of our love, affection, and care. I am hesitant to use this terminology because of the possible negative connotations of the word “marginal,” but I use it because it is the standard term used in the literature to refer to human beings who do not fit the classic definition of the human being as a rational or linguistically equipped animal.
principle. If one says yes, then one is faced with explaining why some people should throw out their intuitions given these special cases. Furthermore, it seems perverse and insulting on many people’s account to equate the moral status of these human beings, who are people’s brothers, sisters, children, and friends, with that of dogs, cats, cows, and rats.

I will divide the class of “marginal” case human beings into three specific subclasses: those who once were but are no longer moral agents, those who are not yet but will likely become moral agents, and those who have never been and will never be moral agents. Before I address the objection with respect to each specific sub-class, I want to respond initially to the charge that this view along with most other animal rights views seeks to lower the moral status of “marginal” case human beings. If it turns out that there is no fundamental justification for attributing a higher moral status to all humans over all non-human animals, this does not mean that the systematic exploitation that we subject animals to now will become acceptable practice on infants, the elderly, and the mentally disabled. Rather, it suggests that the response of horror and disgust we have to the suggestion that “marginal” case humans can be exploited should be felt with equal vigor towards the exploitation of non-human animals. It is not a question of lowering some individuals’ moral status; it is more so a question of raising non-humans’ moral status. Furthermore, none of this theorizing about moral status makes the real human connections and affections one feels for the human beings in question any less valid, nor does it make the care they need any less important.
I will start with considering the class of beings who once were but are no longer moral agents. This includes people who have suffered severely debilitating neurological diseases or accidents, to the point where the cognitive functions central to moral decision making are seriously impaired. Many human beings suffer this type of loss of cognitive function as they approach the ends of their life-span. Alzheimer’s disease is one such illness which often causes such a loss in cognitive function. As per the model of moral agency given in the last chapter, it is not the case that these human beings all of a sudden lose the capacity of moral agency. As their cognitive capacities deteriorate, so too does the level for which we hold them responsible for their actions. Their degree of moral agency slowly deteriorates. Many human beings who we no longer ascribe full moral agency nonetheless still retain a certain level of the cognitive capacities which go into being a moral agent and, therefore, are still subject to the privilege of higher moral status accorded to their limited level of moral agency which may never even be achieved by the other individual in the lifeboat situation.

However, one can imagine deterioration of a human being’s level of moral agency to the point where it is unclear whether or not she retains a level of moral agency superior to a non-human animal, such as the canine. Although it is clear to me that the PMA principle would no longer apply, this does not rule out the use of secondary considerations in determining the correct lifeboat move. In general, it seems to be the case that secondary considerations would still favor the human being over the canine.30

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30 My claim that the moral agent/patient is the most important consideration for lifeboat decisions does not rule out there being other secondary considerations which may become important should the agent/patient distinction provide no clear application of the PMA principle. Some possible secondary considerations are evoked in this chapter.
Imagine that you are an adequate swimmer, and you see two individuals drowning in the ocean. You are morally obligated to help as much as you can, but realistically you only have time and energy to save one individual. One of those individuals is your spouse. The emotional and social ties you have with your spouse plus the acquired duties you have to your spouse by virtue of being in a dependent relationship are secondary considerations strong enough to justify saving your spouse and not the other individual, if not obligate you to do so. Likewise, it seems to be generally, but not necessarily always, the case that stronger social and emotional ties will exist between a moral agent and a former moral agent than will exist between a moral agent and a non-human moral patient. Just as the drowning victims example does not mean that your spouse has a stronger claim to basic moral rights than does the stranger, so too can we not say that the severely debilitated human being has a stronger moral status than the dog. This does not seriously clash with our moral intuitions because secondary considerations would still generally fall in favor of the human being. In the rarest of rare cases where it is quite clear that a human being has been so debilitated to have a level of moral agency lower than that of some non-human animals (language trained apes, for example), it is the case that the PMA principle implies preference for the non-human animal over the human being.

The second class to be considered is the class of human beings who are not yet but will likely become full moral agents. This includes infants and not yet full moral agent children. As with the preceding sub-class, it is necessary to note that although some children may not yet be full moral agents, they still may have a level of moral

\footnote{For sake of not embroiling myself in another highly debated and charged topic, I will not comment on where human fetuses fall in this schema.}
agency subject to the protection of the PMA principle. To go further, I think that we are still entitled to give preference in the lifeboat situation to infants who will likely develop into full moral agents over those moral patients for whom full moral agency is impossible. The spirit of the PMA principle is that moral agency, in whomever it occurs or develops, ought to be given complete protection. The deprivation of some reasonably expected good constitutes a harm for a certain individual. By allowing the infant to die, she is deprived of the full development of the cognitive capacities which make up full moral agency and is thereby harmed. Thus, in a lifeboat situation where the infant and the canine are the two individuals in conflict, the future full moral agency of the infant is being threatened and is, therefore, worthy of the preferential protection which the PMA principle implies.

Evelyn Pluhar argues against attempts to ascribe future moral agents full moral protection on the basis of their potential moral agency. She writes:

Future rights holders constrain our present action just in case they will exist regardless of what we now decide. For example, if we poison land and water that will be needed by those who will exist in the future, they will have been wronged as soon as they exist, but if we blow up our planet instead, we only wrong those who now exist. This may apply for moral constraints imposed by future generations, but it does not apply in the case of infants. The actions on the lifeboat affect a presently existing individual, the infant, and not an individual who will exist in the future but does not yet exist. It is true that the infant is not yet the moral agent she will likely become, but she is an individual who can be harmed now by being deprived of some future good. The moral agent that the infant would become if she were not killed on the lifeboat is not being
harmed. The infant is being harmed now by being deprived of becoming the full moral agent she would become. Therefore, there are good grounds to prefer saving the human infant and developing moral agent over those moral patients incapable of developing full moral agency.\(^{32}\)

The final sub-class to consider is the class of human beings who are not, will not, and have never been full moral agents. This includes human beings with varying degrees of cognitive disabilities in the areas central to the exercise of moral agency. Once again, having a cognitive disability does not disqualify someone from having any level of moral agency. The degree of moral responsibility we expect of an individual depends upon the degree of autonomy and reasoning that the individual has. Thus, the vast majority of individuals with cognitive disabilities are still moral agents to a degree greater than the degree to which the most cognitively advanced non-human animal can obtain. In regards to them, the PMA principle does not present a problem for our moral intuitions on the lifeboat.

In regards to those cognitively disabled individuals whose degree of moral agency is not clearly any more complex than some non-human animals, the PMA principle does not afford them preference and protection. However, just as is the case with those individuals who have lost their moral agency, I think that secondary considerations would generally, \textit{but not necessarily always}, favor the protection of the human beings over the

\(^{32}\) One might wonder if my view discards the traditional concern on sinking ships for saving women and children first before men. I think this intuitive view rests on the claim that we should protect the most vulnerable members of our society first. At first glance, it is sexist to assume women to be naturally more vulnerable and weaker than men. However, children generally are more vulnerable than are adults. Insofar as the “children first” view implies that moral agents \textit{must} be sacrificed before moral patient infants on the lifeboat, I do reject it. However, the PMA principle \textit{does not} rule out the moral permissibility of self-sacrifice for the sake of another, especially if that other is a developing moral agent.
non-human animals. To elaborate on what was said above, psychological concerns generally favor the preference of the cognitively disabled human being. This seems to be somewhat similar to why Mary Anne Warren includes the mentally disabled among the class of individuals with full moral status:

But with even a minimal level of sentience, a human being can often love and be loved. Empathy for disabled members of the human community, and for those who care for and about them, requires that they be accorded full moral status. Individual self-interest points in the same direction: because all of us are vulnerable to injury, illness, and other human frailties, we have self-interested reasons for supporting social practices that protect human beings who suffer from mental or physical disabilities.\textsuperscript{xlv}

Although I am not suggesting that animals can not love and be loved by humans in an emotionally meaningful sense, the affective capacities foundational to moral agency and action are more closely tied, in a general sense, to other human beings. Cognitively disabled humans can be, culturally and biologically, members of our families, whereas non-humans cannot be biological family members. If we ourselves are not emotionally attached to a cognitively disabled human being, there are invariably other moral agents who are so attached and whose emotional ties deserve moral consideration. I have not suggested, as M.A. Warren has, that these considerations are grounds for ascribing full moral status to cognitively disabled human beings, but these secondary considerations will generally fall in favor of the human being over the animal.

I have decided to bite the bullet and say that the PMA principle does imply that some human beings do not have the same moral status as those human beings who are full moral agents. On this, it is extremely important that I emphasize several points. I am in no way suggesting that these human moral patients do not deserve to be treated with
the same basic respect for moral rights as do other human beings in nearly every possible circumstance. This can not be used as grounds to justify systematic exploitation or denial of basic services to these individuals. They still have the same basic rights as we ascribe to full moral agents. The inequality in moral status only makes a substantive difference in lifeboat type situations. Furthermore, I am in no way implying that the relationships and emotional ties people have with human moral patients are any less valuable or meaningful than are relationships between full moral agents. Still today, the basic rights of disabled human beings for reasonable access to adequate health care, education, and employment are under threat. I mean in no way to deny the moral and social import of fighting for the recognition of the rights of disabled individuals.
Chapter 7

Implications and Concluding Remarks

Now that the central thrust of my thesis (the PMA principle) has been proposed, expanded upon, and defended, I wish to explore some of its implications with respect to theories of moral status and contemporary practices involving the use of animals. First, I will investigate the implications of the PMA principle for single and multi-criterial accounts of moral status. Second, I will consider what the PMA principle might mean for justifications or criticisms of the use of animals for food and/or for scientific research. There are, of course, many other institutions and social practices involving animals that are worth investigation and critique. By looking at the two most prominent ways in which animals are used in human societies, I hope that it will become clear how the PMA principle would be applied to other practices as well.

The PMA principle chiefly implies the importance of moral agency, as a capacity which admits of degrees, for the attribution of moral status. As I have stated elsewhere, my arguments assume on the basis of reciprocity that moral agents, by virtue of their moral agency, are worthy of moral considerability. Furthermore, by making the PMA principle the deciding principle in lifeboat situations, I have implied that moral agency is the most important criterion for attributing and determining moral status. This does not imply, nor does it rule out, the possibility of there being other criteria sufficient for establishing some individual’s moral status. As I suggested previously, having sentiency,
the capacity to be subject to the feelings of suffering and joy, seems most relevant when considering the wrongness of causing another individual pain for no good reason. Thus, sentiency would be another criterion sufficient for establishing some degree of moral considerability. I am suggesting this on grounds independent of the PMA principle.33

Although I am sympathetic to approaches to moral status which take into account more than one criterion for inclusion, the PMA principle by itself does not provide an argument for it.34 The arguments provided in this thesis do, however, provide a critique for single criterion models of moral status which turn moral status into a categorical concept, as opposed to an ascription which can and does admit of different degrees. Once examined, our intuitions of the lifeboat scenario strongly suggest that we recognize a difference in moral status between different types of beings. If, as I have suggested, one cannot explain our lifeboat intuitions by appealing to differences in the harm of death for the subject rather than to differences in the fundamental moral status of individuals, then one needs to explain how this difference in moral status is determined. I have suggested that an account of moral status tied partly to the capacity of moral agency best determines the difference in degrees of moral status between different individuals. Any account of moral status that ascribes for individuals only two possibilities, either full and equal moral status or no moral status whatsoever, is insufficient for accounting for these lifeboat intuitions.

33 The sentiency capacity is similar to the moral agency capacity in that it admits of degrees. Perhaps a second principle might be formulated to adjudicate lifeboat conflicts between merely sentient individuals where the degree of sentiency is a deciding factor in who gets preference.

34 Although I disagree with some of the specific calibrations, Mary Anne Warren’s Moral Status provides a convincing model of moral status which takes into account the criteria of life, sentiency, personhood, ecosystemic relations, and caring relations for determining moral status.
One might ask if this difference in moral status, generally speaking, between human beings and non-human animals is enough to justify the production and consumption of animal flesh for food. In order to determine this, one must reflect on whether current meat eating situations meet the requirements set forth in the PMA principle for basing a moral decision on differences in moral agency. I have argued above that the PMA principle cannot be used to justify most systematic exploitation of animals because systematic exploitation rarely occurs within the framework of a fundamental rights conflict involving the moral agency of any individual involved. Thus, the PMA principle could only be used to justify the use of animals for food if said use of animals for food represents a real situation where there are no viable alternatives for food sources other than the animal and where not using the animal for food would severely diminish or destroy an individual’s moral agency.

In the introduction to this work, I imagined an iteration on the lifeboat scenario where there was enough room on the lifeboat for all the individuals to survive until rescue but with much pain and discomfort from not having enough food for full satiation. However, if the human individuals killed and ate the dog for food, then they would be able to survive until rescue and also avoid the inevitable discomfort of foregoing satiation. I think our intuitions tell us that killing the dog in this situation would not be justified. I also think that the relevant specifics of this situation are roughly analogous to the current situation of most Westerners in relation to meat eating. Plant based foods are abundant enough and diverse enough to provide the majority of humans and animals living in Western nations with a healthy diet. Although many people might feel much
discomfort at not eating the food they have grown to love and cherish, the lifeboat intuition suggests that the harm we face from foregoing meat is less important than the harm animals face from death.

The PMA principle is not in tension with this intuition and cannot be used to back up the use of animals for food in the majority of situations for individuals in industrialized nations. Empirical evidence suggests that there is plenty of plant based food resources available to feed the population of the world. These resources are at least easily accessible to individuals with middle levels of income living in the Western world. Furthermore, empirical evidence suggests that people who have vegetarian diets live healthy lives, suffering from no unique medical problems. This is the position of the American Dietetic Associations and the Dietitians of Canada. The PMA principle cannot be applied for these situations because viable alternatives exist and moral agency is not at stake.

However, the world’s population is not primarily made up of Westerners with the necessary income and the access to a healthy diversity of plant based foods. For people in these situations, there is a good case to be made for the consumption of animal flesh with reference to the PMA principle. If refraining from the consumption of animals will likely reduce one’s health to seriously deficient standards or in fact lead to one’s untimely death, then the moral agency of the individual is in danger. Assuming that the individual finds himself or herself where there is no access to plant based foods, be it because of

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35 By vegetarian diet, I am referring to a diet which excludes foods that directly rely on the killing of a sentient animal for its production. Milk, eggs, cheese, etc. can be a part of a vegetarian diet. I am not discussing here a vegan diet, which excludes any food product derived from an animal including eggs and milk.
geographical issues or lack of money, then that individual is morally justified in overriding the rights of an animal to provide for herself or for other moral agents in similar straits.

This use of the PMA principle does not give one a carte blanche in one’s treatment of the animals used for food. It does not excuse one from moral side constraints to limiting to the greatest extent possible the amount of harm caused to the animals and the number of animals used for food, nor does it excuse the individual or social institutions from working to minimize the occurrence of situations where people are forced to override the rights of other individuals, be them humans or animals. Any situation where rights are in direct conflict is a situation where some harm is going to occur. If one of our moral ideals as a moral community is to prevent as much as possible the infliction of harm, given other moral constraints, then acting so as to allow for more individuals to enjoy healthy vegetarian diets helps fulfill such an ideal.

Kathryn Paxton George has argued that vegetarianism should not be upheld as a moral obligation or ideal because the majority of the world’s population is in a situation which makes it exceedingly difficult or unhealthy to adopt vegetarianism. Thus, vegetarianism cannot be a universal or general moral obligation; it can, at best, be a special provisional duty for the small number of people for whom vegetarianism is possible and optimal. In “So Animal a Human,… or the Moral Relevance of Being An Omnivore,” She identifies seven particular groups of people for whom it would be morally wrong to expect adherence to vegetarianism:

(1) infants and children, (2) gestating and lactating women, (3) older women and some older men, (4) allergic individuals and individuals who are predisposed to
vitamin and/or mineral deficiencies, (5) undereducated individuals, (6) poor individuals, including people living in countries where selection of food is narrow and erratic, and (7) people who are genetically not predisposed for vegetarianism.\textsuperscript{xlviii}

Application of the PMA principle would agree with George’s claims in so far as it really is the case that the individuals identified above would face severe health consequences if they fully adopt a vegetarian diet, so severe that the cognitive capacities underlying moral agency would be at risk of loss or diminishment. I do call into question the accuracy of her empirical data involving the health risks and benefits of a vegetarian diet for human beings in all stages of development. In the position paper endorsed by the American Dietetic Association and Dieticians of Canada, it is claimed that “well-planned vegan, lacto-vegetarian, and lacto-ovo-vegetarian diets are appropriate for all stages of the life cycle, including pregnancy and lactation.”\textsuperscript{xlix}

If individuals from group one, two, and three are taken off the list of groups of people for whom it is unreasonable to expect adherence to vegetarianism, and if one accepts that there currently are not reliable medical or social means to enable groups four and seven from adopting vegetarian diets, this leaves the undereducated and the poor of the world. This certainly makes up the majority of the world’s population, a fact that is in itself morally regrettable. Although it would be unreasonable to expect them to immediately adopt vegetarian diets, this does not preclude us from remaining committed to bringing about the situation where these individuals have much better access to nutritional sources and education such that one could reasonably expect adherence to a vegetarian diet. It is not the case that these human beings are excused from certain moral obligations and, thus, viewed as morally inferior to “we” who are able to meet all
obligations. Rather, they simply have a stronger obligation to themselves and other moral agents which is conflicting in these cases with obligations to animals. We can have an ideal of reducing harm and instances of rights conflicts which would contingently mean more people could be vegetarians.

The PMA principle might also justify some use of animals in medical and scientific research, but the number of possible cases in which such use of animals is justified is tremendously smaller and more restricted than the number of uses of animals in research today. For the use of animals in research to be justified by the PMA principle there would have to be no viable alternatives for carrying out the research and the preservation and protection of the moral agency of one or more individuals would have to be directly under threat. This immediately rules out using the PMA principle to justify the testing of commercial products like toothpastes and cosmetics on animal subjects because the question of whether or not human beings have access to new cosmetic and dental hygienic products does not raise any threat to any individual’s moral agency.36

Non-specific medical and scientific research using animal test subjects meant to expand science’s understanding of psychological and physiological systems could not be justified by the PMA principle either. Although expansion of knowledge is a good, and arguably a very important social goal for humankind, it cannot be used to justify every sort of behavior. Since constraining the expansion of knowledge due to concerns for the rights of non-human animals does not directly and specifically threaten the moral agency

36 Acute toxicity tests like the LD50 test use animal subjects to test the toxicity of commercial products, even if the use of the product by one individual never comes close to toxic levels. LD 50 refers to the dose at which 50 percent of the test subjects die. The Draize eye irritancy test is another popular test where commercial products are forcibly and continually dripped into the eyes of restrained rabbits.
of any individual, it would be a hard case to make that such research is justified under the
PMA principle. Peter Singer’s *Animal Liberation* provides many examples of real
experiments performed on animals done in the name of increasing scientific knowledge
that habitually inflicted copious amounts of harm on intelligent animals. If one accepts
that these animals at least have the prima facie right to not be subject to gratuitous
amounts of suffering, then not even the PMA principle could justify these scientific
experiments.\(^{37}\)

However, there do appear to be real life examples of the use of animals in
scientific and medical contexts which could be justified by appeal to the PMA principle.
Certain instances of xenotransplantation might by justified by appeal to the PMA
principle. Xenotransplantation refers to the transplantation of cells, tissues, or organs
from one species to another. For example, heart valves from the hearts of pigs have been
successfully transplanted into the hearts of human patients suffering from bad heart
valves. The widespread and effective use of xenotransplantation might still be far off.\(^{38}\)
There are many legitimate medical reasons, including transmission of viruses from one
species to another, for not pursuing xenotransplantation. Let us assume that the
transplantation of a pig heart valve to a human patient could be done without much
medical risk and the transplantation could be reasonably expected to add to the human
patient’s life a considerable amount of extra time in relatively decent health. Let us also

\(^{37}\) See Peter Singer, *Animal Liberation*, 2nd ed. (New York: Random House Inc., 1990), chapter 2, for an
overview of the use of animals in a variety of scientific and commercial tests.

\(^{38}\) Recent advances in animal cloning might soon make xenotransplantation of whole organs a reality. See
concerning cloning itself might suggest reasonable resistance to these types of developments.
assume that we had to kill a pig to harvest his heart valve, instead of harvesting it from an already deceased pig. Given these circumstances plus the assumption that there are no available viable alternatives to repairing the man’s heart, the PMA principle would justify the overriding of the pig’s right to life.

In a similar vein to what was said about the use of animals for food, it is not a desirable situation for society to be in where many conflict of rights and lifeboat type situations occur. To that end, medical procedures and research protocols that necessitate the overriding of some animals’ rights should not be a desired end state but only a temporary fix. The development and perfection of alternatives to the use of animals in science and medicine is an important and urgent goal that ought to be pursued by the research community. Where the scientific and medical use of animals is indeed justified by the PMA principle, moral side constraints still apply to the treatment of these animals. The infliction of pain and suffering and the number of animals used must be kept to the lowest amount and number possible.

Concluding Remarks

In this essay, I have attempted to explore the issue of moral status as it relates to intuitions about proper action in the lifeboat dilemma described by Tom Regan in *The Case for Animal Rights*. Although I agree that the intuition concerning the sacrificing of the dog in order to save all of the humans should not be jettisoned from our system of beliefs, I have problems with the way Regan attempts to justify the intuition. Contrary to Tom Regan and Peter Singer, our preference for protecting the human being’s life over the dog’s life is not best explained in terms of the difference between the harm of death
for either individual. Rather, it points to a more fundamental difference in the moral status we ascribe to those two individuals, irrespective of the level of harm of death. This difference in moral status should be tied to the capacity of moral agency. Given that moral agency relies on cognitive and affective capacities which admit of degrees, moral status should reflect this by admitting of degrees as well. The lifeboat intuition is best justified by appeal to a principle, which I have called the Protection of Moral Agency principle, that stipulates protection of the moral agency of rights-bearing individuals even if said protection results in the overriding of the rights of individuals with no or a considerably lesser degree of moral agency. After defending this principle from several possible objections, I have examined the possible implications that the PMA principle has for models of moral status and for current social practices which consistently override the prima facie rights of non-human animals.

The most important part of this essay is the formulation and defense of the Protection of Moral Agency principle. This principle stipulates that the overriding of an individual’s basic rights is justified if it is necessary to protect the moral agency of a moral agent and if there are no other viable alternatives available. This reflects a fundamental difference in moral status between individuals with more complex degrees of moral agency and individuals with less complex degrees of moral agency. Establishing an unequal stance to the respective moral statuses of moral patients and moral agents is justified by the importance for the existence of any moral community at all that moral agency has as well as by the failure of equal moral status positions to adequately explain the lifeboat intuition explored in this essay.
I expect that the arguments in this essay will generate much disagreement from people on both sides of the animal ethics debates. Those who do not think that we now treat animals unjustly might think that the PMA principle does not go far enough in establishing the moral difference between humans and animals. Those who advocate for the recognition of animals’ moral rights and the total abolition of meat consumption and animal testing might think that the PMA principle allows too much exploitation and infliction of harm on non-human animals. Disagreement and criticism is quite welcome by this author from both sides of the issue. I, for one, see the arguments in this essay as necessary support for those arguing for the radical reform of the current deplorable conditions of non-human animals in most parts of the world. In order for a pro-animal position to be coherent, one has to account for the intuition in the lifeboat that nearly always supports the protection of the human being over the non-human animal. By attempting to formulate and explicitly detail the implication of this intuition for how much unfavorable treatment to animals is justified, one realizes that the vast majority of exploitation of animals is not justified by this. We realize that even an unequal moral status position concerning the moral considerability of animals does not have the strength to justify that which most enflames the sympathies of animal rights advocates.
End Notes

Chapter 1: Introduction
ii Ibid., 308.

Chapter 2: Tom Regan's Dog on the Lifeboat
v Ibid., 243.
vi Ibid., 248.
ix Ibid., 324.
x Ibid., 308.
xii Ibid., xxix.
xiii Ibid., xxix.

Chapter 3: Other Solutions for the Lifeboat
xvi Ibid., 87.
xvii Ibid., 90.
xviii Ibid., 94.
xix Ibid., 107.
xix Ibid., 107.
xx Ibid., 106.
xxi Frey, 192.
xxii Ibid., 194.
xxiii Ibid., 194.
xxiv Ibid., 194.
xxv Ibid., 194-195.
xxix Ibid., 49.
xxx Ibid., 58.
xxxi Ibid., 59.
xxxv Ibid., 102.

Chapter 4: The Equality of the Harm of Death Across Species

Chapter 5: Moral Status and Moral Agency - The Case for Unequal Rights


Ibid., 37.


**Chapter 6: Objections and Replies**


Ibid., 282-288.


**Chapter 7:**

“Positions of the American Dietetic Association and Dietitians of Canada: Vegetarian Diets.” *Journal of the American Dietetic Association* 103, no. 6 (June 2003): 748-765.


“Positions of the American Dietetic Association and Dietitians of Canada: Vegetarian Diets.” *Journal of the American Dietetic Association* 103, no. 6 (June 2003): 748-765.
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