

CITIZENSHIP GOES TO THE DOGS

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Doctor of Philosophy

by
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CITIZENSHIP GOES TO DOGS

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a candidate for the degree of doctor of philosophy,

and hereby certify that, in their opinion, it is worthy of acceptance.

Professor Peter Vallentyne

Professor Robert Johnson

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For two brother donkeys

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ABSTRACT

The conclusion I defend is that “domestic animals” have a moral claim to what I refer to as “basic citizenship rights,” and that they do so for the same reason that “non-autonomous humans” do. I define each of these key terms.

The bulk of this dissertation is structured around the following formal argument, which I refer to as the Political AMC, on account of its strategy being borrowed from the so-called Argument from Marginal Cases, or AMC:

- (P1) Non-rationally autonomous humans have an undefeated moral claim to basic citizenship rights.
- (P2) If non-rationally autonomous humans have an undefeated moral claim to basic citizenship rights, then possessing vulnerability and no decisive defeaters is a sufficient condition for having an undefeated claim to basic citizenship rights.
- (C1) Possessing vulnerability and no decisive defeaters is a sufficient condition for having a claim to basic citizenship rights.
- (P3) Domestic animals possess vulnerability and no decisive defeaters.
- (C2) Domestic animals have an undefeated claim to basic citizenship rights.

The defense offered for Premise 2 is abductive—an inference to the best explanation—and treated accordingly.

CHAPTER 1: INTRODUCTION

Typical humans in a political community—i.e., a state—enjoy certain affordances. They might be permitted to have their interests reflected in the collective decision-making process, such as through voting. They may also be protected by the military and by domestic law enforcement. Still more, they will have relatively unrestricted access to public areas as well as access to the legal system (e.g., standing to bring civil suits). Finally, they will enjoy the guarantee of self-determination.¹ But the same is not true for every morally relevant entity who lives within the bounds of the political community's territory, or the state.² The question then becomes: in virtue of what do certain individuals but not others get these sorts of affordances?

Indeed, the quality of life that the recipients of these protections experience is significantly different—and presumably better—than the quality of life enjoyed by other individuals living amongst the political community (or within the state). These other individuals might be cast out at any time, as in the case of foreign visitors, or they may exist in a sort of “state of nature,” as in the case of animals like raccoons, squirrels, pigeons and the like. Or they might be left to the whims of their owners, as in the case of animals living under human control.

¹ I.e., they can't be the legal property of anyone else.

² For example, non-human animals and foreign visitors such as tourists. My interest lies with the former and not with the latter.

Returning to the question of how the lines get drawn: It is fairly intuitive to assume that the individuals who receive the affordances rehearsed above are precisely those individuals who *belong* to the political community. At minimum, community of any sort is intuitively understood to be a collection of individuals who work toward shared projects.³ To share a project is to mutually hold the target in mind and to work toward it. For example, a community of tabletop gamers may hold as their target the playing of elaborate tabletop games, and each member is defined by her conscious striving toward that target. We can share projects with other typical humans, particularly those living nearby to us, but we cannot share projects with things like rocks or trees. Those type of things just are not able to hold a target in mind. Neither, it seems, are animals. They might be utilized to accomplish goals that we humans have, but they are seemingly not able to hold those projects in mind and to work toward them—at least not consciously.⁴ This gives us a straightforward account of why at least animals living amongst the political community do not receive these affordances, if not a complete account of where these lines are drawn.⁵

The problem is that this account can't explain why young children and other people who are cognitively impaired receive these affordances.⁶ Whatever

³ This definition captures sports community, gaming community, academic community, etc. What differentiates the political community from these other communities is its access to the absolute authority of the state. However, what's important for this line of thought is not a definition of "political community" but rather the definition of "community."

⁴ In order to remain at a relatively intuitive level, a working definition of "conscious" for current purposes might make reference to having reflective access to the fact that one is holding the target in mind and/or an awareness that others are simultaneously holding the target in mind.

⁵ The account provided here would need to be enriched in order to address the case of foreign visitors who are typical adult humans.

⁶ As will become clear, the force of my argument is completely derived from the strength of the intuition that children and cognitively impaired persons also enjoy the affordances. See the final

the story is that needs to be told, it is more complicated than initial appearances. In this dissertation, I ultimately conclude that the property in virtue of which typical adult humans, young children, and cognitively impaired persons enjoy these legal/political affordances is a property that is shared with certain non-human animals.

1.1 Background

Human exceptionalism—the conviction that human animals are categorically superior to all other animals—is deeply embedded in our thinking. Recent years have, however, seen a growing body of scholarly work complicating what were once thought to be bright lines between humans and non-human animals. For example, John Hadley has argued that the framework of holding property rights can be coherently extended to non-human animals with regard to their territory. Hadley has also explored, alongside Mark Rowlands, Barbro Fröding, and Martin Peterson, whether non-human animals are, like humans, capable of being party to friendship relationships. Mark Rowlands and Asia Ferrin have offered arguments that certain non-human animals have capabilities that go beyond mere moral patiency and are in fact closer to or identical with moral agency. Mark Rowlands has additionally argued that certain non-human animals are not merely *moral* persons but also *metaphysical* persons. Similarly, Stephen Wise, David Favre, and Gary Francione have offered various arguments that certain

paragraphs of Section 2.1.6 for a discussion of the significance of this reliance, as well as Chapter 3 for a more complete defense.

non-human animals are not merely *metaphysical* persons and not merely *moral* persons but are also *legal* persons. Robert Garner has argued that the liberal concept of justice can coherently be extended to enfranchise non-human animals, and Kim Smith has argued that a politically liberal community can coherently politically enfranchise non-human animals without doing violence to its liberal underpinnings. Perhaps most conspicuously, Sue Donaldson and Will Kymlicka have argued that we can coherently apply the framework of “citizenship theory” to animals to yield interesting insights, including the insight that certain animals ought to be considered citizens of the state in which they reside. The common thread between each of these works is the basic idea that whatever differences can be found between humans and animals, those differences are not capable of doing as much conceptual or even normative work as has been widely assumed.

I am interested in whether the differences between humans and animals can justify the assumption that animals are not an appropriate subject matter for political philosophy. It is precisely this assumption that John Hadley, for example, takes aim at when he argues that we can coherently use the concept of property rights to understand some of our obligations to animals. My specific interest, however, concerns what it takes to be “the right sort of thing” to be eligible for political enfranchisement, where to be politically enfranchised involves being a member of the community on whose behalf a state exists. We can, for example, distinguish a being who is politically enfranchised within a given state from an individual whose interests merely set side constraints one

what the state may do.⁷ It has been traditionally assumed that only humans are the right sort of things to be politically enfranchised within a state, even if non-human animals set side constraints on a state's behavior. After all, man is "the political animal," and man himself creates the state in the first place. Contrary to this assumption, the conclusion I defend in this dissertation is that certain non-human animals have a moral claim to be politically enfranchised, in a manner I specify below.⁸

I am not the first person to provide an argument that rejects the assumption that only humans are the right sort of things to be politically enfranchised. The positions defended by Garner, Smith, and Donaldson and Kymlicka can all be understood as also rejecting this assumption. To illustrate how the view I defend in this dissertation compares with their views, I think it is useful to provide an analogy to a subject that is less exotic than the idea of "animal citizenship" and to then "transpose" the aforementioned authors' views into the context of this analogy. Doing so permits us to more clearly appreciate the conceptual terrain within which this dissertation is situated, since the subject matter of the analogy is more familiar and comfortable.

The illustrative analogy that I offer concerns the fact that higher education is currently seeing a sweep of unionization efforts by graduate student teaching and research assistants. These unionization efforts are controversial. A central

⁷ Contrast, for example, the relationship between a given state and a tourist with the relationship between that same state and one of its citizens. See Donaldson and Kymlicka (2011), pp. 50-54 for the useful example I allude to briefly, here, and for extended discussion of the distinction.

⁸ "Political enfranchisement" often has a specific and narrow meaning of simply being given the vote. This line may therefore evoke mental images of a cow or a pig toting a ballot to a regional ballot box. While I do address the concept of voting, later, it is worth emphasizing that I use the term "political enfranchisement" in a broader sense than simply being given the vote.

question is this: Ought graduate student assistants be conceived of as the sort of thing that have a moral claim to unionize? The *traditional* answer is “no,” because graduate student assistants are students, not employees, and a necessary condition for having a moral claim to unionize is being an employee. By contrast, the “*Kim Smith*” answer to this question is that there is nothing in the concept of “unionization” nor in the concept of “graduate student assistant” that forbids us from conceiving of graduate student assistants as the sort of thing that have a moral claim to unionize. Alternatively, the “*Robert Garner*” answer is that we indeed ought to conceive of graduate student assistants as the sort of things that have a claim to unionize because if we do not, then their interests will never be adequately protected (e.g., by university administrators). The “*Donaldson and Kymlicka*” answer is also “yes,” but because when we conceive of graduate student assistants in this way it provides greater clarity on closely related issues when compared with other ways of conceiving of graduate students (e.g., as merely students, not employees). For example, it better helps us understand why graduate student assistants are paid when other students are not, and it better helps us understand why graduate student assistants have all of the other rights and obligations that employees do but that other students do not (e.g., workers’ compensation, being a mandated reporter). Finally, the answer that I give in this dissertation is “yes,” but not because conceiving of graduate student assistants in this way is necessary to protecting their interests, nor because doing so has certain theoretical virtues as a theory of what sort of things graduate student assistants are. Rather, I answer the target question affirmatively because faculty are conceived of as the sort of thing that have a moral claim to unionize, and

there is no discernible difference between graduate student assistants and faculty that matters with respect to having a moral claim to unionize.

The strategy that is operative in my answer to the union question in the foregoing analogy will be familiar to anyone who has been exposed to the so-called “Argument from Marginal Cases.” The Argument from Marginal Cases, or AMC, has featured prominently in the debate regarding the intrinsic moral status of non-human animals.⁹ The basic steps of the AMC are to first require that morally similar cases receive morally similar treatment, and then to establish both that “marginal” humans (e.g., human infants and severely cognitively impaired persons) have X, where X might be, for example, a particular moral claim or a general moral status. The next step is to establish that certain non-human animals are similar to “marginal” humans in all morally relevant respects *as regards X*. The conclusion then is that these specific animals must also have X. The original AMC set the value of X as “intrinsic moral status,” but in this dissertation, I attempt to set the value of X as “a moral claim to six particular legal/political rights.” I specify these legal/political rights, below.

Before introducing my argument and its key concepts, it is worth identifying the major challenges that anyone using an AMC-style argument faces. For one, it is not always easy to establish that “marginal” humans must have X, whatever X may be. This is how a Kantian might respond to the AMC when “intrinsic moral status” is the value of X. According to the Kantian, the

⁹ Dombrowski (1997). The intrinsic moral status of an individual refers to the moral protections or considerations demanded in virtue of that individual’s intrinsic properties. Roughly, an intrinsic property is one which would still be possessed by that individual were she to exist in an empty universe.

“marginal” human lacks *intrinsic* moral status, but enjoys various moral protections for other reasons.¹⁰ A second challenge is to determine what it means to be similar to “marginal” humans in all morally relevant respects. The standard for “moral relevance” must be relative to whatever value X is given, and there is significant room for disagreement as to what is morally relevant with respect to any given value of X (e.g., intrinsic moral status, citizenship). A third challenge is determining what subset of non-human animals one appeals to in their version of the AMC, since the animals in question must satisfy whatever conditions are determined to be morally relevant as regards X. Dealing with these challenges when “having a moral claim to certain legal/political rights” is assigned as the value of X will occupy the bulk of my work in this dissertation.

1.2 Introduction

The conclusion I defend is, in its most basic form, that “domestic animals” have a moral claim to what I refer to as “basic citizenship rights,” and that they do so for the same reason that “non-autonomous humans” do. I define each of these key terms, below.

I understand a “non-autonomous human” as a sentient member of the species *Homo sapiens* who lacks the higher-order cognitive capacities generally taken to be characteristic of typical adult humans. These higher-order cognitive capacities have been variously understood in terms of a capacity for self-

¹⁰ I refer here to Kant’s infamous attempt to morally enfranchise individuals lacking reflective autonomy, or rationality.

reflection, a capacity for normative self-government or reflective distance and corresponding control over one's own actions, rationality, rational autonomy, and the like. Sentience, in turn, is understood as the capacity to be a subject of valenced phenomenological experiences, such that things can go better or worse from one's own first-person perspective. These valenced phenomenological experiences may be merely perceptual (i.e., "bodily sensations") or they may be cognitive (i.e., "emotions") or even more general (i.e., "moods").¹¹ Paradigmatic examples of so-called non-autonomous humans include infants and humans who are significantly cognitively impaired, either due to genetics, disease, or injury (e.g., those with Down Syndrome). Non-autonomous humans might be of any age.

A domestic animal is to be understood as a sentient, non-human member of the biological "*Animalia*" kingdom¹² who lives within the bounded territory of a given state and under the control of humans. Such control can involve the living space, access to food, and other important parts of the animal's life. The state, in turn, is understood as that which claims a monopoly on coercive power over a bounded territory and the community living therein. For the sake of simplicity, I

¹¹ It is important to allow for a being capable of undergoing any of these three types of valenced phenomenological experiences to satisfy the conditions of sentience, because an account of sentience should render "is sentient" true of both a human with pain asymbolia, who does not feel pain but who is nonetheless capable of feeling anguish or grief, and a very simple animal, who is incapable of experiencing any negative phenomenological experience aside from pain.

¹² The restriction to members of the *Animalia* kingdom is artificial, and it is intended to merely delimit and more clearly describe the creatures that I will concern myself with. It may be the case that some members of the *Fungi* kingdom, for example, are sentient. If so, I will not be addressing their case. My focus lies with creatures like cows, pigs, and dogs. This is in part due to the comparative wealth of knowledge to which I have access regarding the lives of mammals versus the lives of fungi.

assume for the purposes of this dissertation a state that looks something like the 21st century United States.

It is important to be clear that a “domestic animal” is not the same thing as a “domesticated animal.” The set of *domestic* animals includes as a proper subset many *domesticated* animals. A domesticated animal is a member of a species that has been bred by humans to have certain features. Examples of domesticated animals include dogs, cows, horses, and cats to a somewhat lesser extent. The set of domestic animals is larger, however, and includes non-domesticated animals kept in entertainment venues such as zoos, animals in research settings such as medical labs.

I focus on domestic animals for the purposes of this dissertation because it strikes me as odd for a theory to say, for example, that companion *dogs* could seek compensatory and punitive damages upon the discovery that a brand of pet food contains melamine, but that companion *armadillos* could not. My focus on domestic animals more broadly, rather than on domesticated animals more narrowly, is driven by the intuition that what is morally relevant to having a moral claim against the state for “basic citizenship rights” (defined below) is not an individual animal’s inability to lead a good life independently of humans, but rather an individual animal’s ability to lead a good life *given* the fact that the animal is residing within a human community.

Lastly, I use the term “basic citizenship rights” to refer to a set of six legal rights, enforced by the state, that protect an individual’s interests. The specific legal rights I identify are characterized by the fact that they are, I assume, critical to establishing and maintaining an individual’s reasonable shot at leading a good

life.¹³ I therefore find it useful to distinguish between the four *substantive* basic citizenship rights, which are legal rights that *establish* an individual's reasonable shot at living a good life, and the two *procedural* basic citizenship rights, which are legal rights that *maintain* an individual's reasonable shot at living a good life. The four "substantive" basic citizenship rights are as follows:

- 1) *Legal personhood*. The U.S. legal system, like many legal systems, distinguishes between persons and property. African slaves in the U.S. were legally considered property. Children are, at least currently, categorized as persons. Legal personhood is critical to ensuring that an individual's own moral interests (e.g., to not suffer) are not inappropriately put into competition with morally unimportant considerations (e.g., to make money) by not allowing an individual (and all of her interests) to belong, in the eyes of the law, to anyone but herself.
- 2) *Bodily security*, which ensures that an individual's body is legally protected from abuse, disaster, and perhaps also illness. This right might take the form of legal prohibitions against imprisonment, torture, or assault. It might also take the form of legally guaranteed inclusion in state rescue or protection operations during disasters or wars. It might also take the form of a right to healthcare.

¹³ The specific content of the basic citizenship rights can be debated and refined, although doing so goes beyond the scope of the present project. Presently, the focus is on what sort of beings have claim to enfranchisement, rather than being on what sort of protections would constitute enfranchisement for a certain type of creature.

- 3) *Mobility*, which concerns the ways that different individuals physically navigate the world due to their different motor and sensory endowments. This right includes a strong presumption in favor of accessing the public space. Examples include infrastructure accommodations in the public and perhaps private spheres.
- 4) *Socialization*, which ensures that each individual, regardless of how they are “wired,” is equipped with a basic set of tools, both interpersonal and intrapersonal, required to have a reasonable shot at leading a successful life in the world they live in. This may include basic education as well as a chance to become familiar with the sights, sounds, and behavioral signals of the world they live in, including “lessons” regarding both infrastructure and other individuals in their shared community. One example of a law derivative of this right might be, e.g., a criminal law against depriving a child of an opportunity to speak to others.¹⁴

Finally, the two “procedural” basic citizenship rights are as follows:

- 5) *Legal standing*, which provides an individual recourse regarding legal protections that take the form of civil rather than criminal prohibitions, and entails:

¹⁴ I refer here to the case of “Genie,” the young child discovered in 1970 to have been locked in a dark room, tied down, and not given a chance to ever have anyone talk or interact with her (among other abuses).

- a. A legal right to have civil suits brought on one's behalf, and
 - b. A legal right to have the outcomes of a civil suit appealed on one's behalf.
- 6) *Legislative standing*, which is to have at least some of one's interests to count within the legislative process in the sense that one's interests help determine, rather than merely constrain, the legislative decision.

The remainder of this dissertation is structured around the following formal argument, which I refer to as the Political AMC, on account of its strategy being borrowed from the so-called Argument from Marginal Cases, or AMC:

The Political AMC

- (P1) Non-rationally autonomous humans have an undefeated moral claim to basic citizenship rights.
- (P2) If non-rationally autonomous humans have an undefeated moral claim to basic citizenship rights, then possessing vulnerability and no decisive defeaters is a sufficient condition for having an undefeated claim to basic citizenship rights.
- (C1) Possessing vulnerability and no decisive defeaters is a sufficient condition for having a claim to basic citizenship rights.
- (P3) Domestic animals possess vulnerability and no decisive defeaters.
- (C2) Domestic animals have an undefeated claim to basic citizenship rights.

A defense of Premise 1 is reserved until Chapter 3. Chapter 4 is dedicated to a defense of Premise 3 and an exploration of the implications of Conclusion 2. In Chapter 5, I situate the Political AMC more carefully with respect to other positions in the literature, and I identify a possible direction for developing the Political AMC further. However, the next chapter, Chapter 2, is concerned with defending the most significant premise of the Political AMC, which is Premise 2. I turn now to that project.

CHAPTER 2: GROUNDING BASIC CITIZENSHIP RIGHTS

The task I have set for myself is to defend the assertion that domestic animals have a claim to a set of six legal rights to which I am referring collectively as “basic citizenship rights”: legal personhood, bodily integrity, mobility, socialization, legal standing, and legislative standing. This assertion challenges a longstanding categorical assumption that all sentient humans have at least a defeasible claim to basic citizenship rights but no non-human animals do.¹⁵ In order to accomplish my task, I am borrowing a strategy that was deployed in the context of challenging a similar categorical assumption: the assumption that all sentient humans have *intrinsic moral status* but that no non-human animals do.¹⁶

The strategy that I borrow operates by exploiting the fact that when most people are pressed to explain *why* humans categorically possess the claim or status or protection in question, they often appeal to some property that is *not* possessed categorically by humans, such as rational autonomy. This fact presents an opportunity. When such a person is pressed further to account for why non-autonomous humans enjoy the claim or status or protection in question, two options emerge. The first option is to bite the bullet and concede that non-autonomous humans do not in fact enjoy the claim or status or protection in

¹⁵ I leave open the possibility that some humans, perhaps due to committing terrible crimes, might have their claim to basic citizenship rights either undercut or overridden.

¹⁶ Dombrowski, Daniel A. (1997) *Babies and Beasts: The Argument from Marginal Cases*. Chicago: University of Illinois Press.

question. In the context of basic citizenship rights, I must show that this first option is unattractive in order to retain my leverage for securing my target conclusion concerning domestic animals. I tackle that task in Chapter 3, where I defend the claim that non-autonomous humans do in fact have an undefeated claim to basic to citizenship rights. The second option is to find some other property that can account for why non-autonomous humans enjoy the claim/status/protection in question.¹⁷ If it can be shown that the property that accounts, in an unrestricted sense, for why non-autonomous humans enjoy the claim or status or protection in question is a property also possessed by domestic animals, then the stage is set for securing my conclusion concerning those animals. In the context of basic citizenship rights, I accomplish this second goal by arguing that if it is true that non-autonomous humans enjoy a claim to such rights, then being “vulnerable” and possessing no defeaters is sufficient for enjoying that claim. Roughly, “vulnerability” involves one’s fundamental interests being dependent on the actions of at least one moral agent living under the state, where that dependency was brought about in some relevant way by that agent.¹⁸ The notion is discussed further in Section 2 of the present chapter.

Phrased in the context of the Political Argument from Marginal Cases (AMC), the work of this chapter is to defend Premise 2 of that argument. For reference, recall that the argument runs as follows, where all entities under consideration are stipulated as being sentient:

¹⁷ It is not necessary that the alternative property explain both non-autonomous humans’ claim/status/protection *and* rationally autonomous humans’ claim/status/protection. It is conceptually possible that both sorts of humans have the same claim/status/protection but for different reasons.

¹⁸ Vulnerability in the relevant sense therefore assumes the existing of a state.

The Political AMC

- (P1) Non-autonomous humans have an undefeated moral claim to basic citizenship rights.
- (P2) If non-autonomous humans have an undefeated moral claim to basic citizenship rights, then possessing vulnerability and no decisive defeaters is a sufficient condition for having an undefeated claim to basic citizenship rights.
- (C1) Possessing vulnerability and no decisive defeaters is a sufficient condition for having a claim to basic citizenship rights.
- (P3) Domestic animals possess vulnerability and no decisive defeaters.
- (C2) Domestic animals have an undefeated claim to basic citizenship rights.

2.1 Narrowing the Pool

My argument in support of “vulnerability” being a sufficient condition for having a defeasible claim to basic citizenship rights—i.e., Premise 2 of the Political AMC—is abductive and negative. I proceed by considering properties possessed by non-autonomous humans that could conceivably serve as sufficient condition for the aforementioned claim and ruling all of them out, with the exception of being “vulnerable.” It is important to note now—as will be discussed in more detail nearer to the end of this chapter—that the negative and abductive nature of this argument raises serious concern that the more appropriate conclusion to

draw is that non-rationally autonomous humans do not, in fact, enjoy basic citizenship rights and *a fortiori* nor do non-human animals.¹⁹

2.1.1 Species Membership

A natural starting place for explaining why non-autonomous humans, like rationally autonomous humans, have a claim to basic citizenship rights is by appealing to some way in which the two sorts of humans are related. The most conspicuous property of this sort is the biological property of being human. We can refer to this property as *human species membership*. The reason that human species membership is an attractive candidate is that most people take it as relatively obvious that typical adult humans have legal rights against the state, and the most obvious property shared between rationally autonomous humans and non-autonomous humans is the fact that they are all members of the human species.

Human species membership is being understood here in a narrowly biological sense. Membership within one or another species is determined by an individual's genes, and species themselves are categories defined by the exclusive capacity of members to successfully reproduce.²⁰ Species membership

¹⁹ I hasten to emphasize that this possibility need not be understood as a radical conclusion in its own right. I have defined basic citizenship rights in a strong manner such that they are enjoyed at least partially in virtue of stable properties of the individuals who enjoy them. While there are costs to biting the bullet of non-rationally autonomous humans "civil rights" being based on contingent factors—e.g., the good will of rationally autonomous humans—it is likely that many would be willing to bite that bullet.

²⁰ The term "successfully" may refer to the production of an offspring or it may refer to the production of an offspring that is itself capable of passing along genetic material.

understood in this precise way does not imply further features, such as sentience, an ability to reason, or anything else.

Human species membership is a poor candidate for the task at hand. One reason to reject it is that if it were a sufficient condition for having even a defeasible claim to basic citizenship rights, then anencephalic infants, who are born with no cerebral hemispheres and therefore a presumed lack of capacity for sentience, would enjoy this claim, as would permanently brain dead humans. However, such humans are not the right sorts of things to have a claim against the government that their reasonable shot at living a good life be protected, because they have no good life to speak of.²¹

It might be thought that species membership simply need be conjoined with sentience in order to serve as a sufficient condition for basic citizenship rights. While it is plausible that sentience is in fact a necessary condition for having any sort of claim to basic citizenship rights, a possibility I consider in greater detail in the next section, this strategy is unlikely to yield a plausible conjunctive sufficient condition for those rights. Species membership suffers from a more basic flaw, which is that it seems to be as morally significant as eye color or nose size.

A simple way to make the point that species membership is morally irrelevant with respect to determining whether a certain being has or lacks a moral claim is to imagine two individuals with qualitatively identical cognitive and physical capacities. Each individual is a sentient subject of experience, has

²¹ McMahan, Jeff. (2002) *The Ethics of Killing: Problems at the Margins of Life*. Oxford University Press, 147.

the capacity for rational thought, can communicate in English, etc. However, one individual is a carbon-based lifeform and the other individual is a silicon-based lifeform. Due to their different biochemistries, the two individuals cannot interbreed and are therefore different species. Holding other things equal, it is difficult to imagine mere species membership justifying drawing a moral line between these two individuals such that we may, for example, kill and consume one but not the other.

Species membership has been understood here in the genotypic sense. There are also phenotypic and hereditary conceptions of species membership. However, neither is able to succeed where the genotypic conception fails. Developing an appeal to a phenotypic conception of species membership yields the result that the property of (or properties associated with) appearing human are necessary and sufficient for having a moral claim to basic citizenship rights. This assertion is implausible on its face, because appearance properties have no intuitive moral significance. Counterexamples are also readily available, as we can imagine both a morally significant being who does *not* look like a human as well as a morally insignificant being who looks like a human.²² On a hereditary conception of species membership, if X gives birth to Y, then X and Y are members of the same species. This yields implausible answers in real-life cases of creatures such as mules, which are birthed from a male donkey and a female horse. The defender of this position may strengthen their position by requiring

²² E.g., creatures who are alike typical adult humans in every single manner save for their skin is metallic and they have wheels where limbs would have otherwise been or beings such as David Chalmers' philosophical zombies, respectively.

that the offspring be fertile in order to be considered of the same species as the creature who birthed it.²³ However, this move pulls into sharp relief the core question with this approach: is the ability to propagate genetic material a morally relevant property capable of accounting for something as substantial as basic citizenship rights?²⁴

2.1.2 Species Norms

Rather than appeal to species membership, itself, a common strategy in the context of the intrinsic moral status debate has been to appeal to what is normal for members of a species. On this view, non-autonomous humans enjoy higher moral status than non-human animals not because they are human *per se*, but rather because they are members of a species for whom the norm is to possess properties that generate a higher moral status (e.g., rationality). Non-human animals do not belong to this species, and so they do not enjoy the same moral status. This argument is a specific instance of Carl Cohen's more general argument from *kinds* that is discussed in Subsection 2.1.3.²⁵

The origin and justification of norms, as appealed to by proponents of this theory, is controversial. However, the species norm strategy can be rejected

²³ Some mules have, apparently, been fertile.

²⁴ It is also possible to provide more exotic counterexamples to the hereditary conception of species membership, such as a typical adult human female who gives birth to a typical lion cub.

²⁵ Wilson (2005) and Nobis (2004) spend considerable time exploring different ways to interpret the operative notion of "kind" in Cohen's thinking. Nobis (2004, p. 52) concludes, "Cohen is not alone in his kind arguments, but other philosophers' attempts are as unsuccessful as his are. 'Kind' strategies are often suggested, but never carefully developed or defended." Here, I explore a strong, specific instance of the strategy. Other strong directions in which the appeal to *kinds* has been developed are appeals to potential, which are discussed in Subsection 2.1.4.

without delving into that issue. If we take the argument at face value, then we know that whatever norms are, one norm for humans is that humans are rationally autonomous. Rationally autonomous beings possess moral rights, and therefore the species norm for humans is to possess moral rights. It is through this route that moral rights are secured for non-autonomous humans. However, rationally autonomous beings are also bearers of moral obligations. By the same line of thought, then, an additional species norm for humans is to bear moral obligations. Therefore, Cohen's argument entails that non-autonomous humans, in addition to having rights, also bear moral obligations. But they do not.

To save this approach, it might be argued that non-autonomous humans can be conceived as bearing dispositional moral obligations whose manifestation conditions have not yet been met.²⁶ To counter this move, however, we need only rephrase the original line of reasoning to specify that an additional species norm for humans is to bear actual, occurrent moral obligations. Additionally, this move is not an attractive approach to saving the appeal to species norms, since it can be used to defeat itself. One could concede to the defender of a species norm appeal that non-human animals are poised to enjoy a higher moral status than non-human animals, but only once the manifestation conditions are met. Finally, if all else fails, the *reductio* regarding bearing moral obligations can be replaced with any number of other counterexamples: A species norm for humans is to be dead,

²⁶ To the extent that the force of this move is intended to derive not from a correctly formulated *species norm*, but rather from being the kind of thing that possesses the *potential* to develop the capacity in question, see Subsection 2.1.4 on appeals to potential.

since most humans are dead. So, I'm dead. Or a species norm for humans is to be conscious, so the person in a persistent vegetative state is conscious.

Whatever the defender of this theory has in mind for how norms are determined, this strategy for securing rights for non-autonomous humans via their species association with rationally autonomous humans will run afoul of *reductios*.

2.1.3 Appeal to Kinds

The appeal to species membership and the appeal to what is normal for a species are prominent examples of the more general, and deeply intuitive, strategy of appealing to *kinds*. On this view, non-autonomous humans are the *kind* of thing that can be rationally autonomous, or that can bear moral obligations, even if they are not actually rationally autonomous nor actually bearers of moral obligations. Non-human animals are not of this *kind*, and for that reason the former but not the latter enjoy a moral status akin to rationally autonomous humans.

Appeals to *kinds* are commonly associated with Carl Cohen.²⁷ Cohen himself does not go to great lengths to unpack his notion of 'kinds', but Nathan

²⁷ Cohen, Carl. (1986) 'The Case for the Use of Animals in Biomedical Research', *New England Journal of Medicine*, 315, 865-870. Note that Cohen's argument is subject to a similar objection to the aliens example I give, which is laid out Jeff McMahan's "Superchimps" thought experiment (McMahan pp. 147-153). See also Agnieszka Jaworska and Julie Tannenbaum's extension of McMahan's argument in "The Grounds of Moral Status," in *Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, (Stanford, CA: Stanford University, 2013), <http://plato.stanford.edu/archives/sum2013/entries/grounds-moral-status/>

Nobis shows that further specification is not needed in order to see that appeals to *kinds* fail.²⁸ Per Nobis, Cohen's argument can be formulated as follows:²⁹

Cohen's Animals

- (1) If an individual is of a kind that lacks the capacity for free moral judgment, then he or she does not have moral rights.
- (2) Each animal is of a kind that lacks the capacity for free moral judgment.
- (3) Therefore, animals do not have moral rights.

As well as the corollary:

Cohen's Humans

- (1*) If an individual is of a kind that possesses the capacity for free moral judgment, then he or she has moral rights.
- (2*) Each 'marginal' human is of a kind that possesses the capacity for free moral judgment.
- (3*) Therefore, 'marginal' humans have moral rights.

²⁸ Either fail or collapse into an alternative strategy that I canvass elsewhere in Chapter 2. To illustrate how close the lines are, consider a genetically normal human infant whose head is struck so hard that she is rendered brain-dead. Someone hoping to show that this infant has higher moral status than a non-human animal could make an appeal to *kinds*, as follows: Although the infant actually lacks the potential to become rationally autonomous, it is nonetheless the *kind* of thing that has that potential. When this approach fails, the person can pivot to an appeal to potential: what's important isn't the kind of thing that the infant is, but rather the fact that the infant possesses the property of having the *genetic*, if not *actual*, potential to become rationally autonomous. It is this property that grounds its higher moral status, rather than its being of a certain *kind*.

²⁹ Nobis, Nathan. (2004) 'Carl Cohen's "Kind" Arguments *For* Animal Rights and *Against* Human Rights' *Journal of Applied Philosophy*, 21, p.46.

Nobis offers strong rejections of both P_1/P_1^* and P_2/P_2^* .

In the preceding section, I argued that any appeal to species membership will fall prey to a *reductio ad absurdum*. The same is true for an appeal to kinds. The reason for this is that, in order to make P_2/P_2^* true, Cohen proves too much. However *kinds* are determined, there will be a myriad of *kinds* to which any particular entity belongs. Moreover, there are no reasons to prioritize certain kinds over other kinds—aside from independent reasons that would render the theory impotent. The result is that the truth conditions of P_2/P_2^* yield contradictions. For example, humans are the kind of thing that is more than half water. The norm for such things is to be incapable of feeling pain, and so humans cannot feel pain. However, humans are also the kind of thing that feel pain, and so humans can feel pain. It is impossible for both things to be true of humans, and so the original premise (P_2/P_2^*) must be rejected.

The stalemate illustrated in the foregoing example regarding pain could be broken just in case we have a way to legitimize or prioritize certain *kinds* over others. For example, we could say that humans can in fact feel pain because being the kind of thing that feels pain is a more morally important *kind* than is being more than half water, and hence humans really do feel pain. However, now the moral significance of pain is doing the theoretical work, rather than being a certain kind of thing doing the theoretical work. It is also debatable whether creating a strategy for prioritization would yield the desired result. For example, if *kinds* that are determined by what cognitive capacities an individual has are prioritized, then non-autonomous humans and non-human animals are both the

same *kind* of thing, and non-autonomous humans and rationally autonomous humans are *different* kinds of things.

The intuitive force of the *reductios* rehearsed in objection to appeals to species norm was drawn in part from the ambiguity of determining *kinds*, as just discussed. However, it also draws from the implausibility inherent in P1/P1*. In order for P1/P1* to be true, so must be the more general principle of which they are tokens:³⁰

Guilt by Association

If (1) an individual A is a member of some kind K and (2) some, most or all of the other members of that kind K have some property C and (3), on the basis of having property C, they have property R, then individual A has property R as well, even though A lacks property C.

To show that this general principle is false, Nobis offers two examples. The student who is earning a C- in his class full of students earning A+'s does not warrant an A+ by the power of association. Similarly, the relatively small number of visitors to a prison at any given time do not magically become felons due to the same being true for virtually everyone else in the compound.

Whatever reason non-autonomous humans have a moral claim to basic citizenship rights, it will not be in virtue of their being a certain *kind* of thing. Rather, it will be because they perform some function or have some feature or

³⁰ Nobis (2004), p. 53.

capability. A fairly intuitive feature that non-autonomous humans have that non-human animals lack is that only the former possess some sort of *potential* to become rationally autonomous humans.³¹ I consider appeals to potential, next.

2.1.4 Appeals to Potential

Appeals to potential are common in the literature concerning the intrinsic moral status of animals and the original AMC, and may generally seem to offer an attractive candidate for grounding non-autonomous humans' moral claim to basic citizenship rights.

An appeal to potential must specify what sort of potential is being invoked. David DeGrazia (2012) suggests that the most plausible of the available alternatives is an appeal to genetic, sometimes called “natural” potential, which may be understood as the potential that a being has either at the instant of its conception or at the point in its gestation when all of the cells in the embryo have differentiated and spontaneous twinning is no longer possible.³² An appeal to *genetic* potential, such as this, is more inclusive than an appeal to actual, or current potential. To illustrate, consider a genetically normal infant who happens to suffer a debilitating brain injury after birth such that she will never achieve

³¹ I intend the reference, here, to being a rationally autonomous human to serve as a sort of catch-all. It could be understood in terms of having the potential to bear moral obligations, having the potential to be a contractor, having the potential to mutually engage in shared projects, etc.

³² DeGrazia (2012), pp. 20-31. He does not consider this notion of potential in the context of legal or political rights for animals, however, and I do not mean to imply he would endorse such a strategy. DeGrazia makes a strong case that because spontaneous twinning remains possible until all of an embryo's cells are differentiated, which is around the 2-week mark, that the moment of conception may not be the point at which humans as such come into existence. I am not sure if this point extends beyond the context of personal identity to be applicable in the current context concerning potential, but perhaps it does.

rational autonomy. An appeal to genetic potential will include this infant, whereas an appeal to actual potential will exclude it.

The problem with appealing to genetic potential is the existence of genetic conditions that cause significant cognitive, affective, or physical impairments. Not all non-autonomous humans possess even the genetic potential to become rationally autonomous, as in the case of humans with certain kinds of genetic abnormalities. At best, an appeal to genetic potential might identify one sufficient condition for having a claim to basic citizenship rights. However, it is not a sufficient condition satisfied by all non-autonomous humans. For this reason, it cannot do the work required by Premise 2 of the Political AMC.

Jeff McMahan (2002, pp. 302-329) defends an alternative understanding of the moral significance of potential, which he describes as follows:

“The real relevance of possibility is practical. For the important question in each particular case is not how X’s potential affects its moral status but how strong a moral reason, if any, there is to try to realize X’s potential. And this may be affected by ‘how possible’ it is to realize or to elicit the potential [in an identity-preserving way].”³³

On McMahan’s notion of potential, X possess potential for Y just in case X actually lacks Y, but we have the practical knowledge sufficient to bring about X’s possession of Y. If we apply McMahan’s notion of potential to the present

³³ McMahan (2002), 317.

context, the rough idea would be that non-autonomous humans have a claim to basic citizenship rights in virtue of the fact that it is relatively practically possible for their potential to become rationally autonomous. Once again, however, this appeal to potential will disenfranchise an implausible number of non-autonomous humans. The practical possibility of realizing a typical human infant's potential to become a rationally autonomous human is admittedly high. However, the practical possibility of doing the same for a genetically impaired infant (e.g., one with Down Syndrome) is considerably lower. Indeed, the practical possibility in the latter case may be on par with the practical possibility of realizing the potential of a dolphin or a chimpanzee to become rationally autonomous. The practical possibility of realizing the potential of a dog may not lag terribly far behind.

At our current and foreseeable level of knowledge and technology, it seems as though an appeal to McMahan's notion of potential will not do the work required by Premise 2 of the Political AMC. Insofar as we think that contemporary humans with Down Syndrome have a claim to basic citizenship rights, we can reject this strategy on the grounds that we have no current practical knowledge of how to transform an individual with Down Syndrome into a rationally autonomous human. Interestingly, however, even if there comes a time where realizing the potential for rational autonomy of a human with Down Syndrome is importantly more practically possible than doing the same for a

dolphin or a dog, the present strategy implies that dogs' day may eventually come.³⁴

2.1.5 Appealing to Care

Instead of accounting for Premise 2 of the Political AMC by appealing to some intrinsic property of non-autonomous humans, such as their species membership or their potential, we might instead appeal to some particular relation that non-autonomous humans stand in to rationally autonomous humans. A compelling example of such a relationship is characterized by the attitude of care that tends to exist between the aforementioned sorts of humans, such the attitude of care of parent toward a child. Call this the property of *being an object of care*, which is to be understood descriptively for current purposes.³⁵

An appeal to actually being an object of care captures the fact that many non-autonomous humans are cared about by one or more rationally autonomous humans, where this care is understood in terms of some relevant psychological attitude(s) toward the non-autonomous human. These humans are typically parents, family members, friends, or other caretakers who adopt a certain orientation of concern for the non-autonomous human in question. Conceivably,

³⁴ Understanding potential in terms of this more practical conception of metaphysical possibility yields a stronger theory than does understanding potential in terms of a less restrictive conception of metaphysical possibility. The fewer metaphysical restrictions, the more likely it is that appealing to "metaphysical potential" (as opposed to "practical potential") will enfranchise not only non-autonomous humans, but also non-human animals. For that reason, I do not consider weakening the conception of "potential" in this way.

³⁵ Here, I consider the property of actually being an object of care. I address normative rather than descriptive notions of being an object of care, later.

it is part and parcel of this orientation of concern that these typical adult humans somehow guarantee that the non-autonomous humans in question have a claim to basic citizenship rights.

For example, one possible mechanism by which being an object of care might guarantee basic citizenship rights for non-autonomous humans is where the legal rights of the caregiver are specified in such a way that her objects of care enjoy derivative legal protections. For example, the law might acknowledge that for some or other reason many rationally autonomous humans cannot adequately pursue their conception of the good life unless their objects of care are granted basic citizenship rights. On this sort of line, basic citizenship rights for non-autonomous humans would flow from rationally autonomous humans, rather than from the non-autonomous humans, themselves.

The problem with this approach is that not every non-autonomous human is actually an object of care. The unloved child is not an object of care for any rationally autonomous adult. It is possible that the significantly developmentally disabled adult who lives in a caretaking facility under the care of series of staff who are overworked, underpaid, and disenchanted may not be the object of care in the relevant sense. However, it seems as though both individuals do have a claim to basic citizenship rights. While it is possible that being an object of care is one sufficient condition for having a claim to basic citizenship rights, it is not the sufficient condition capable of doing the explanatory work required by Premise 2 of the Political AMC. At best, an appeal to being an object of care pushes the question back.

2.1.6 Hypothetical Object of Care

Instead of appealing to the property of being *actually* cared about, we might instead appeal to the property of being the sort of entity that contractors, in a sense specified below, will reliably wish to protect.³⁶ Call this being a *hypothetical object of care*.

The question becomes whether any plausible social contract theory would generate basic citizenship rights for non-autonomous humans. For illustration, this might happen if all contractors involved cared very deeply about non-autonomous humans, or perhaps if the contractors were all representatives of non-autonomous humans, themselves.

To see why this strategy fails, consider that any formulation of a social contract theory will specify that X type of individuals are expressing their preferences regarding Y goods, and an ultimate decision will be generated by running those preferences through Z procedure. For example, in a naïve social contract theory, the value of X might be actual, rationally autonomous humans, the value of Y would be any of those humans' preferences whatsoever, and the value of Z might be simple aggregation. For Rawls, the value of X is idealized representatives of rationally autonomous humans who have been rendered ignorant of certain facts about the world, and the value of Y is "basic goods."³⁷

It is possible to construct a dilemma by drawing attention to what value may be given to X. Either X is specified in such a way as to enfranchise non-

³⁶ Mary Anne Warren in Eugene Hargrove (ed.) 1992, pp. 196-8 flirts with this strategy.

³⁷ Rawls avoids the need to specify any particular value for Z, because he sets up the contract in such a way that every contractor will generate the same preferences regarding basic goods—or, every X will express the same preferences regarding Y—so it is unnecessary to identify a particular decision procedure for rectifying different preferences.

autonomous humans or it is not. For example, if the value of X were “all beings capable of reflecting on and reporting their own sense of the good,” then X will disenfranchise non-autonomous humans. Alternatively, if the value of X were “omniscient representatives of all sentient beings,” then non-autonomous humans would be enfranchised. My basic contention is that insofar as X is set in such a way that disenfranchises non-autonomous humans, no plausible value for Y nor Z would cause the theory to ultimately generate basic citizenship rights for those humans. For example, if non-autonomous humans are disenfranchised by X, and the value of Y is, for illustration, “all actual preferences,” then we might set the value of Z as simple aggregation or perhaps bargaining or even by taking a game theoretic approach such as by ranking preferences and finding a suitable equilibrium. I submit, although I cannot thoroughly argue, that regardless of what decision procedure we select, it is simply implausible that the contractors specified by the value of X would have sufficiently strong actual preferences to generate basic citizenship rights for non-autonomous humans. Regarding aggregation, it seems doubtful sufficiently many contractors would hold the necessary preference. Regarding bargaining, it seems doubtful that sufficiently many contractors would hold strongly enough the necessary preference. Similarly for equilibrium approaches. I further submit that the same holds true if we vary the value of Y within reasonable parameters, such as setting Y as “basic goods.”³⁸

³⁸ We might set the value of Y as “maximizing the well-being of all sentient entities, consistent with doing the same for all other sentient entities.” However, it is my sense that this would deviate too far from what social contract theorists typically take themselves to be doing. If I am incorrect about that, then I’ll happily concede. However, a value such as this for Y would simply run into the second horn of the dilemma, which is that it would also secure basic citizenship rights for domestic animals, which is my target conclusion. Thus, this strategy fails to enfranchise non-autonomous humans while disenfranchising domestic animals.

It remains conceptually open for someone to develop a social contract theory that reliably secures basic citizenship rights for non-autonomous humans. However, I am not hopeful that this can be done without thereby also securing basic citizenship rights for domestic animals, if at all. I draw the tentative conclusion that appealing to being a hypothetical object of care faces the dilemma of either failing to preclude, or helping to secure, my target conclusion regarding the enfranchisement of domestic animals. In the meantime, because there exist other potentially sufficient conditions for explaining why non-autonomous humans have a claim to basic citizenship rights, I continue canvassing those options, below.

Before continuing, however, it is worth drawing attention to a point that I made at the outset of Chapter 1 in Footnote 6. There, I said that the force of my argument is parasitic on the strength and specificity of our intuition that non-autonomous humans have a moral claim to Basic Citizenship Rights. At this point in my argument, I have found some of the most established theories incapable of drawing a bright line with all humans on one side of that line and all non-human animals on the other side of that line. Instead of growing more convinced of my conclusion, a reasonable reader may instead be growing comfortable with revisiting the precise nature of their intuition that non-autonomous humans ought to be politically enfranchised.³⁹

I reserve a more complete defense of the claim that non-autonomous humans have a strong moral claim to political enfranchisement—one that is not

³⁹ Recall that I conceive of ‘political enfranchisement’ in terms of the six Basic Citizenship Rights, not simply in terms of being given the vote.

dependent on the good will or whims of others—for Chapter 3. For now, suffice to concede that this is an attractive place to “get off the train.” Contractarian and contractualist theories, particularly, are rich theories replete with many conceptual tools and robust intellectual traditions. A reasonable person might be willing to modestly attenuate their understanding of non-autonomous humans’ claim to basic citizenship rights, and a reasonable person may have more confidence that their robust intellectual tradition will yield adequate accounts of why we can draw a bright line between humans and animals in the context of the political community. And a reasonable person may prefer these approaches to the more radical approach that involves politically enfranchising non-human animals. The support for my approach relies, I think, heavily on the strength, stability, and perhaps specificity of one’s intuitions about the basic citizenship rights of non-autonomous humans.⁴⁰

2.1.7 *Being a Rearee*

I have so far canvassed two versions of the property of being an object of care. In the first, being an object of care was understood descriptively. In the second, the property was understood hypothetically. A third variant of the property of being

⁴⁰ To perhaps help motivate continuing canvassing options as part of my abductive and negative argument, consider the following four phenomena: (i) our longstanding insistence on human exceptionalism, (ii) the steady pace of new evidence—experimental and theoretical—continuously debunking each explanation of why humans are exceptional, (iii) our intuition that kids and other non-autonomous humans morally must be afforded basic citizenship rights, and (iv) the weak nature of non-autonomous humans’ moral claim to basic citizenship rights if those rights are contingent on the preferences of rationally autonomous humans. Given the way that phenomenon (ii) weakens (i), and given the way that (iv) bolsters (iii), I believe it’s more reasonable to jettison (i) than to jettison (iii).

an object of care—understood normatively—has been developed recently by Jaworska and Tenenbaum (2014, 2015). They argue that—at least in the context of intrinsic moral status and the original Argument from Marginal Cases—non-autonomous humans enjoy a higher moral status than non-human animals on account of the fact that non-autonomous humans, but not non-human animals, have the property of being the proper target of a *person-rearing relationship*. As before, this strategy can be transposed from the context of the original AMC to the Political AMC, and we can refer to this candidate ground as the property of being a *reeree*.

A *person-rearing relationship*, according to Jaworska and Tannenbaum (2014), is the relationship between a caregiver and a non-autonomous human, such as an infant or a human who is significantly cognitively impaired. The authors argue that what is distinctive about non- autonomous humans, and what differentiates them from animals, is that caretakers *must* orient themselves toward non-autonomous humans as though they can become self-sufficient persons.⁴¹ As they argue, “Given that one is a parent, one is required to maintain this end and its components even in the face of strong evidence that the end is impossible.”⁴² This strategy can be transposed into the context of the Political AMC by proposing that what grounds non-autonomous humans’ claim to basic

⁴¹ Jaworska, Agnieszka and Tannenbaum, Julie. (2014) ‘Person-Rearing Relationships as a Key to Higher Moral Status’, *Ethics*, 124, 242-271. See particularly pp. 259-263. For broader discussion, see the debate between David DeGrazia and Jaworska & Tannenbaum in *Ethics*: DeGrazia, David. (2014) ‘On the Moral Status of Infants and the Cognitively Disabled: A Reply to Jaworska and Tannenbaum’. *Ethics*, 124(3), 543-556. Also, Jaworska, Agnieszka and Tannenbaum, Julie. (2015) ‘Who Has the Capacity to Participate as a Reeree in a Person-Rearing Relationship?’, *Ethics*, 125, 1096-1113.

⁴² Jaworska and Tannenbaum (2014), 261.

citizenship rights is that they are all capable of participating (largely passively) in a *rearing* relationship, so defined.⁴³

On its face, the appeal to *being a rearee* is implausible due to the way it calls for holding individuals to some standard that is divorced so entirely from their own actual, embodied, and individual reality.⁴⁴ Consider a non-autonomous human who, for genetic reasons, has no potential to become self-sufficient. For a caretaker to orient himself toward this non-autonomous human as though the non-autonomous human can become self-sufficient is to simply reject the actuality of the sort of entity that non-autonomous human is and what a good life looks for her. Far from being morally required, it seems morally condemnable for a caretaker to take this orientation toward a non-autonomous human, and particularly for a caretaker to do so.⁴⁵

More carefully: Travis Timmerman and Bob Fischer have recently offered a strong rejection of Jaworska & Tannenbaum's strategy.⁴⁶ I borrow their argument, here. On the appeal to *being a rearee*, autonomous humans enjoy a higher moral status than non-human animals precisely because non-autonomous

⁴³ I don't mean to imply that Jaworska & Tannenbaum would endorse this extension of their view.

⁴⁴ A similar critique can be and has been leveled against Martha Nussbaum's capabilities approach. There it is argued that Nussbaum establishes the set of morally salient capabilities by exclusive reference to able-bodied or "typical" or "paradigmatic" instances of the sort of creature in question (e.g., humans.). The implication of establishing an objective list of capabilities that accommodates only "ability" and not also "disability" is that those individuals who deviate from the norm stand to be importantly disenfranchised, since protections that flow from the objective list will not be protections that adequately or equitably protect them. However, Nussbaum's approach is notable for making vulnerability rather than self-sufficiency the core political concept.

⁴⁵ DeGrazia (2014), pp. 550-553 makes a similar point. DeGrazia then goes on to argue (p. 53-4) that even if Jaworska & Tannenbaum's strategy worked, it would leave a great number of non-autonomous humans disenfranchised.

⁴⁶ Timmerman, Travis and Fischer, Bob. (2019) 'The Problem with Person-Rearing Accounts of Moral Status', *Thought*, 8(2), 119-128.

humans are the right sort of things to be party to a person-rearing relationship. Such relationships obtain when it is *minimally reasonable* for the rearer to take the reeree's becoming a self-sustaining person, or "SSP" (or "rationally autonomous human," in my parlance). In order to enfranchise both typical human children and, for example, the genetically cognitively impaired child, this theory introduces a distinction between *end-aims* and *end-standards*. While it is not reasonable to take on the genetically impaired child's becoming an SSP on as an *end-aim*, it is reasonable to take the same on as an *end-standard*.⁴⁷ The reason that *becoming an SSP* is a reasonable end-standard for this sort of a child is that the child is the sort of individual for whom *flourishing* requires becoming an SSP.

It is at this point that the appeal to *being a reeree* faces serious difficulties. The attentive reader will already see that the appeal is close to collapsing into one of the other approaches already canvassed in this chapter. Jaworska and Tannenbaum simplify things by explicitly assuming that what flourishing involves for an individual is determined either by the intrinsic potential of that individual or by what's good for normal members of species to which the individual belongs. I have already argued that appeals to both species norms and potential fail. However, it is instructive to consider Timmerman and Fischer's case of *Anomaly* to see where the appeal to *being a reeree* fails:⁴⁸

⁴⁷ For typical human children, it is minimally reasonable to adopt the same as an end-aim.

⁴⁸ Timmerman and Fischer (2019, 122).

Anomaly

Two human parents give birth to Anomaly, where a large random genetic mutation causes (genotypic) speciation to occur. Consequently, the DNA make-up of Anomaly is importantly different from human DNA. For instance, although Anomaly is still fertile — i.e., were another of her kind to exist, she would be able to produce viable offspring — it's impossible for her to reproduce with a genotypic human. So, on any genotypic conception of species, Anomaly is not human. What's more, Anomaly's mutated DNA has exactly the same phenotypic effects as normal human DNA with one notable exception: she will not develop a cognitive capacity higher than that of an average two-year-old. As such, Anomaly looks identical to any other human baby and will continue to look like a normal human as she develops physically. However, her mental life will always mirror that of a set of cognitively disabled humans.

Anomaly is the only member of her species, and so it had better turn out that becoming an SSP is *not* a norm for her species. She also lacks the intrinsic potential to become an SSP, so by Jaworska and Tannanbaum's own lights, it is not minimally reasonable to take *becoming an SSP* on as either an end-aim or an end-standard for Anomaly. Anomaly, as such, has the lower moral status of a non-human animal, rather than having the higher moral status of a non-autonomous human or rationally autonomous human. This is true despite

Anomaly being otherwise indistinguishable from a genetically impaired 2-year-old who would enjoy the higher moral status.

Jaworska and Tannenbaum might just concede that species norm conceptions of flourishing fail, and instead fall back on an intrinsic potential conception of flourishing in order to make their account work. But this move faces a similar difficulty. Timmerman and Fischer use the helpful names of “Hadit” and “Neverdid” to make this point, which I’ve also addressed elsewhere in this chapter. “Hadit” is a human infant who lost her potential to become a rationally autonomous adult due to a traumatic brain injury sustained after being born. “Neverdid” is a human infant who, due to genetic defect, could never become a rationally autonomous adult. They are otherwise similar in all respects. Jaworska and Tannenbaum must either bite the bullet by conceding that Anomaly has a lower moral status than an otherwise identical human 2-year-old or by conceding that “Neverdid” has a lower moral status than “Hadit.”

2.1.8 Social Contribution

The strategies canvassed so far have all been drawn from the literature on the original AMC, which dealt with intrinsic moral status rather than having a claim to legal and political enfranchisement. At this point, it is useful to turn to strategies that can be drawn from the political theory literature, specifically.

One such account of why typical adult humans have a claim to citizenship is that these humans all contribute in some way to the realization of the benefits of citizenship. The operative notion of contribution might be understood in

different ways. For example, perhaps being a contributor requires making sufficiently significant of a contribution to the production of the benefits of citizenship. Alternatively, being a contributor might require that one's contributions be made intentionally.

We don't need to settle here the best interpretation of what "contribution" requires. We only need to consider two options: Either the operative notion enfranchises non-autonomous humans, or it does not. If it does not, then it cannot do the work required by Premise 2 of the Political AMC. Importantly, this is true whether it enfranchises no non-autonomous humans or if it enfranchises only some.⁴⁹ For example, if contribution requires something akin to working, then while some non-autonomous humans (and domestic animals) will be enfranchised, many non-autonomous humans such as infants and those with severe physical impairments that prevent working will not be. If the definition of contribution is loosened enough such that it does enfranchise non-autonomous humans, however, then it will also enfranchise domestic animals. By definition, domestic animals live under human control, which means they necessarily serve *some* function for human society. Thus, the appeal to being a contributor faces the same dilemma we have seen already: it either fails to do the work required by Premise 2 of the Political AMC or it is capable of doing the work required by Premise 2, but in doing so it also enfranchises domestic animals.

⁴⁹ Recall that I have defined non-autonomous humans as being sentient.

2.1.9 Being Bound by State Law

Another strategy that comes from the literature on political philosophy rather than the literature on intrinsic moral status is to appeal to the fact that being bound by a state's law constrains one's freedom, and that a fair exchange for this constraint on freedom is the protection provided by legal or political rights.⁵⁰ As with the strategy of appealing to contribution, however, this strategy faces a dilemma.

Generally speaking, the idea of being bound by a state's law(s) is morally significant because it constrains an individual's freedom. An interest in freedom can be either intrinsic or instrumental, which yields two ways of understanding the moral significance of being bound by a state's law. The first way to understand being bound by law is to understand the operative notion of being "bound" in a more restrictive way that only allows beings with an intrinsic interest in freedom to be bound. To have an intrinsic interest in freedom is to have an interest in freedom for its own sake, rather than because of anything that flows from it.⁵¹ However, having an intrinsic interest in freedom requires cognitive capacities not possessed by non-autonomous humans, such as the cognitive capacity for rational autonomy. Thus, while being bound by law may be a sufficient condition for having a claim to basic citizenship rights, it is not the

⁵⁰ In the literature that deals with the so-called "boundary problem" for democratic theory, this is sometimes referred to as the coercion principle. See Song (2012). For defenses of the principle, see López-Guerra (2005) and Abizadeh (2008 & 2010).

⁵¹ Characteristically, insofar as an individual has an intrinsic interest in freedom, even freedom that is reliably producing negative outcomes is still considered a good for her.

sufficient condition capable of doing the work required by Premise 2 of the Political AMC.

The second way to understand the moral significance of being bound by a state's laws law is to understand the operative notion of being "bound" in a less restrictive way that allows beings with an instrumental interest in freedom to be bound in the relevant way. An instrumental interest in freedom is an interest in freedom that ultimately cashes out in terms of some other value. For example, if freedom tends to maximize an individual's ability to eat her favorite food, then she may be said to have an instrumental interest in freedom. However, if the appeal to being bound by law is understood in this second way, then domestic animals, and not just non-autonomous humans, will be enfranchised and the Political AMC will go through.⁵²

Admittedly, the property of being bound by law, understood in the more permissive sense, is a more plausible candidate for explaining non-autonomous humans' claim to basic citizenship rights than several of the properties considered so far. However, I suspect the most plausible elements of an appeal to being bound by law are retained by the strategy of appealing to vulnerability, which is developed in the next section.

2.2 The Final Candidate

⁵² Instead of appealing to the property of *actually* being bound by (state) law, one might instead appeal to the property of being *bindable*, or having the potential to become bound by law. In this case, refer back to Section 2.1.4, which addresses appeals to potential.

I have so far canvassed a number of potential properties the possession of which could serve as a sufficient condition for having a defeasible moral claim to basic citizenship rights. I have argued that none so far is capable of accounting for the claim possessed by non-autonomous humans. I now turn to what I consider the only remaining candidate, which is the property of *being vulnerable*. There may be other possible plausible candidates, but I assume there are not. Before specifying my preferred notion of vulnerability in the present context, it is useful to say a few words about the notion more generally.

Vulnerability is a multiply ambiguous term, but in general it conjures a sense of helplessness in the face of a possible adverse event. Understood as such, the moral significance of vulnerability can be greater or lesser. If an adult and infant are both stranded on a small island with no potable water, perhaps it is true that while both are helpless to stop their impending dehydration, the infant is more helpless in this regard than is the adult. What varies in this example is the ease by which the helplessness in question can be eliminated. For example, the adult's helplessness in the island case can be eliminated by the presence of a potable water source merely one hundred yards away. The infant's helplessness in this case, however, is not so easily mitigated. In addition to variation of the foregoing sort, it is also possible to be helpless to adverse events that are of greater or lesser importance. The helplessness of the infant to avoid her impending dehydration is more morally important than the helplessness of the infant to avoid being tickled. Finally, helplessness may come about for reasons ranging from entirely under one's control to entirely out of one's control. For example, the helplessness of the person who goes skydiving to avoid spontaneous

parachute failure might be of less moral significance than the same individual's helplessness to fight off an Ebola infection unassisted.

I define "vulnerability," as I invoke that term in the context of the Political AMC, as follows:

Vulnerability

X is vulnerable just in case X's fundamental interests are systematically and over time sensitive to the actions of the state that controls the territory in which X resides, where this sensitivity cannot be reasonably avoided.

Notice that vulnerability, defined in this way very plausibly entails being sentient, because sentience is plausibly necessary for having fundamental interests, as I use that term, here. The fundamental interests I am interested in are those with moral relevance to a subject for that subject's own sake. An entity that lacks sentience lacks subjectivity and therefore cannot have anything done for *their* sake. When my friend hands me water to drink as refreshment, it is indeed the case that a fundamental interest of mine has been addressed in the provision of necessary nutrients to the continuous operation of the body in question. When that same friend then waters his potted flowers, however, it is not the case that a fundamental interest of that plant has been addressed in the provision of necessary nutrients to the continuous operation of that plant. Again recall that in Section 1 of this chapter it was briefly mentioned that sentience is very plausibly a necessary condition for having a claim to basic citizenship rights due to the fact

that that basic citizenship rights protect an individual's shot at a good life, and sentience is plausibly necessary for an individual to have a good. When I speak of vulnerability being a sufficient condition for having a defeasible claim to basic citizenship rights, I am therefore not ignoring the plausible fact that sentience is a necessary condition for the same.⁵³

In addition to the reference to “fundamental interests” in the above definition, the reference to “systematically and over time” also helps importantly restrict the set of individuals who are vulnerable in the relevant sense. For example, tourists who visit the United States could reasonably be considered to have their fundamental interests be sensitive to the actions of the U.S. government. However, the fact that this sensitivity is brief and episodic, rather than consistent and pervasive seems sufficient to explain why the tourists do not have a claim to basic citizenship rights.⁵⁴ Long term foreign visitors, on the other hand, could be considered as having their fundamental interests systematically and over time be sensitive to the actions of the United States. However, they would still fail to count as “vulnerable,” because they could avoid the sensitivity in question by simply returning to their home country.⁵⁵

⁵³ Note that our best current evidence tells us that entities such as insects (or trees) are not sentient. They therefore would not have fundamental interests in the sense used in this definition.

⁵⁴ On my definition of vulnerability, tourists satisfy multiple independently sufficient conditions for lacking a claim to basic citizenship rights.

⁵⁵ It might be thought that for long term visitors who have established lives in the U.S., it is not “reasonable” for them to avoid the sensitivity, systematic and over time, of their fundamental interests to the U.S. government by simply returning to their home country and leaving behind the lives they've created. I am ambivalent regarding such cases. On one hand, I see little cost to conceding this point. On the other hand, it remains open to say that because they were informed of the conditions of their visit, the subsequent decision to put down roots is not a decision for which the U.S. bears any responsibility, and cannot bear on the determination of “reasonableness” as that term appears in the definition of vulnerability. Note that there is also some ambiguity in how my definition would handle the case of refugees, though the details are of little concern in the present context.

As for non-autonomous humans, they are importantly dependent on caretakers for the satisfaction of their fundamental interests. This dependence is significant in the present context for two reasons. The first reason that the non-autonomous human's dependence is significant is that insofar as she is dependent on a caretaker who is subject to the jurisdiction of a given state, then she will satisfy the conditions of vulnerability with respect to that state. The reason for this is that within the territory controlled by a state, among the actions it engages in are the creation of laws that generally govern the conduct of individuals who happen to be caretakers. If, for example, a state decides not to pass a law requiring caretakers abstain from abusing the non-autonomous humans under the care, then the caretaker may abuse the non-autonomous human with legal impunity and the fundamental interests of the non-autonomous humans will be affected. Moreover, because non-autonomous humans retain a significant degree of dependence on their caretakers, the sensitivity of these fundamental interests is correctly understood as being "systematic and over time." The second reason this dependence is important is that for any non-autonomous human whose fundamental interests are systematically and over time sensitive to the actions of the state, it will not often be reasonable for that human to avoid the sensitivity in question. Consider, for example, a human with a mental age of seven years old. Even if this individual has very little in the way of an established life in the United States, she could not be reasonably expected to avoid sensitivity to the United States by moving to some other country because doing so is beyond her capabilities. Indeed, how reasonable it would be for her to avoid the sensitivity in question might be

entirely dependent on how reasonable it is for the caretaker to relocate with the non-autonomous human.

Stated somewhat more formally, some and only rationally autonomous humans serve as caretakers of non-autonomous humans, and all rationally autonomous humans living under the jurisdiction of a certain state have their conduct governed, systematically and over time, by the actions of the state. The fundamental interests of non-autonomous humans who are living under the care of a given rationally autonomous human are sensitive, systematically and over time, to the conduct of that rationally autonomous human. Given the nature of their dependency, it is typically not a reasonable expectation for a non-autonomous human to avoid the sensitivity in question. Therefore, the fundamental interests of a non-autonomous humans living under the care of some rationally autonomous human and residing under the jurisdiction of a given state are sensitive, systematically and over time, to the actions of that state, and the sensitivity in question cannot be reasonably avoided.

In addition to governing the conduct of caretakers, the actions of a given state have a variety of other impacts on the lives of non-autonomous humans. Most obviously, the state governs the behavior of individuals who might interact with non-autonomous humans in the day-to-day lives of those humans. Whether or not a state passes laws concerning, for example, the assault of non-autonomous humans (by non-caretakers), the circumstances under which medical experimentation can be performed on non-autonomous humans, the education provided to non-autonomous humans, the rescue of non-autonomous during times of disaster, or many more possibilities will have profound impact on

the daily lives of non-autonomous humans. Additionally, the actions of the state can create dedicated bureaus or agencies concerned with protecting non-autonomous humans, and the decision of a state to or not to do so will again have profound impacts on the fundamental interests of non-autonomous humans.

Non-autonomous humans are vulnerable with respect to the state in which they reside, and basic citizenship rights offer a way to mitigate this vulnerability. For this reason, I propose that being vulnerable is sufficient for having a *defeasible* claim to basic citizenship rights.⁵⁶ What is sufficient for having an *undefeated* claim to basic citizenship rights is the possession of both vulnerability and no defeaters. In the next section, I argue that non-autonomous humans do not possess any defeaters relevant to a claim to basic citizenship rights, at which point my support for Premise 2 of the Political AMC is complete.

2.3 No Defeaters

Recall that Premise 2 of the Political AMC reads “If non-autonomous humans have an undefeated moral claim to basic citizenship rights, then possessing vulnerability and no decisive defeaters is a sufficient condition for having an undefeated claim to basic citizenship rights.” I have so far argued that vulnerability is the only plausible candidate for grounding non-autonomous

⁵⁶ It might be thought that an appeal to vulnerability, so defined, disenfranchises non-autonomous humans who have been abandoned. I think that external moral considerations require us to take such a being under our care. Once we have done so, dependency and therefore vulnerability has been established. The same strategy is not available in the context of an appeal to care. We do not have a duty to care, when caring is understood in a psychological sense.

humans' moral claim to basic citizenship rights, insofar as they have such a claim. What remains to be argued is that non-autonomous humans do not possess any decisive defeaters relevant to a claim to basic citizenship rights. A moral claim can be defeasible either because it is subject to being *undercut* or because it is subject to being *overridden*. I discuss both options, below.

2.3.1 Undercutting

A moral claim is undercut just in case the ground(s) of the claim remains but the force that the ground(s) would otherwise generate is not produced. There are three examples of undercutting that might be of interest. The first is when the force of the claim is cancelled voluntarily, such as in the case of boxing with respect to one's claim to bodily integrity within the bounds of the boxing match. The second is when the force of the claim is cancelled involuntarily, but due to circumstances for which the individual is morally responsible, such as an attacker's right to bodily integrity in the case of unprovoked assault of an innocent. The third example of undercutting is when the force of the claim is cancelled involuntarily, but due to circumstances for which the individual bears no moral responsibility, such as when a person's negative claim to free movement is undercut by having contracted an extremely infectious and dangerous disease that requires quarantine.

The first two examples of undercutting can be dismissed in the context of basic citizenship rights because non-autonomous humans lack the requisite cognitive capacities to be morally responsible and to cancel the force of a moral

claim of such significance.⁵⁷ For example, if we imagine the case of a toddler announcing that she waives her right to bodily integrity, we recognize that we would not then enroll her in a boxing match, since of course her proclamation was morally impotent. The claim to basic citizenship rights, concerns affordances for having a reasonable shot at a good life, seems more similar to the case of boxing than the case of hugging.

The final possibility to consider is whether the claim to basic citizenship rights as possessed by non-autonomous humans might be undercut involuntarily and in the absence of moral responsibility. To illustrate this sort of undercutting, we can imagine a person who is walking on a bridge when suddenly the bridge disappears, and the person begins falling toward a second person who is sitting on the sidewalk far below. Although the falling person bears no moral responsibility for threatening the sitting person's life, it may be the case that the sitting person may seriously harm or even kill the falling person without thereby wronging that person.⁵⁸

It is not clear, however, whether this type of involuntary cancellation of the force of a moral claim is relevant in the context of the Political AMC. For the sake

⁵⁷ I leave open the possibility that a toddler possesses the moral authority to cancel weaker claims that she enjoys. For example, a toddler plausibly enjoys a weak defeasible claim against others not to touch her without her permission. It would therefore be wrong, *ceteris paribus*, to hug the child without her permission. However, by announcing that she would like a hug, perhaps the toddler exercises a genuine moral power she possesses.

⁵⁸ Although my opinion is immaterial to the present argument, I think that whenever any being who is at least a moral patient poses a serious risk of harm to any being who is a moral agent but bears no moral responsibility for doing so, the moral agent can never harm or killing that moral patient *without thereby wronging the moral patient*. Harming or killing the moral patient may under certain conditions be morally permissible, but it seems to be that moral residue would necessarily be generated in a case such as the one described. Thus, the moral patient's relevant claims against the moral agent to whom she poses a risk (e.g., to bodily integrity or to life) can only be overridden, not undercut.

of argument, we might imagine an alien species that carry a lethal virus against which human immune systems cannot defend and human doctors cannot inoculate. Even if these aliens possessed the ground(s) for a claim to basic citizenship rights, such as vulnerability, it is possible that their claim is undercut by the risk they unavoidably pose. In order for non-autonomous humans' claim to basic citizenship rights to be undercut in the same way, they would need to pose a similar risk to other prospective members of a political community. Given that non-autonomous humans (and domestic animals, for that matter) already live alongside other humans within the territorial bounds of political communities, it seems clear that such they do not normally pose a risk analogous to the one posed by our imaginary virus-bearing alien species.

2.3.2 Overriding

I have just considered the first way that a moral claim can be defeasible, which is by being subject to being undercut. The second way that a moral claim can be defeasible is if that claim is subject to being overridden. The paradigm example of overriding a moral claim is choosing to cut off the hand of one innocent human in order to save the planet from nuclear annihilation. What distinguishes overriding from undercutting is that when a claim is overridden, the force of the claim remains uncanceled. When a claim is overridden, it is permissible to act in such a way so as to contravene the claim in question but acting in such a way still wrongs the individual who possesses the claim. The fact that the individual in

question is wronged is precisely why overriding a right generates “moral residue,” which may take the form of requiring an apology or even compensation.

It is central to cases of overriding that some benefit be secured. To determine whether non-autonomous humans’ claim to basic citizenship rights might be overridden, we therefore must consider whether any benefits could be accrued by contravening their claim. Importantly, however, the benefit must be genuinely significant, which is not necessarily always so in cases of overriding. Weak or less important moral claims, such as my right to continue standing where I am currently standing, rather than an inch to the left, might be easier to override, perhaps only requiring a benefit to be secured that is only modestly more significant than the benefit accrued by the right being contravened. More important moral claims may not be overridden so easily. For example, it is not the case that one of my neighbor’s fingers could be involuntarily cut off in order to save some other entirely disconnected person from losing two of their fingers. We could, however, cut off my neighbor’s finger in order to permanently cure cancer.

The claim to basic citizenship rights is a claim concerning the adequate accommodation of an individual’s reasonable shot at having a good life, and therefore will demand a significant benefit be accrued in virtue of its contravention. It does not seem as though any such benefit exists in the context of non-autonomous humans. A fanciful possibility is that we may encounter a very powerful alien species that can be persuaded to leave us alone only by giving them a steady supply of the bones of non-autonomous humans. However, nothing of much significance hangs on this fact, because the same holds true for

typical adult humans. Similarly, we can imagine circumstances in which the claim to basic citizenship rights enjoyed by some individual non-autonomous human might be contravened in order to, say, stop an impending nuclear attack on Russia. However, the same holds true for individual rationally autonomous humans. If we set aside fanciful examples, it seems clear that under normal circumstances, the claim to basic citizenship rights as possessed by animals would not be overridden significantly more easily than the comparable claim as possessed by typical adult humans.

2.3.3 Conclusion

There are two ways that a defeasible claim might be defeated. The first is that it might be undercut. The second is that it might be overridden. I have considered both possibilities with respect to the moral claim that NPH have, if they have such a claim at all, to basic citizenship rights. Non-autonomous humans' claims to basic citizenship are not undercut, because both forms that undercutting might take—waiving and forfeiting—require a degree of agency not possessed by non-autonomous humans. Nor are non-autonomous humans' claims to basic citizenship overridden, because accommodating that moral claim, insofar as it exists, poses no great risk, nor does contravening that claim pose any great benefit. If non-autonomous humans have a claim to have their reasonable shot at living a good life be protected by the government, then that claim is undefeated.

2.4 Conclusion

Recall that the Political AMC runs as follows:

The Political AMC

- (P1) Non-autonomous humans have an undefeated moral claim to basic citizenship rights.
- (P2) If non-autonomous humans have an undefeated moral claim to basic citizenship rights, then possessing vulnerability and no decisive defeaters is a sufficient condition for having an undefeated claim to basic citizenship rights.
- (C1) Possessing vulnerability and no decisive defeaters is a sufficient condition for having a claim to basic citizenship rights.
- (P3) Domestic animals possess vulnerability and no decisive defeaters.
- (C2) Domestic animals have an undefeated claim to basic citizenship rights.

I have so far defended Premise 2 in two steps. First, I gave a negative abductive argument in support of the claim that vulnerability is a sufficient condition for a *defeasible* claim to basic citizenship rights. Then, I argued that non-autonomous humans do not satisfy any conceivable defeater for a claim to basic citizenship rights. In the next Chapter, I defend Premise 1.

CHAPTER 3: NON-AUTONOMOUS HUMANS

In the preceding chapter, I simply assumed that non-autonomous humans have a moral claim to basic citizenship rights. Recall that a non-autonomous human is a sentient human who lacks the higher-ordered cognitive capacities necessary for the ability to reflect on both the grounds and the likely outcomes of one's actions and to subsequently modify one's behavior in accordance with the bounds of rationality. In the present chapter, my task is to defend the claim that non-autonomous humans living under the state do in fact have a moral claim to basic citizenship rights, which is asserted by Premise 1 of the Political AMC. Once this task is complete, I can conclude that "vulnerability," as defined in Chapter 2, is actually sufficient in an unrestricted sense for possessing an undefeated claim to basic citizenship rights.⁵⁹

Basic citizenship rights are legal claims against a state that, I assume, are essential to protecting an individual's reasonable shot at living a good life.⁶⁰ From

⁵⁹ In Chapter 2, I argued that non-autonomous humans do not possess any defeaters for a claim to basic citizenship rights. That argument holds regardless of whether non-autonomous humans actually or merely hypothetically have a moral claim to basic citizenship rights. It therefore need not be repeated, here.

⁶⁰ As noted in Chapter 1, the specific content of the basic citizenship rights can be debated and refined, although doing so goes beyond the scope of the present project. Presently, the core focus remains on what sort of beings have claim to enfranchisement. A working assumption such as the specific basic citizenship rights I've presented gives us enough to reasonably work with. The goal of this chapter is to play out the implications of my argument on that working assumption, rather than the goal being to analyze my working assumption (i.e., to analyze the specifics of the six basic citizenship rights I've presented).

Chapter 1, recall that there are six basic citizenship rights, four of which *establish* a reasonable shot at giving a good life and two of which *maintain* the same. The six legal rights are: Legal Personhood, Bodily Security, Mobility, Socialization, Legal Standing, and Legislative Standing. I consider each, in turn.

3.1 Legal Personhood

The law recognizes just two categories of entities: persons and things.⁶¹ Under contemporary law, the set of legal things includes all inanimate objects and all non-human animals. The set of legal persons includes what are called “natural” persons, namely human beings, and what are called “juridical” persons, such as corporations. So, under the law, the Pepsi Corporation and I are both legal persons, while my dog Rover and my couch are both “things.”⁶²

Critically, only legal things can be the object of property rights, while only legal persons can be the holders of property rights. Property rights outline what actions legal persons who hold the title to a particular legal thing may perform

⁶¹ See, e.g., Favre, 2000, p. 502 or Wise, 1996, p. 493. Wise writes: “Gaius, the second-century Roman jurist whose *Institutes* was the most influential Roman jurisprudential text up to the time of Justinian, was the first to divide the law into the now-familiar categories of persons, things, and actions.”

⁶² It might be thought that this assertion is too simple, since animals are often legally protected in ways that cars are not. However, there are in fact only two legal classifications, and animals do indeed share a classification with cars. While animals are granted more legal protections than cars, these constraints on human freedom have been taken on voluntarily, and there are, as I suggest below, categorical limits on how far such protections can go given animals’ current legal classification. Roughly, the idea is that a liberal state can only constrain the freedom of citizens when doing so is in the public interest, or when those citizens have voluntarily taken on the constraints to their freedom that correspond to the protections in question. Insofar as animals are legal things, they do not help constitute the public interest, which means that their interests will not “automatically” constrain the freedom of citizens. All of this is consistent with the fact that human citizens have taken on some limited constraints to their freedom corresponding to weak legal protections for animals.

with their property, and jurisdictions tend to place some constraints on what uses certain property may be put toward.⁶³ For example, a pistol is a legal thing which may be the subject of property rights which are held by a certain legal person, such as an adult human. The adult who owns the pistol is physically capable of using the pistol for purposes such as violently coercing store owners to part with their fairly earned money, but most jurisdictions legally prohibit this sort of use of pistols. Similarly, while the owner of the pistol is physically capable of hiding the pistol in his pockets and subsequently walking around in public, many jurisdictions require that the owner of the pistol first satisfy certain conditions (e.g., paperwork, training, etc.) in order to enjoy the legal permission to perform the aforementioned action.

The question at hand is whether sentient, non-autonomous humans do in fact have a moral claim to being considered legal persons, rather than legal things. For illustrative purposes, it will be useful to consider a hypothetical human with a mental age of six years old, either due to actual age or due to developmental impairments. Call this human “Maggie.” Assume that Maggie is the sort of being that cannot enter into legal contracts and cannot be held legally responsible for actions which would otherwise be considered criminal acts or civil violations, meaning that the law does not view Maggie as capable of bearing legal duties.⁶⁴

⁶³ Favre, 2000, pp. 477-9.

⁶⁴ I intend here to make a legal rather than moral stipulation. The law often claims that legal personhood requires being capable of bearing legal rights *and* legal duties. Because I intend to reject this view, I construe Maggie as lacking the ability to bear legal duties. Maggie’s capacity, in a moral rather than legal sense, is thus beside the point. However, a being such as Maggie probably cannot enter into morally binding contracts. Note, however, that regarding legal contracts and minors, contemporary law does actually permit a constrained set of legal contracts

Speaking descriptively, the legal classification of Maggie has not been an entirely straightforward matter. Historically, humans like Maggie have been classified as property of their parents, or at least of their fathers.⁶⁵ It is generally accepted that, in the legal tradition of the West, this classification persisted more or less until the mid-nineteenth century.⁶⁶ It was not until the twentieth century that “the concept of parental obligations as an outgrowth of divinely conferred paternal ownership and control of children had given way to that of parental trusteeship in the child’s ‘best interests’.”⁶⁷ Today, it is legally accepted that children, and indeed all sentient, non-autonomous humans existing outside of another person’s uterus are legal persons.⁶⁸

Speaking normatively, the current legal classification of non-autonomous humans—like Maggie—as legal persons seems intuitively correct. The alternative classification invites uses of non-autonomous humans that we have good reason to prohibit. For example, property may be sold, destroyed, and put toward uses that serve the interests of the owner. A property model of children, for example, can allow parents to sell their offspring to unsavory persons in order to settle

to be entered into by such humans, namely pertaining to the purchase of basic goods such as food. Regarding legal responsibility, the lowest internationally specified age of responsibility is seven years old. Within the US, a number of sub-federal jurisdictions do not specify an age but do employ a test of cognitive capacities.

⁶⁵ Wise, 1996, p. 493. Woodhouse, 1992, pp. 1043-5.

⁶⁶ Grossberg, 1985, p. 25 and p. 295. See also Woodhouse, 1992.

⁶⁷ Woodhouse, 1992, pp. 1038-9. However, while Woodhouse accepts this general timeline in broad strokes, her article emphasizes that a more granular look at the legal terrain reveals that major US Supreme Court decisions in 1923 and 1925 codified the traditionalist view of children-as-property in a way that has significant impact on our contemporary legal practice.

⁶⁸ Favre (2000, pp. 481-2) writes that “under existing concepts, it is fair to state that the newborn human is self-owned. Certainly, in the negative sense, no one else is the owner of human [infant] Susan.” Favre also cites a 1988 court decision: “Our law views the child as an individual with the dignity and humanity of other individuals, not as property.” (United States v. King, 840 F.2d 1276, 1276 (6th Cir. 1988))

debts, prostitute them or force them to serve hard labor at young ages, or kill them should whim or financial pressure call for it.⁶⁹

It is consistent with a classification of children as property, however, that jurisdictions could place some constraints on the uses toward which humans like Maggie could be put. These constraints might come in the form of child welfare laws that, for example, permit only certain sorts of corporal punishment, forbid selling children, and perhaps prohibit prostitution of the same. What is important about constraints that are placed on property rights by a jurisdiction, such as a state, is that the constraints must be justified as being in the public interest of that jurisdiction. Insofar as children are considered property rather than persons, their interests do not, in and of themselves, help constitute the public interest. In order for their interests to factor into the public interest, legal persons would need to take those interests on as their own, and therefore voluntarily take on certain constraints to their own freedom for the sake of children-as-property. For reasons addressed in Chapter 2.1.4, there is no reason to believe that the set of legal persons, insofar as that set excludes children, would voluntarily adopt the requisite sort of constraints corresponding to what children are morally owed. Therefore, the constraints placed on property rights over children will predictably fail to adequately reflect the interests of the children themselves.⁷⁰

⁶⁹ “Roman law treated children as chattels. The Roman *Paterfamilias* could not only sell his children at will, but also kill them.” (Woodhouse, 1992, p. 1044)

⁷⁰ Kelch, 1998, p. 532 and p. 537. A similar point is made by Robert Garner (2013) regarding the inability of liberalism to support robust animal protections unless animals are viewed as proper recipients of justice (since liberalism constrains individual liberty only insofar as is required by justice).

By contrast to the foregoing model, a model of non-autonomous humans as legal *persons* construes those humans as being “essentially free [and] merely entrusted to the parent for nurture.”⁷¹ This model frames parents and other caretakers of humans like Maggie as stewards, rather than owners. A defining element of stewardship, so understood, is that the actions of the steward must be guided by what is in the *best interest* of the non-autonomous human.⁷² The constraints that can be developed on the basis of what is in the best interest of Maggie will be more demanding and will better protect Maggie, when compared to the constraints that are achievable when Maggie is considered as property. For example, Maggie’s *owner*, even in a jurisdiction with child welfare laws, could decide to not enroll Maggie in school so that Maggie could be put to work, either at home or elsewhere. So long as Maggie’s hours of labor were not excessive and her treatment was not overly abusive, considerations of her welfare would be satisfied.⁷³ By contrast, Maggie’s *steward* would be obligated to enroll Maggie in school in order to give her the best shot at living a good life.

I take it as non-controversial that the conduct of caretakers toward non-autonomous humans morally ought to be constrained by “best interest”

⁷¹ Woodhouse, 1992, p. 1040.

⁷² See Carbone (2014). Note that an unqualified “best interest” standard is probably too strong, and theorists tend to prefer a weaker standard whereby caretakers are obligated to act in the best interest of the child *compatible with* certain important interests of the caretakers themselves, other dependents in the family, and non-family members. So, a caretaker is not obligated to donate both her kidneys to her child, nor is she obligated to kill strangers to feed her child. However, this qualification does not affect the central distinction between the child legally conceived of as property versus person. Only in the latter do the interests of the child itself unavoidably and centrally factor into the decision making regarding the child.

⁷³The limitations on the constraints that can be placed on property rights through mechanisms such as welfare laws derive from the fact that property rights by their very nature carve out a sphere of autonomy for the individual *contra* the collective (e.g., *contra* the public interest). See Maillard, 2010, pp. 9-15.

considerations, rather than mere “welfare” considerations. Moreover, it seems correct that caretakers’ obligation in this regard is sufficiently significant that it ought to be enforceable against those caretakers. Insofar as this is true, and insofar as the state is either the holder of all enforcement rights of those within its borders or the best situated to enforce enforceable rights, what is entailed is that non-autonomous humans do in fact have a moral claim to the first basic citizenship right: legal personhood.

3.2 Rights of the Body

The second and third basic citizenship rights concern *bodily security* and *mobility*. Each one deals with the fact that an embodied entity cannot have a reasonable shot at living a good life unless certain affordances are made for their physicality. As with legal personhood, I argue that non-autonomous humans do in fact have a moral claim to both bodily security and mobility by appealing both to contemporary practice and what the world would be like were non-autonomous humans to not have the claims in question.

3.2.1 Bodily Security

The legal right to bodily security, as defined in Chapter 1, ensures that an individual’s body is legally protected from damage, or harm, including death. Damage to a body may occur in a number of ways. Most obviously, a body can be damaged through the intentional actions of an autonomous being, as is the case

in the contexts of assault or war, or through the negligence of the same sort of being. A body may also be damaged through the unintentional action of a non-autonomous living being, as when the bear mauls the fisherman. Damage to a body may also occur in the course of natural disasters, such as earthquakes, floods, and the like. Lastly, damage to a body may occur on account of disease or other medical condition, as well as through malnutrition or exposure.

The myriad ways in which a body may be damaged are commonly protected against by a state. For example, the laws of a state make illegal intentional acts of damage such as murder and assault, and those laws are upheld through an enforcement arm (e.g., police) and through a judiciary. The state also maintains a military, which provides defense to the people living within the state from attack. Similarly, the state typically provides some form of defense or rescue from natural disaster, which might take the form of evacuation, emergency aid, the building of levees, the preemptive strategic burning of tracts of land, the monitoring of weather trends and seismic activity, and more. Protection against disease and other medical conditions is provided either in the more robust form of universal health care or in less robust forms such as laws prohibiting medical providers from turning away patients in emergency need for reasons related to ability to pay.

For present purposes, we can restrict our attention to the cases of (i) murder, (ii) assault, (iii) protection during war, (iv) rescue and relief in times of natural disaster, and (v) adequate nourishment and medical assistance. If non-autonomous humans did not have a moral claim to elements (i) and (ii) of the right to bodily security, then the state would not be obligated to protect non-

autonomous humans from being killed, injured or abused. But this just seems wrong. Intuitively, the state is obligated to provide the aforementioned sort of protections, and that is an enforceable obligation that it owes specifically to non-autonomous humans.

Similarly, if non-autonomous humans did not have a moral claim to elements (iii) and (iv), which are protection during war and rescue/relief in times of natural disaster, then the state would be permitted to selectively protect and rescue only rationally autonomous humans during times of warfare or natural disaster. However, intuitively the state does not enjoy this permission. In the aftermath of Hurricane Katrina in the United States, it would have been enforceably morally impermissible for the government to selectively deploy boats and helicopters to rescue only rationally autonomous adults, and not also non-autonomous humans. Were a mainland invasion of the United States by a foreign state to occur, it would be enforceably morally impermissible for the U.S. government to relocate all rationally autonomous humans to dedicated secure, fortified locations for the purposes of more easily defending them, while simultaneously abandoning the non-autonomous humans to remain in their unprotected dwellings. Moreover, the two examples just described are morally impermissible because they involve violating claims possessed by the non-autonomous humans themselves, rather than claims possessed for example by the non-autonomous humans' caretakers.

Finally, because non-autonomous humans are importantly dependent on others to meet their basic needs, it is worth drawing attention to the right to nourishment and medical assistance, which are addressed by element (v) of the

right to bodily security. We can imagine the case of a non-autonomous human who has a potentially lethal but highly treatable disease, and whose caretakers choose not to seek medical treatment for the non-autonomous human, perhaps because they don't like the doctor very much or they simply don't feel like it or even because they don't believe in medicine. I take it as non-controversial that the caretakers in this example have done something morally impermissible. Moreover, it seems that the course of action was *not* morally impermissible simply because it, for example, violated a public interest in seeing children grow to become adults. Rather, it seems as though the course of action was morally impermissible because it wronged the non-autonomous human in question. That human had a moral claim to that medical assistance and due to her lack of robust cognitive capacities was morally incapable of cancelling that right, and therefore the actions of the caretakers violated an undefeated claim possessed by the non-autonomous human. Like the others, this claim seems to be enforceable.

I conclude that non-autonomous humans have a moral claim to the second basic citizenship right, which is bodily security, on the grounds that were no such claim to exist, then morally impermissible courses of action would either be morally permitted *or* could be unpermitted but for the wrong reasons.

3.2.2 Mobility

The second basic citizenship right that deals with the physical body is the right of mobility. Mobility is critical to having a reasonable shot at living a good life, because it allows an embodied being to navigate the physical world in accordance

with their preferences, such as in the pursuit of play, companionship, nourishment, novel experience, or any number of other ends. The legal right of mobility under consideration is to be understood as a strong presumption in favor of mobility both within the private and public sphere. Understood as such, it may require, among other things, infrastructure accommodations and assistance.

To begin, the most basic privilege entailed by having a legal right to mobility is the right to simply exist in, or be present in, a space. In the context of the public sphere, the idea would be that non-autonomous humans cannot be excluded from the public space. Such exclusions could take the weaker form of requiring that non-autonomous humans never be unaccompanied or the stronger form of requiring that they only ever exist in private dwellings, such as homes, vehicles, and privately-owned buildings. In addition to this basic privilege, the strong presumption of mobility also includes accommodations in the form of infrastructure modifications and assistance that take into account the different motor, sensory, and cognitive endowments possessed by persons. If this legal right were possessed by non-autonomous humans, then for example the idea would be that if some non-autonomous human lives in a home where important elements of the home are split between different stories and the stairs are too tall or too steep for her to traverse, then that human has a right to either an alternative means of traversing the stairs or a *prima facie* right to be assisted in traversing them upon request. Similarly, a person with Down Syndrome who wishes to go to the park has a right either to be assisted in going to the park by another person or to a public transportation system that can accommodate any

relevant impairments such as speech, sight, or hearing difficulties that may obtain for the individual in question.⁷⁴

If non-autonomous humans do not have a moral claim to the legal right of mobility, so described, then they could be prohibited from the public sphere, and that prohibition could be legally enforced. I take that possibility as a nonstarter. There would also be no legally enforceable duty that caretakers (at home) and the public itself (in the public sphere) provide adequate infrastructure accommodations or opportunities for assistance in order to practically permit non-autonomous humans to navigate their world, within reason. For example, in the hypothetical case of a caretaker who persistently and over time refused the requests of his six-year-old child to the park without reason other than whim or laziness, thereby systematically frustrating the satisfaction of reasonable desires which she is dependent on others to satisfy, the child would have no recourse under the law. While this possibility is less obviously morally problematic than the possibility of prohibiting non-autonomous humans from the public sphere, the limitations it imposes are nonetheless unacceptable. As Donaldson and Kymlicka note: “We use forms of restraint and confinement with infants and children for several years until they can safely negotiate their environment. Such restrictions call for clear justification, however.”⁷⁵

Although non-autonomous humans are not, by definition, rationally autonomous, they still do possess different, perhaps more limited forms of

⁷⁴ Individuals with Down Syndrome have higher incidents of the impairments just mentioned. See, e.g., Hickey et al. (2012), particularly pp. 140-2.

⁷⁵ Donaldson and Kymlicka, 2011, pp. 126-7.

autonomy, such as what Tom Regan calls “preference autonomy” or Steven Wise calls “practical autonomy.” Wise defines that term as follows:⁷⁶

“Practical autonomy” is not just what most humans have but what most judges think is *sufficient* for basic liberty rights, and it boils down to this: a being has practical autonomy and is entitled to personhood and basic liberty rights if she:

1. can desire;
2. can intentionally try to fulfill her desires; and
3. possesses a sense of self sufficiency to allow her to understand, even dimly, that it is she who wants something, and it is she who is trying to get it.

Consciousness, not necessarily self-conscious, and sentience are implicit in practical autonomy.

Most non-autonomous humans, with the probable exception of infants who for independent reasons lack the sort of interests that correspond to mobility, satisfy Wise’s definition of practical autonomy. The frustration of even practical autonomy, either through actively creating barriers to its exercise or through neglecting to positively foster it, harms a non-autonomous human in ways that are sufficiently significant to be enforceably prohibited. Insofar as the non-

⁷⁶ Regan, 1984, p. 86 and Wise, 2002, p. 32. Note that Wise (2002) is dedicated entirely to the question of notions of autonomy and corresponding moral claims to legal liberty rights. See also Giroux (2016)

autonomous human is embedded within a state context and possesses “vulnerability” in the sense defined in the previous chapter, it seems correct that she has both a negative and positive moral claim against the state to grant her a legal right to mobility.

3.3 Socialization

The fourth basic citizenship right concerns socialization. Of the six basic citizenship rights, it is the final of what I’ve referred to previously as “basic” or “substantive” basic citizenship rights, which are those rights that I claim *establish* a reasonable shot at living a good life. The remaining two basic citizenship rights still to be considered—legal and legislative standing—are referred to as “procedural” basic citizenship rights, which are critical to *maintaining* the reasonable shot at a good life that is secured by the four “substantive” basic citizenship rights.

The legal right to socialization, as it is understood in the present context, ensures that an individual is equipped with a basic set of tools, both interpersonal and intrapersonal, required to have a reasonable shot at leading a successful life in the environment in which they live.⁷⁷ Socialization includes basic education (e.g., in mathematics, history, etc.) as well as a chance to become familiar with the sights, sounds, and behavioral cues that are dominant in the world they live in. For example, we can imagine a child becoming frightened by the sound of a

⁷⁷ See, e.g., Donaldson and Kymlicka, 2011, p. 123.

blender or of a vacuum, and that fright can be ameliorated by helping that child grasp that no harm corresponds with the sensory input in question. Socialization also includes lessons pertinent to the navigation of both infrastructure and other individuals in their shared community. For example, children do not simply come into the world knowing that cars are very heavy objects that travel at high velocity, or that the pavement reliably indicates the presence of cars. Similarly, children do not simply come into the world with an innate grasp of certain social cues and patterns of interaction. This is particularly true for those which are culturally specific. For example, a child raised for six years in a typical upper middle-class Anglo-Saxon home would likely experience significant sensory overload, uncertainty, and even anxiety if he were, suddenly and without socialization, to find himself spending his seventh Thanksgiving in a typical working class African American home. Play, whether with another child, an older human, or non-human animals, also provides an important context in which children develop the intrapersonal and interpersonal skills needed to successfully navigate their shared community.

The law recognizes that non-autonomous humans have a right to socialization, and it seems morally correct in doing so. Take, for example, the extreme case of “Genie,” the young child discovered in 1970 to have been locked in a dark room, restrained, and not given a chance to ever have anyone talk or interact with her (among other abuses). Distinct from the violations of Genie’s rights to mobility and bodily security, her circumstances also left her with significantly underdeveloped interpersonal capacities, such as for speech due to having heard very little spoken word. The law prohibits this sort of social

isolation of children. In a more mundane context, the law also requires parents provide children with a basic education that must satisfy certain criteria. In a similar vein, school curricula include not only standard academic material such as mathematics, civics, and the like, but also material that deals with infrastructural issues such as road safety, emergency services, personal hygiene, and more.

I take it as uncontroversial that the law is morally correct in protecting non-autonomous humans in these ways, given the moral undesirability of the alternative. To fail to socialize a non-autonomous human that satisfies the conditions for possessing “vulnerability” seems to do impermissible injury to that non-autonomous human, regardless of the impact on any other person(s). Additionally, the injury in question seems to be of sufficient moral significance for a prohibition against causing it to be enforceable. The best explanation is that non-autonomous humans do in fact have a moral claim to socialization.

3.4 Procedural Rights

I have so far provided motivation for the assertion that non-autonomous humans living under the state do in fact have moral claims to each of the four “substantive” basic citizenship rights: legal personhood, bodily security, mobility, and socialization. Each “substantive” basic citizenship right is important because without it, significant disruptions to non-autonomous humans’ life prospects could occur. However, there are two other ways that such disruptions could

occur, which warrants two additional prohibitions in the form of the two “procedural” basic citizenship rights.

The most obvious way that significant disruptions to non-autonomous humans’ life prospects could occur is for the relevant laws to simply not be “on the books.” The less obvious ways that such disruptions could occur are if the legal rights in question were to be either inadequately enforced or modified/cancelled. For reasons given below, these two possibilities, coupled with a commitment to the four “substantive” basic citizenship rights, entail two additional “procedural” basic citizenship rights.

3.4.1 Legal Standing

Recognizing the claim of non-autonomous humans living under the state to legal personhood, bodily security, mobility, and socialization entails developing various legal protections for those humans. However, not all legal protections take the form of criminal prohibitions. Some legal protections fall under the domain of civil, rather than criminal law. Take, for example, the legal right to bodily security possessed by a non-autonomous human. One law that plausibly falls out of this right is a *criminal* prohibition against abuse and neglect. If a caretaker is thought to be guilty of violating this prohibition, then the government will bring a criminal case against them. However, other laws that fall out of this right to bodily security concern non-criminal prohibitions, such as the prohibition against causing a child an injury in a car accident. If a child is injured in a car accident due to the fault of the driver of the other car, a civil suit may be

brought on behalf of the child to seek relief against that driver, such as for physical pain, emotional stress, or a reduced ability to earn a living in the future.⁷⁸ This suit is distinct from the suit which the child's caretakers may file to seek relief, such as for medical expenses. Similar cases can be imagined wherein the party at fault is a corporation, rather than a natural person.⁷⁹

If non-autonomous humans did not have a moral claim to legal standing, then they would not have an enforceable claim to relief of the sort described in the example just rehearsed of personal injury. However, it does not make good sense to recognize that non-autonomous humans have a moral claim to the aforementioned four "substantive" basic citizenship rights, but to not allow them access to the realm of civil law. Doing so would disallow them from seeking relief in accordance with civil statutes that follow from their basic citizenship rights. In order to ensure that these humans have full access to the relief that follows from their basic citizenship rights, the only options would be to either make all relevant laws criminal rather than civil or to simply grant non-autonomous humans access to civil suits. The former seems needlessly punitive and unmotivated, and the latter is already common legal practice. It seems, then, that a moral claim to legal standing does in fact follow from a legal claim to legal personhood, bodily security, mobility, and socialization.

Importantly, civil suits may also be brought against state actors. The legal rights to legal personhood, bodily security, mobility, and socialization give rise to

⁷⁸ The details will depend on the particular legal codes of each state, at least within the context of the United States. For a pertinent discussion, see Spizman and Kane (1992).

⁷⁹ We might imagine negligence on the part of a toy manufacturer or a company that makes candy leading to injury on the part of children.

certain governmental infrastructure (e.g., the U.S. Children’s Bureau, state-level Child Protective Services, etc.) and certain laws governing the conduct of various actors within that infrastructure. Relevant examples of state actors include police officers, officers of the court, and government workers in agencies, bureaus, or offices dedicated to protecting children. It is possible for all of these such actors to violate the laws which govern their conduct with respect to non-autonomous humans’ legal rights. For the same reasons as rehearsed in the personal injury example given above, acknowledgment that non-autonomous humans have a claim to the four “substantive” basic citizenship rights entails a moral claim to the procedural basic citizenship right of legal standing.

Finally, note that in addition to granting the ability to bring civil suit against private citizens, corporations, or state actors, legal standing also grants an individual access to appellate procedures. When an individual brings civil suit, it remains possible for a court to render a faulty judgment. Appellate procedures allow an individual to appeal decisions rendered within the context of civil law. Insofar as it is warranted for an individual to have legal standing to initiate civil proceedings, this second facet of legal standing follows uncontroversially.

3.4.2 Legislative Standing

The second procedural basic citizenship right, and final of the six basic citizenship rights, is *legislative standing*. For reasons similar to those just rehearsed regarding legal standing, an acknowledging that non-autonomous

humans have a moral claim to the four “substantive” basic citizenship rights entails they possess the same to legislative standing.

To have legislative standing is to have at least some of one’s interests to count within the legislative process. For some individual’s interests to count is not merely for that individual’s interests to *constrain* the legislative decisions made by others in the absence of the individual in question, but also for the that individual’s interests to factor into *determining* the legislative decision. To illustrate this distinction, imagine a married couple is deciding what to do with their Friday evening. Only the two parties who are part of the couple get to decide what, from a certain set of alternatives, will be done. However, parties who not part of the couple can nonetheless constrain the set of alternatives available to the couple. For example, the couple may not use their Friday night to murder their friends. In the context of legislative standing, imagine the United States Congress were deciding whether to pass a law that would give every Chinese national on the planet a lump sum gift of ten thousand dollars per person.⁸⁰ Because the Chinese population is about four times the population of the United states, we can safely assume that if Chinese nationals enjoyed legislative standing in the United States, then the law would pass quite easily. However, if Chinese nationals lacked legislative standing in the United States, the law would not obviously pass.

Defined in this minimal way, legislative standing is consistent with a number of schemes regarding the manner in which an individual’s interests

⁸⁰ We can assume for the sake of this example that the United States would not then go bankrupt and crash the global economy.

“count.” For example, an individual with a full vote in a given election would be considered as having legislative standing, as would an individual who gets a vote that is only worth some fraction of one. In the context of the legislative standing of non-autonomous humans, I do not assume any particular scheme detailing the precise manner in which non-autonomous humans’ interests “count.” Rather, I assume only that the sense of “counting” under discussion is not trivial, such as being merely one trillionth of a full vote.

Additionally, a particular scheme of legislative standing for some individual could either allow that individual’s interest to count in any decision whatsoever that might arise within the legislative process or only allow the interests to count in a certain class of decisions. For example, we could imagine the United States granting Mexican nationals each half a vote on legislative matters within the United States Congress concerning the Colorado River, but no voting power on any other issue that Congress might consider.

Democratic theory does not typically leave room for drawing lines of this sort, but it is nonetheless a relatively natural idea that having a stake in a certain legislative decision is at least a necessary condition for having voting power with respect to it. Assuming this intuition is correct, then insofar as one can be certain that a given individual has no conceivable stake in a certain class of legislative decisions, that individual’s legislative standing can reasonably be abridged with respect to that class of decisions. For example, we can be confident that non-human animals cannot conceivably have an interest in whether a certain national park is named “Wyoming National Park” or “Grand Teton National Park.” Thus, we can be confident that whether or not non-human animals are capable of

having legislative standing under certain conditions, any legislative standing they might be granted will never include voting power with respect to the aforementioned sort of decisions. By contrast, we might think that because rationally autonomous humans are capable of having an interest in what actions are undertaken “in their name,” that the set of decisions in which they have a stake has no comparable in-principle restrictions.

For present purposes, my intention is only to defend the limited claim that non-autonomous humans have legislative standing of some non-trivial sort (e.g., not one trillionth of a vote) specifically with regard to issues pertaining to the adequate accommodation of their basic citizenship rights. Consider, for example, the basic citizenship right of bodily security. Assume that because non-autonomous humans have a claim to this legal right, a law has been created by the legislature that compels rescue services to include non-autonomous humans in their rescue efforts during natural disasters. Then imagine that one day the legislature decides to modify the original law, perhaps by deleting it entirely or perhaps by adding that rescue agencies may only use privately donated money to fund rescues of non-autonomous humans (whereas public funds may be used for rescue of rationally autonomous humans). Imagine that the modified law stands for two years before being reverted, and during those two years several natural disasters occur, and two million non-autonomous humans were not rescued when they otherwise would have been. If non-autonomous humans were granted legislative standing corresponding to their other basic citizenship rights, then the risk of this sort of thing would be minimized. To fail to provide non-autonomous humans legislative standing with respect to their other basic citizenship rights

opens the door to avoidable lapses in precisely the protections that are supposed to follow from those basic citizenship rights. For this reason, it seems acknowledging that non-autonomous humans have a moral claim to the four “substantive” basic citizenship rights entails acknowledging they also have a moral claim to the procedural basic citizenship right of legislative standing, in the constrained sense mentioned above.

3.5 Conclusion

In Chapter 2, I argued that *if* non-autonomous humans have a claim to basic citizenship rights, then the best explanation is that “vulnerability,” in an unrestricted sense, is a sufficient condition for having a claim to basic citizenship rights. In the present chapter, I argued that non-autonomous humans do in fact have a moral claim to the set of six legal rights that I am referring to as basic citizenship rights. To defend this claim, I first argued that non-autonomous humans have a moral claim to legal personhood, bodily security, mobility, and socialization on the basis that the possible world in which they do not describes a morally unacceptable state of affairs. I then argued that non-autonomous humans have a moral claim to legal and legislative standing on the basis that the underlying motivation for their claim to the first four basic citizenship rights cannot be adequately accommodated otherwise. I can now conclude that “vulnerability” is sufficient for having a claim to basic citizenship rights. My next task is to argue that domestic animals are “vulnerable,” and to explore the implications.

CHAPTER 4: DOMESTIC ANIMALS

I have defined a domestic animal, for a given state, as a sentient, non-human member of the biological “*Animalia*” kingdom who lives within the bounded territory of that state and is under the control of humans, where that control can involve access to living space, nutrition, and other important parts of the being’s life. The first task for the present chapter is to defend Premise 3 of the Political Argument from Marginal Cases (AMC), which is the claim that domestic animals are “vulnerable” as defined in Chapter 2 and that they possess no defeaters relevant to a claim to basic citizenship rights. If this is so, then given my foregoing defenses of Premises 1 and 2 of the Political AMC, I can finally conclude that domestic animals have an undefeated claim to basic citizenship rights. Consequently, the second task for the present chapter is to explore what implications do and do not follow from this conclusion. The two tasks for the present chapter correspond to Premise 3 and Conclusion 2 of the Political AMC, respectively. For reference, recall that the Political AMC runs as follows:

The Political AMC

- (P1) Non-autonomous humans have an undefeated moral claim to basic citizenship rights.
- (P2) If non-autonomous humans have an undefeated moral claim to basic citizenship rights, then possessing vulnerability and no decisive

defeaters is a sufficient condition for having an undefeated claim to basic citizenship rights.

(C1) Possessing vulnerability and no decisive defeaters is a sufficient condition for having a claim to basic citizenship rights.

(P3) Domestic animals possess vulnerability and no decisive defeaters.

(C2) Domestic animals have an undefeated claim to basic citizenship rights.

I turn now to defending P3 of the Political AMC.

4.1 The Vulnerability of Domestic Animals

To begin, recall that vulnerability, in the context of having a claim to basic citizenship rights, has been defined as follows:

Vulnerability

X is vulnerable just in case X's fundamental interests are systematically and over time sensitive to the actions of the state that controls the territory in which X resides, where this sensitivity cannot be reasonably avoided.

Domestic animals satisfy the conditions for being vulnerable, so defined. Recall that domestic animals are defined as sentient non-human animals living under the *control* of humans. For the sake of ease, we can refer to those humans who exert the relevant sort of control as "caretakers." Among the various actions states engages in are the creation of laws that govern the conduct of caretakers. If,

for example, a state decides not to pass a law requiring caretakers abstain from abusing domestic animals under the care, then the caretaker may abuse the non-autonomous human with legal impunity and the fundamental interests of the non-autonomous humans will be affected. Moreover, because domestic animals retain a significant degree of dependence on their caretakers, the sensitivity of these fundamental interests is correctly understood as being “systematic and over time.” As was the case with non-autonomous humans, therefore, the dependency of the domestic animal when coupled with the fact that states govern the conduct of the individuals on whom the domestic animals are dependent establishes that domestic animals satisfy the first element of “vulnerability”: systematic sensitivity of interests to the state.⁸¹

The second element of “vulnerability” concerns whether the sensitivity in question can be reasonably avoided. Unsurprisingly, it is typically not a reasonable expectation for a domestic animal to avoid the sensitivity in question. Unlike a tourist visiting the U.S., we cannot reasonably expect the domestic animal to simply relocate herself. The most obvious reason for this is that the animal is under the control of some human, and cessation of the control in question is not up to the domestic animal. Additionally, domestic animals cannot navigate the human environment with sufficient reliability to simply relocate themselves to another state or to a territory not practically governed by the state

⁸¹ In addition to governing caretakers, the state performs other actions to which the fundamental interests of a domestic animal are sensitive. For example, the state also governs humans with whom domestic animals may interact with in the course of the normal lives, but who do not have control over those animals. Additionally, the state operates institutions that can have profound impacts on the lives of domestic animals, such as rescue operations during times of natural disaster or wartime protections during times of war.

(e.g., the “wild”). A chimpanzee cannot book her own flight from a U.S. research lab back to the Congo, nor can she hail a cab from the airport back to the jungle. Moreover, if she could do all of this, there’s a real possibility that her ability to navigate a non-human environment has been adversely affected by her time under the control of humans. For domestic animals that are members of *domesticated* species, such as dogs, years of selective breeding practices have adversely impacted their innate ability to successfully navigate an environment in which they are *not* under the control of a human. For domestic animals that are not members of domesticated species, such as lions, their time under human control may have caused them to fail to develop critical natural behaviors (e.g., hunting techniques) or to lose certain critical behaviors (e.g., healthy fear and avoidance of humans and other animals). In either case, domestic animals cannot reasonably avoid the sensitivity of their interests to the actions of the state that is engendered through their dependence on caretakers whose actions are governed by the state. Therefore, the fundamental interests of a domestic animals living under the care of some rationally autonomous human and residing under the jurisdiction of a given state are sensitive, systematically and over time, to the actions of that state, and the sensitivity in question cannot be reasonably avoided.

I conclude that domestic animals are vulnerable in the operative sense. However, vulnerability is sufficient just for having a *defeasible* claim to basic citizenship rights. What remains is to argue that domestic animals possess no defeaters relevant having a moral claim to basic citizenship rights.

4.1.1 Undercutting Defeaters

As with the question of whether domestic animals possess vulnerability, the question of whether domestic animals possess defeaters relevant to having a claim to basic citizenship rights can mirror very closely that argument to that effect given in Section 3 of Chapter 2 regarding non-autonomous humans. To begin, recall that a moral claim, such as the claim to basic citizenship rights, can be defeasible either because it is subject to being *undercut* or because it is subject to being *overridden*. I discuss both options, below.

Drawing from the discussion in Chapter 2, recall that a moral claim is undercut just in case the ground(s) of the claim remains but the force that the ground(s) would otherwise generate is not produced. There are three examples of undercutting that are of interest: voluntary cancellation of a moral claim (e.g., as a boxer does in a boxing match), involuntary cancellation of a claim due to circumstances for which the individual is morally responsible (e.g., as with the attacker in an assault), and involuntary cancellation of a claim due to circumstances for which the individual is *not* morally responsible (e.g., as with the individual who contracts an infectious disease and must be quarantined). The first two types of undercutting can be dismissed in the present context, because domestic animals lack the requisite cognitive capacities to be morally responsible and to cancel the force of a moral claim. The third type of undercutting, however, must be addressed in more detail.

For it to be the case that domestic animals' moral claims to basic citizenship rights are undercut due to circumstances for which those animals are not morally responsible, those animals would need to (i) present an unreasonable

risk such that (ii) it makes sense to curtail their basic citizenship rights.

Regarding the first point, most domestic animals present no significant risk to humans under current, normal conditions. Indeed, in many cases the animals in question have been placed under the control of humans due, in part, precisely because they are capable of living alongside humans. However, we can imagine that a limited number of domestic animals might present more recalcitrant cases, such as certain predatory animals currently held in zoos (e.g., lions) and certain companion animals (e.g., severely traumatized dogs), where these domestic animals present an increased risk of physical attack. Additionally, we can imagine certain domestic animals acting as vectors of zoonotic diseases, such as the strains of “swine flu” that can be passed along from pigs, the rabies virus that can be carried by various mammals, and salmonella which may be present on even backyard chickens.

The risk domestic animals pose as vectors of zoonotic disease is not very significant.⁸² There are few cases, the symptoms are often relatively minor, and the diseases can often be avoided through simple changes including providing vaccinations or modifying handling practices, such as by wearing a basic face mask in the case of swine flu from pigs or handwashing in the case of salmonella from chicken. By contrast, the risk that humans pose to each other by acting as vectors of disease is far more significant than the risk posed by domestic animals. To the extent that the disease risk posed by domestic animals is significant, however, the implications that risk has for their basic citizenship rights is minor:

⁸² The more significant zoonotic diseases are spread by mosquitos and ticks, which lack sentience and therefore are not candidates for being domestic animals.

A particular basic citizenship right, probably mobility, may be modestly curtailed or modified for a temporary time. For example, the family dog who contracts rabies may be temporarily quarantined by a veterinarian for observation and perhaps not given daily exercise until the disease has been verified to have passed.

The risk of attack posed by domestic animals is somewhat more significant, particularly because it can be more difficult to predict and to manage than the risk posed by disease. This being said, the risk of attack can be non-trivially mitigated through proper socialization (e.g., in the case of training dogs) and through the education of humans about animal body language and other non-verbal cues. Where the risk of attack remains significant, however, the implications for basic citizenship rights are minor. Given the nature of the risk posed, the only relevant basic citizenship rights that would conceivably be affected are the rights to mobility, bodily integrity, and socialization.

There is no sense in curtailing any of the three other basic citizenship rights held by a domestic animal who poses a risk of attack, because there is no coherent connection between on the one hand posing (non-responsibly) a risk of attack and on the other hand possessing a claim to legal personhood, legal standing, and legislative standing. Moreover, the impact on the legal rights of mobility, bodily integrity, and socialization will not go beyond what is familiar in the case of individual humans who pose a risk to others for which they are not morally responsible (e.g., the violently “insane”). For example, regarding mobility, the lion living under human control may be forbidden from freely navigating the public space but must nonetheless be provided adequate space of

her own in which to live an enjoyable life. Regarding socialization, the lion's restricted sphere of mobility will require a narrower scope of socialization, but she must still be given a chance to interact with other lions in her sanctuary environment and to develop the social skills needed to navigate that restricted environment. Regarding bodily integrity, agents of the state, such as police officers, may physically restrain or otherwise harm the domestic animal that is attacking fellow community members, but only in the least harmful manner required to mitigate the risk being posed.

In summary, domestic animals pose two sorts of risk to humans that might conceivably be relevant to undercutting those domestic animals' claim to basic citizenship rights. In both cases, the risk posed is probably less than or comparable to the risk that humans already pose to each other. In the small number of cases where a higher degree of risk is present, only certain of the six basic citizenship right will be impacted, and that impact will typically take the form of small modifications to the right, rather than outright cancelling of the right. I conclude that domestic animals do not to any particularly significant extent possess undercutters relevant to a claim to basic citizenship rights.⁸³ The remaining possibility to consider is whether their claim might be, in some significant way, overridden. If it is not, then we may conclude that domestic animals do not possess any defeaters relevant to the possession of a moral claim to basic citizenship rights, as Premise 3 of the Political AMC states.

⁸³ However, as is the case with certain humans, some domestic animals may have certain basic citizenship rights undercut in special circumstances.

4.1.2 Overriding Defeaters

When a claim is overridden, it is permissible to act in such a way so as to contravene the claim in question, although acting in that way still wrongs the individual who possesses the claim because the force of the claim remains uncanceled. For a claim to be overridden, some benefit must be secured through the contravention of the claim in question. Moreover, because the claim to basic citizenship rights is, as established in Chapter 1, a claim concerning the adequate accommodation of an individual's reasonable shot at having a good life, it is therefore of some significance, and overriding it will require that a significant benefit be accrued in virtue of its contravention.

The most obvious benefits that domestic animals provide to humans are food, fiber (e.g., leather, wool), labor, entertainment, companionship, and medical knowledge through experimentation. However, these benefits can, in most cases, be maintained without contravening domestic animals' claim to basic citizenship rights. For example, the benefit of companionship is not significantly hampered by any basic citizenship right. The same holds true for the benefit of labor, since adequate labor can be extracted from domestic animals while abiding by the six basic citizenship rights. In the context of entertainment, it is possible that certain animals could not be used in ways they are currently, such as whales, polar bears, and other animals incapable of exercising their natural behaviors under captivity. In the cases of both fiber and food, non-invasive collection of materials (e.g., wool, eggs) could continue, and even invasive materials (e.g., leather, meat) could be collected so long as this was done from the corpse of an animal that was not killed prematurely and, if living under human control, had its

basic citizenship rights accommodated throughout its life. To the extent that modifications to both invasive and noninvasive collections of materials might reduce global supply of these materials, it is important to note, first of all, that viable alternatives for both materials and food exist and second that the materials and food in question are most often not necessities for humans. Finally, the benefits provided by animal experimentation can be replicated through alternative strategies, and there is increasing reason to think that these alternative strategies may have independent considerations, such as increased accuracy, in their favor.⁸⁴ To the extent that certain instances of animal experimentation provide unique benefits, it is possible to significantly improve on existing protocols in ways that would at least more completely accommodate domestic animals' claims to basic citizenship rights.⁸⁵

All things considered, the contravention of domestic animals' basic citizenship rights, as such, provides only limited benefits. The benefits it does provide are largely insignificant, such as *specific* materials at a low cost (e.g., wool) or luxury goods such as vast quantities of protein sourced specifically from muscle fibers. It is unlikely that these benefits will be sufficient to override, in any significant capacity, the moral claim of domestic animals to basic citizenship rights.

⁸⁴ See, for example, Akhtar (2015) and Goodman et al. (2015).

⁸⁵ For two example proposals, see Kantin and Wendler (2015) and Johnson (2013).

4.2 Legal Personhood

I have so far provided some motivation for Premise 3 of the Political AMC, which states that domestic animals are “vulnerable” in the relevant sense and that they do not possess any decisive defeaters for a moral claim to basic citizenship rights. So much for the first task of the present chapter. I turn now to the second task, which is to explore what implications do and do not follow from the conclusion that domestic animals have a moral claim to basic citizenship rights.

The first basic citizenship right is legal personhood. Legal persons, unlike legal things, cannot be the object of property rights. To recognize domestic animals as being legal persons, rather than legal things, is just to recognize that, like non-autonomous humans, domestic animals are not the sort of things that may be the subject of property rights held by others, and their human caretakers are stewards rather than owners. When the relationship between domestic animals and the humans who exercise the definitive sort of control over them is understood in stewardship terms, there will be significantly stricter constraints on the actions of humans toward domestic animals than currently exist.⁸⁶

Current laws are limited because they do not take the perspective of what is in the best interest of the animals themselves. So, for example, existing federal welfare laws ultimately exclude large classes of animals from protection, provide limited protections to those animals that are included, include a number of exemptions for certain types of owners of animals and certain industries, have significant practical limitations on enforcement, and largely take the form of civil rather

⁸⁶ See Appendix A—Summary of Federal Animal Welfare Laws

than criminal protections. Each of these limitations is consistent with domestic animals modeled as legal things, but not with domestic animals modeled as legal persons.

The legal reclassification of animals as legal persons rather than legal things will have widespread and complex impacts on contemporary practices. However, a growing body of legal literature explores the subject of precisely such a reclassification in detail.⁸⁷ Additionally, animal law is a growing field, with an increasing number of practicing lawyers and even dedicated academic programs. Organizations such as the Nonhuman Rights Project have gained some prominence for their numerous court cases seeking legal recognition of certain nonhuman animals as persons entitled to common law *habeus corpus* protections.⁸⁸ While the changes entailed by a reclassification of domestic animals are significant, there is good reason to think that the challenge can be successfully undertaken.

Additionally, it is important to note that reclassifying domestic animals as legal persons rather than legal things need not remove animals entirely from economic participation. Rather, it will place significant and novel constraints on the manner in which domestic animals may be included in the economy. The effect will be that economic fruits of animal labor and animal bodies (e.g., milk,

⁸⁷ See especially the work of David Favre, Steven Wise, Thomas Kelch, and Gary Francione.

⁸⁸ Interestingly, courts have ruled that nonhuman animals cannot be persons because they are only capable of bearing legal rights and not legal duties, and they are incapable of “participating in the social contract.” The courts have based this assertion off of a definition given by Black’s Law Dictionary, which claims legal personhood requires the ability to bear legal rights *and* duties, but it was recently determined that the two sources Black’s Law Dictionary cites both use the disjunctive “or” rather than the conjunctive “and.” Moreover, the courts did not acknowledge that consistent application of their requirement would exclude non-autonomous humans from legal personhood. For court transcripts and related legal filings, see the website for the Nonhuman Rights Project: <https://www.nonhumanrights.org/litigation/>

leather) are less common and more expensive, but not nonexistent. Nor does the legal reclassification of domestic animals require their complete abolition from human interference, which would lead to the extinction of domesticated species and a complete absence of sentient non-human animals from human communities.⁸⁹

4.3 Rights of the Body

The second and third basic citizenship rights both concern the physical body: bodily security and mobility. As has been alluded to in Section 4.1, the most significant outcomes of extending the legal right of bodily security to domestic animals will concern animals currently used for food, fiber, and medical experimentation. For example, the slaughter of a cow would no longer be permitted, but the harvesting of meat from a cow that has died in due course could be permitted.

An additional outcome of extending bodily security to domestic animals is that such animals must be protected in times of war and natural disaster. For example, when Hurricane Matthew struck North Carolina in 2016, millions of livestock drowned from subsequent flooding. Rescue efforts were undertaken for these animals, nor were they required. Similarly, when Hurricane Katrina struck New Orleans, government rescue efforts significantly ignored companion

⁸⁹ Such is the position of animal abolitionists such as Gary Francione, who view domesticated species as fundamentally perverted by human hands to be so dependent on humans that the relationship they stand in to humans is necessarily morally unacceptable.

animals.⁹⁰ The legal right of bodily security compels that such efforts be undertaken.

Finally, the right to bodily security may also include a right to medical treatment. Recall that contemporary law grants non-autonomous humans a right to medical treatment when it is in their best interests and regardless of the personal beliefs of their parents. This law protects, for example, the child of a devout Christian Scientist who requires life saving medicine but whose parents do not believe in using medicines. Similarly, we might imagine that domestic animals have a right to timely medical care and preventative medicine, perhaps through the creation of a similar mandatory health insurance scheme as currently exists in the United States or through the creation of a single-payer health insurance scheme as currently exists in nations such as Canada. Roughly, the idea would be that just as non-autonomous humans are extended mandatory health insurance protections, so would be domestic animals.

Somewhat less clear is how the legal right of mobility would play out as regards domestic animals. An adequate solution to this issue would need to attend to relevant differences across different animals. For example, some animals such as whales and polar bears have significant space requirements to satisfy their natural behaviors and corresponding objects of their preference autonomy, whereas others do not. Similarly, some animals like dogs and cats

⁹⁰ Public Law 109-308 authorized the rescue of companion and service animals by FEMA, but the justification is not the lives of the animals themselves but rather the lives of human owners. The justification of the bill came from the fact that a significant number of humans who stayed behind during the flooding cited an unwillingness to abandon their pets. Thus, only companion animals whose owners are significantly concerned about them during times of a natural disaster are protected under this law.

have a significantly higher capacity to partake in the public space than do others like lions.

In each individual case, however, the core idea will be that the animal in question has both negative and positive rights of mobility. He or she may not be restrained or caged or imprisoned, but rather must be given access to space of adequate size and quality to lead a gratifying life. A chimpanzee in a very large but entirely empty warehouse would not satisfy this requirement, for example. Although she may be given adequate quantity of space, the quality of the space is insufficient. Additionally, a given animal must have their mobility fostered, within reason. For the aforementioned lion or chimpanzee, this might simply take the form of providing a dynamic environment in which the animal can express natural behaviors. For the dog or the cat, this requirement might take the form of modifying infrastructure and policies governing the public space so that a dog can take herself to the park, or a cat may successfully roam her neighborhood, or it might simply require taking the animal in question to spaces such as dedicated parks.⁹¹

Key to the legal right of mobility is that it establishes a strong presumption in favor of the bearer existing in and navigating the territory of the state against which the right is held. Because the right establishes a presumption and not a guarantee, it is possible for the right to be abridged in particular cases. However,

⁹¹ A popular contemporary news story circa 2015 details a Seattle-area canine who rides the bus unaccompanied to the park on a regular basis. See, e.g., Hooley (2017) p. 15. <https://doi.org/10.1007/s11158-017-9374-1>

abridgments must be carefully and seriously justified, and may require compensatory accommodations.

Finally, a discussion of rights of the body in the context of domestic animals raises the question of whether our current uses of domestic animals may continue. As I allude to in Section 4.1.2, some uses may need to cease, as in the case of keeping typical polar bears in zoos. Other uses may continue, but perhaps not without significant changes. For example, it is an open question whether we may—assuming the Political AMC is sound—continue to produce leather, meat, or even harvest animal byproducts such as fur, wool, or even eggs. Addressing this open question in full is a task that falls beyond the current project. However, the question is compelling, because answered in a certain way, the Political AMC implies that we may make the same use of non-autonomous humans. If it turns out that we may continue harvesting eggs from chickens, subject to certain conditions regarding their physical accommodations (e.g., field, shelter) and handling, then it appears as though we may also use an adult woman who is substantially cognitively impaired as an egg donor for adult couples struggling to conceive their own child. Less exotically, consider leather: My inclination—although I won't over a defense of it, here—is that leather may continue to be produced, though on a much smaller scale due to restrictive conditions. These conditions might include only being harvested out of sight of other animals, and only from the corpse of an animal who was provided a happy life and died from natural causes despite being provided reasonable healthcare. That, however, suggests that it is also permissible—according to the Political AMC—to make a (presumably soft and therefore desirable) leather from the skin of infants who die

during childbirth. This is not an attractive implication for an argument to produce.

There are two strategies that could be used to help the Political AMC avoid the implication that we can use non-autonomous humans in repulsive ways. The first is to bite the bullet, but still accommodate the desired prohibition as a purely legislative phenomenon. The idea would be that the basic citizenship rights of non-autonomous humans never prohibited certain uses of their body precisely because those uses cannot impact their ability to lead a good life. Similar to how an infant can have no preference regarding the name of a local playground while her parents may have such a preference, an infant can have no preference regarding the use of her remains. However, other individuals within the political community do have preferences regarding the use of those remains, and so they legislate certain prohibitions. On this view, it is *pro tanto* permissible to engage in the behavior in question, but it is also permissible to legally prohibit the behavior in question.

The second strategy involves accepting that the prohibition on certain uses of non-autonomous humans' bodies is a genuine, non-optional moral prohibition, not a mere legislative phenomenon. On this view, something like the following story gets told: Rationally autonomous humans have the capacity to be harmed by the fact that creatures phenotypically similar to them—e.g., other humans—are having their remains be put to certain uses. Because this harm to rationally autonomous humans is a reliable phenomenon presumably “hardcoded” in their neural activity, and because the harm is associated with phenotypic similarity (i.e., looking alike), rather than cognitive similarity, there is

a genuine moral prohibition against using non-autonomous humans in ways in which it is permissible to use domestic animals.

Beyond these two strategies, the most I can do to quell concerns that the Political AMC has repulsive implications for what uses may be made of certain humans is emphasize that vanishingly few of our current uses of domestic animals may continue in anything reminiscent of their current form. For now, we can simply flag this open question raised by the matter of domestic animals' bodily rights and continue canvassing the implications of domestic animals being granted the six basic citizenship rights.

4.4 Socialization

The legal right to socialization ensures that an individual is given the basic skills they need in order to have a reasonable shot at living a good life in the community in which they reside. As with the legal right of mobility, the implications of this legal right will differ across animals. For example, a lion who will spend its days on an animal sanctuary (so that its mobility rights are satisfied) will require different socialization than a dog who will spend its days in an urban home. For present purposes, it will be more useful to focus on the latter case than the former. The majority of animals such as lions who will spend the majority of their time interacting with other animals in a dedicated animal space, rather than in a mixed human animal space, will receive the bulk of their socialization through interactions with other animals. Also, there are many more dog-like domestic animals than lion-like domestic animals.

Anyone who has experience raising a dog or a cat is familiar with the basic idea of socialization as it pertains to an animal. The animal must be introduced to the sights and sounds and smells of a human environment, because initially they may experience strong feelings of fear at sounds as mundane as the opening of a bag of chips. As with non-autonomous humans, these animals must also learn how to navigate phenomena such as deceptively clear glass windows roads with cars on them. Dogs must also learn to read the nonverbal cues of humans, including tone, posture, and gesturing.

The most significant implication that follows from recognizing that domestic animals have a moral claim to socialization is that humans may be obligated to provide significantly more socialization to animals than is currently typical. For example, it is common for household pets to engage in property destruction while their caretakers are gone for the day, typically at work. It has been recognized that this phenomenon is commonly the avoidable result of separation anxiety on the part of the animal. It may be that the right to socialization grants these dogs the emotional preparation necessary to not experience this sort of separation anxiety. In a somewhat related vein, it is well-known that common human goods such as the chocolate on one's purse or the antifreeze that leaks into one's parking space are toxic to dogs. The current practice for protecting animals from these environmental dangers is to simply physically restrain the animals from interacting with the toxins. However, the right to socialization may compel humans to more proactively train domestic animals such as dogs to avoid such toxins on their own accord.

More speculatively, a second interesting implication that might follow from recognizing domestic animals' legal right to socialization is a requirement that humans receive training with regard to domestic animals. Here, the idea would be that the successful navigation of one's social environment is not solely a matter of one's own knowledge and skills, but rather requires that one's fellow community members have a basic working knowledge of them. For example, just as a dog may have a claim to be socialized to the sound of a bag of chips opening, so too might the dog have a claim against humans to be socialized to learn what different tail-wagging patterns indicate in a dog. To continue the example, under current practice, if a dog bites a human, the social circumstances are largely ignored. Even if the bite comes only after the display of numerous warning signs on the part of the dog, the human is not expected to have recognized or heeded these signals. Similarly, under current practices the owner of a horse may be liable if the horse they care for bites or kicks a person, even if the horse's ears had previously been pinned back, indicating significant frustration. Plausibly, however, having a moral claim to be given the basic skills needed to have a reasonable shot at a good life in a given community may include a claim not just to receive relevant training about navigating the outside world and others, but also to have others receive relevant training about you. If this is correct, then it may become incumbent on humans to learn the body language of various domestic animals with whom they may be reasonably expected to interact.

4.5 Procedural Rights

4.5.1 Legal Standing

The final basic citizenship rights are legal standing and legislative standing. Legal standing will grant domestic animals access both to having civil suits initiated on their behalf and to appellate procedures. The details of how this might play out in a given jurisdiction cannot be stipulated with much clarity in advance, but it is worth repeating that an extant body of legal literature has already begun exploring the question. Also, because granting legal standing to domestic animals will require they have access to legal representation, it is also worth repeating that animal law is budding legal field, however, so there is no reason to think that this need for legal representation will present significant challenges. Additionally, the case of non-autonomous humans, such as in the context of family law or child law, can serve as a useful guiding model for developing an adequate framework for domestic animals' legal standing.

4.5.2 Legislative Standing

The final basic citizenship right is legislative standing. To have legislative standing is to have one's interests be factored in, in some non-trivial way, to the determination of some legislative question. As with non-autonomous humans, I make only the limited claim that domestic animals have legislative standing specifically with regard to issues pertaining to the adequate accommodation of their basic citizenship rights. Thus, while a dog will have a vote on issues

pertaining to dogs in the public space, it will not have a vote on the question of what to name some-or-other national monument.⁹²

Accommodating the legislative standing of domestic animals could be accomplished in a number of ways. For example, it could involve the creation of dedicated animal representatives in the United States Congress. Alternatively, it could involve the creation of a dedicated government agency tasked with determining how the interests of domestic animals would factor into a given legislative debate, perhaps by drawing from our best science and the knowledge of animal experts. A full exploration of these possibilities, however, falls beyond the scope of the present project. The central requirement of any given scheme is that it make the interests of domestic animals help determine, not merely constrain, legislative decisions pertaining to their basic interests.⁹³

4.6 Conclusion

I have argued so far in this dissertation that there is no non-arbitrary account to be given of why non-autonomous humans do in fact have a moral claim to basic citizenship rights that does *not* also entail that domestic animals have the same claim. If domestic animals do in fact have a moral claim to basic citizenship rights, then many practical details remain to be sorted out regarding what the

⁹² Assuming, of course, that a name under consideration does not somehow glorify or encourage the violation of domestic animals' basic citizenship rights.

⁹³ Recall the example of a couple deciding what to do with their weekend. Only the two partners have a say in determining what they do from a set of options, but other people can nonetheless constrain the set of options available to them.

human-animal community ought to look like. However, I have offered in this chapter some rough outline of what implications might follow from recognizing domestic animals' legal rights of legal personhood, bodily security, mobility, socialization, legal standing, and legislative standing. Speaking generally, the implications are practically and morally significant, and will require sweeping modifications to our existing social and political institutions. At the same time, however, the implications are relatively unsurprising, because they model very closely the ways in which we have come to realize we ought to politically enfranchise non-autonomous humans, such as young children and significantly developmentally impaired humans.⁹⁴ The close relationship between how the contemporary state enfranchises non-autonomous humans and how, I have argued, the state ought to enfranchise domestic animals offers useful practical guidance for how the conclusion of the Political AMC might be realized in an actual political community. However, it goes beyond the scope of this dissertation to explore these implications in greater detail. I turn now to the final chapter of this dissertation, which situates my argument in the broader "animal politics" literature and explores some additional areas for future research that build on the conclusion of the Political AMC, as I have defended it.

⁹⁴ I hasten to note that an important open question, which I offered some treatment of in Section 3 of this chapter, remains what uses of animals—their body or their labor—remain permissible, and what this may entail for the use of non-human animals (e.g., can a super-soft leather be developed from humanely harvested infant skin? A fashionable baby hair lampshade?).

CHAPTER 5: CONCLUSION

I have argued that sentient, non-human animals living under the control of humans within a given state have a moral claim against that state to six legal rights that establish and maintain those animals' reasonable shot at living a good life, and that they enjoy this moral claim because their fundamental interests are, systematically and over time, sensitive to the actions of the state that controls the territory where they reside. My argument for this conclusion ultimately draws its normative force from the fact that sentient non-autonomous humans enjoy the same claim for the same reason, and no non-arbitrary difference relevant to the claim in question can be found between non-autonomous humans and domestic animals. This argument falls within what has become known as the “political turn” in animal ethics.⁹⁵ In the first section of this chapter, I situate the Political AMC within the “animal politics” literature. In the second section, I identify a possible future direction for the Political AMC.

5.1 Situating the Political AMC

Recall that the Political AMC runs as follows:

⁹⁵ See, e.g., Garner and O’Sullivan (2016) or Milligan (2015).

The Political AMC

(P1) Non-autonomous humans have an undefeated moral claim to basic citizenship rights.

(P2) If non-autonomous humans have an undefeated moral claim to basic citizenship rights, then possessing vulnerability and no decisive defeaters is a sufficient condition for having an undefeated claim to basic citizenship rights.

(C1) Possessing vulnerability and no decisive defeaters is a sufficient condition for having a claim to basic citizenship rights.

(P3) Domestic animals possess vulnerability and no decisive defeaters.

(C2) Domestic animals have an undefeated claim to basic citizenship rights.

In this section, I compare the strategy and ultimate conclusion of the Political to similar positions in the budding animal politics literature.

Perhaps the earliest works to consider animals within the political context were from legal scholars who questioned the legal classification of non-human animals as “property.” By now, a number of proposals exist in the legal literature, and they range from reclassifying animals as legal persons to developing a more nuanced legal notion of property. Each proposal employs different legal strategies and offers somewhat different moral justifications for the reclassification. Due to this diversity, specific proposals differ in a number of ways from the strategy pursued by the Political AMC. However, a common thread across the proposals is that the focus in each instance is limited to animals’ legal reclassification. Legal reclassification corresponds to just one of the six basic citizenship rights

defended by the Political AMC, and this limitation is a characteristic way in which the account that I have defended differs from, or goes beyond, merely legalistic views defended within the so-called political turn.

Kim Smith's 2013 contribution to the animal politics literature has a comparable limitation. Smith (2013) provides a lucid and thorough argument for the conclusion that robust political enfranchisement of animals, such as extending the six basic citizenship rights that I have defended, is consistent with liberal theory. To do so, Smith shows how there is room for animals within familiar political concepts such as the social contract, hypothetical consent, political agency, and representation. Indeed, Smith takes care to argue that the interests of animals are properly the subject matter of political theory by understanding the term "political" more broadly than is sometimes done, as in the tradition of Joseph Raz's notion of "justified power," rather than Aristotle's notion of "rule over equals."⁹⁶ Roughly, Smith argues that considerations of animals' wellbeing make it appropriate to justify our use of power over them, and that we can use our best knowledge of what constitutes flourishing for animals' to determine the conditions of their hypothetical consent in order to determine when particular uses of power are justified. However, Smith's conclusion is ultimately that robust animal enfranchisement is consistent with liberal theory—i.e., that human members of a political community may opt to enfranchise animals in this way without thereby violating liberalism—but not that we are obligated to pursue such enfranchisement. In this way, the conclusion I've

⁹⁶ Smith (2013), xviii-xxii.

defended using the Political AMC is stronger than the conclusion Smith defends. On my view, the political enfranchisement of (select) animals is morally obligatory, rather than merely available and consistent with liberal theory.

Like Smith (2013), Robert Garner defends a view that assumes political liberalism. Roughly, Garner's argument runs as follows:

(P1) Animals warrant strong moral concern.

(P2) If animals warrant strong moral concern, then their moral claims ought to be coercively enforceable by the state.

(P3) If animals are not recipients of justice, then their moral claims are not coercively enforceable by the state.

(C1) Therefore, animals are recipients of justice.

In running this argument, Garner makes two foundational liberal assumptions. The first is that the state may not constrain individual freedom except as required by justice, and the second is that the principles of justice are not drawn from any specific comprehensive moral theory. His argument can be rejected most easily either by rejecting Premise 2 in the formal argument above or by simply endorsing a somewhat less strict version of liberalism that makes a limited amount of room for comprehensive moral theories to ground state-enforced constraints on the freedom of individuals, even within a pluralistic society.

Garner's view differs from the one I've defended in two important ways. The first is that, like Smith, Garner restricts his attention to the theoretical context of political liberalism, whereas the Political AMC does not rely on a

particular political theory. The second important difference is that, on the Political AMC, domestic animals must be politically enfranchised (i.e., granted basic citizenship rights) ultimately as a matter of consistency with how non-autonomous humans are treated, whereas the normative force of Garner's account ultimately skews more toward pragmatic considerations. For example, Garner writes "I conclude that animals need justice because of the high status attached to it"⁹⁷ and "it is doubtful if any direct moral duties to animals, equivalent to or greater in weight than those attached to justice claims, can in practice be established."⁹⁸

Perhaps the closest account to the one I've defended using the Political AMC—and indeed the account that motivated my own—is given by Donaldson and Kymlicka (2011). Donaldson and Kymlicka extend Kymlicka's "Citizenship Theory," developed in his earlier work, to the topic of animals. The authors distinguish three categories of animals—wild, liminal, and domesticated—and offer a view on which, relative to a given nation, wild animals are treated as citizens of foreign, sovereign nations, liminal animals are treated as itinerant or migrant workers. For present purposes, Donaldson and Kymlicka's treatment of domesticated animals is most relevant. The authors argue that domestic animals can and should be treated as equal co-citizens of the nations in which they reside, and they identify several salient topics that this sort of political enfranchisement will impact.⁹⁹

⁹⁷ Garner (2013), p.2

⁹⁸ Garner (2013), p.8

⁹⁹ Examples include basic socialization, sex and reproduction, use of animal labor and products, and political representation. See Donaldson and Kymlicka (2011), pp. 122-155.

The most obvious major difference between Donaldson and Kymlicka's account and the position that I've defended with the Political AMC is that they focus on "domesticated" animals, whereas I focus on "domestic" animals. The set of *domestic* animals includes as a proper subset many *domesticated* animals. A domesticated animal is a member of a species that has been bred by humans to have certain features and is now dependent on humans for its continued existence.¹⁰⁰ Examples of domesticated animals include dogs, cows, horses, and cats to a somewhat lesser extent. The set of domestic animals is larger, however, and includes non-domesticated animals kept in entertainment venues such as zoos, animals in research settings such as medical labs (e.g., tigers, chimpanzees, whales).

In Chapter 1, I briefly explained that my focus on domestic animals more broadly, as opposed to domesticated animals more narrowly, is driven by the intuition that there is something morally important about the simple fact of being a certain sort of being living under certain circumstances. There, I noted that it strikes me as odd for a theory to say that companion dogs could seek compensatory and punitive damages upon the discovery that a brand of pet food contains melamine, but companion aardvarks could not. What strikes me as morally relevant to having a claim against the state for certain legal and political rights is not an individual animal's ability to lead a good life independently of

¹⁰⁰ See Donaldson and Kymlicka (2011), pp.74-5.

humans, but rather an individual animal's ability to lead a good life *given* the fact that the animal is residing within a human community.¹⁰¹

Donaldson and Kymlicka's focus on domesticated animals, specifically, may in part be an artefact of their emphasis on "political agency" as a condition for being politically enfranchised.¹⁰² Political agency, as they understand the notion, requires the capacity for a certain degree of give-and-take that is primarily possessed by animals who are members of social species, and domestication itself can only occur with social species.¹⁰³ By contrast, the Political AMC identifies "vulnerability," rather than a capacity for "political agency," as sufficient for political enfranchisement. One implication of this difference is that Donaldson and Kymlicka cannot avail themselves of the sort of constraints on animal voting power that I raise as possibilities in Chapter 3.4.2 and Chapter 4.5.2. On their view, the legislative standing of animals cannot be satisfied via the creation of, for example, a government agency that identifies and propagates our best understanding of animals' interests on relevant legislative topics. Instead, each domesticated animals' individual political agency must be fostered.

The fact that Donaldson and Kymlicka's view requires each domesticated animals' political agency to be fostered raises serious practical problems. For Donaldson and Kymlicka, the political agency of domesticated animals is modelled after the notion of dependent agency that has been developed within

¹⁰¹ By contrast, Donaldson and Kymlicka take an abolitionist line for domestic-but-not-domesticated animals. See especially Donaldson and Kymlicka (2011), p.105.

¹⁰² Critically, Donaldson and Kymlicka argue for an interpretation of political agency, drawing from the literature on "dependent agency" and on trust-based models of contracting (e.g., Silvers and Francis, 2005), that is not restricted to rationally autonomous humans.

¹⁰³ See Donaldson and Kymlicka (2011), pp.104-122 and p. 175.

disability studies.¹⁰⁴ Dependent agency refers to a sort of agency that is accessible to in the context of a trusting relationship in which the other party deploys loving attentiveness and a great deal of knowledge and skill in order to facilitate the impaired person's agency, and the domesticated animal population in the United States alone is massive. The pet population, excluding those in shelters, for which the number is unknown, is 164 million: half the human population. Among livestock, the numbers only increase. According to the Food and Agriculture Organization of the United Nations, the sum of chickens, ducks, turkeys, donkey, cattle, horses, pigs, and sheep in the United States as of 2013 was 2.3 billion.¹⁰⁵

In addition to the practical impossibility of satisfying Donaldson and Kymlicka's requirement that the political agency of domesticated animals be fostered, their view further suffers from a refusal to accord domesticated animals "second-class citizenship," which crops up in a number of places throughout their work.¹⁰⁶ The upshot is that Donaldson and Kymlicka must grant domesticated animals equal voting power with humans and that their view lacks the conceptual resources to restrict the topics on which domesticated animals may vote. In the case of the United States, their view would therefore introduce more than two billion non-human votes into the human legislative process, far eclipsing the voting power of human beings.¹⁰⁷ By contrast, the Political AMC does not face these challenges, because the basic citizenship right of legislative standing places

¹⁰⁴ See, e.g., Silvers and Francis (2005), Prince (2009), or Wong (2009).

¹⁰⁵ <http://faostat.fao.org/site/573/DesktopDefault.aspx?PageID=573#ancor>

¹⁰⁶ See, e.g., Donaldson and Kymlicka (2011), pp. 93-4, p. 129, or p. 131.

¹⁰⁷ Such a massive differential in voting power might raise or exacerbate concerns of "tyranny." See, e.g., Planinc (2014).

a constraint on what topics domestic animals have standing with respect to, it does not demand equal voting power, and it does not require individualized relationships to foster political agency following a dependent agency type of model.

A final difference between the two views under discussion concerns ultimate motivation for each view. It is not clear what motivates Donaldson and Kymlicka's extension of citizenship theory to domesticated animals. At times, they speak as though the application of political concepts to the issue of human-animal relations is merely pragmatic. For example, they write:

“For a number of reasons, people have trouble connecting the concepts of 'animals' and 'citizenship': they belong to different intellectual registers. Our full response to this worry unfolds over the course of the next four chapters. The proof is in the pudding, and we hope to show that applying a framework of citizenship theory is not only coherent, but helps to clarify a number of inconsistencies and dead ends that have afflicted animal rights to date.” (2011, p.54)

If this passage accurately captures Donaldson and Kymlicka's motivation for their theory of animal citizenship, then the risk becomes that only those who have a preexisting commitment to finding a plausible theory of animal ethics can feel the force of their argument. By contrast, the force of the Political AMC draws from considerations of consistency, and so can be felt by any person who holds that sentient, non-autonomous humans have a moral claim to basic citizenship rights.

To summarize: The Political AMC offers a view of what political communities owe to the animals they live with that enjoys important benefits over alternative views. Kim Smith's view does not go as far as the Political AMC and is restricted to liberal states. Robert Garner's view is similarly restricted to liberal states, and the ultimate normative force of his argument is pragmatic and seemingly contingent on human psychology.¹⁰⁸ Sue Donaldson and Will Kymlicka's view draws a line between domesticated and domestic-but-not-domesticated animals, lacks the conceptual resources to solve serious issues specific to their model of legislative standing for animals, and cannot be found compelling by folk who lack a preexisting commitment to finding a workable theory of animal rights. The Political AMC, in turn, is not restricted to any single political theory, avoids the line-drawing and legislative standing problems faced by Donaldson and Kymlicka, and draws its normative force from a theoretical, not pragmatic, consideration that are broadly accessible.

5.2 Future Directions

Stepping back a bit, the Political AMC defends a particular account of what grounds the moral claim that non-autonomous humans have to basic citizenship rights. In doing so, it identifies merely one sufficient condition for the moral claim in question. Moreover, it only asserts that this one sufficient condition, which is "vulnerability," accounts for the claim to basic citizenship rights enjoyed

¹⁰⁸ Garner repeatedly emphasizes that claims of morality are not taken as seriously by people as are claims of justice, which is why animals need to be conceived of as recipients of justice.

by non-autonomous humans and by domestic animals. The upshot here is that the Political AMC is silent on what grounds the moral claim that rationally autonomous humans have to basic citizenship rights. It is additionally silent on whether such humans enjoy legal/political rights in excess of the six basic citizenship rights. The issue of what legal/political rights rationally autonomous humans have a moral claim to and why is, however, an interesting question.

One particularly compelling area of future inquiry that builds on the Political AMC would be exploring whether “vulnerability” can be asserted as being not only a sufficient condition but also a *necessary* condition for basic citizenship rights. To understand the significance of this modification to the Political AMC, consider two plausible statements regarding rationally autonomous humans:

- (A) Rationally autonomous humans have a moral claim to basic citizenship rights.
- (B) Rationally autonomous humans have a moral claim to more legal/political protections than those granted to domestic animals and to non-autonomous humans in virtue of their basic citizenship rights (e.g., RAHs have a moral claim to equal voting power on all legislative subjects, whereas NAHs and DAs do not).

It is consistent with the weaker form of the Political AMC that I have defended in this dissertation to account for *both* A and B in virtue of some property unique to rationally autonomous humans, such as the capacity for rational autonomy. If,

however, the Political AMC is strengthened to assert “vulnerability” as sufficient *and* necessary, then accounting for A and B is not so straightforward.

Regarding A, the strengthened version of the Political AMC would entail that rationally autonomous humans enjoy basic citizenship rights for the same reason that domestic animals and non-autonomous humans do (i.e., vulnerability), rather than for some distinctive reason such as rational autonomy. An interesting choice then emerges for how to accommodate B. One option would be to argue that while rationally autonomous humans’ moral claim to basic citizenship rights is grounded by the same property as grounds domestic animals’ and non-autonomous humans’ claim to the same, they enjoy in virtue of some distinctive capacity (e.g., rational autonomy) an *additional*, supplementary claim that grants them legal/political affordances beyond those granted by basic citizenship rights to domestic animals and non-autonomous humans.¹⁰⁹ An alternative option for accommodating B under the strengthened version of the Political AMC would be to argue that rationally autonomous humans do not have a moral claim to any supplementary legal rights beyond the six basic citizenship rights, but rather that the claim they have to basic citizenship rights generates stronger affordances than those generated by the claim to basic citizenship rights possessed by domestic animals and non-autonomous humans.

In order to make this second strategy for accommodating B work, one could appeal to certain *bridge principles* grounded in the fact that basic citizenship rights are, as stipulated in Chapter 1, ultimately intended to establish

¹⁰⁹ One potentially undesirable feature of this first position might be that it makes rationally autonomous humans’ total set of legal/political rights oddly internally discontinuous.

and maintain an individual's reasonable shot at living a good life. We can understand bridge principles as assertions of the form of "For a being of type X, the adequate satisfaction of basic citizenship right Y requires Z," where X is determined by a capacity or property of an individual relevant to what its reasonable shot at a good life requires (e.g., possessing a merely instrumental interest in freedom versus possessing an intrinsic interest in freedom, or being ambulatory or not). The value of Y would then be one of the six basic citizenship rights. Finally, Z would be determined by what affordances relevant to some given basic citizenship right a being of type X requires for that basic citizenship right to adequately establish or maintain that being's reasonable shot at a good life. By way of an example, consider the basic citizenship right of legislative standing. Plausibly, an individual who is self-aware of her status within a community relative to others who are also self-aware of their own and each other's statuses will need to be given equal voting power with her peers. The bridge principle would read, approximately, "For a self-aware being, the adequate satisfaction of the basic citizenship right of legislative standing requires equal voting power with other self-aware beings." Similarly, we could imagine that for a being capable of flight, the basic citizenship right of mobility would require access to some amount of airspace. Here, the bridge principle would read, approximately, "For a being capable of flight, the adequate satisfaction of the basic citizenship right of mobility requires access to airspace." The basic idea behind such bridge principles is that all humans and domestic animals would have the same set of six possible values for Y (i.e., the six basic citizenship rights) and for the same reason (i.e., vulnerability), but that intuitions such as the one

expressed by sentence B would be accommodated by different values for Z. These bridge principles would also need to address what current uses of animals may or may not be continued, as well as wrestling with the implications that any answer has for permissible uses of non-autonomous humans.¹¹⁰

Further speculation on how bridge principles might be developed and on the theoretical benefits between the two different strategies for accommodating sentence B assuming the strong version of the Political AMC go too far beyond the present project. The weaker version of the Political AMC that I have defended is interesting enough for now. If that argument is sound, then non-human animals living under human control have a moral claim to a set of six legal rights that are critical to establishing and maintaining their shot at a good life. This moral claim mirrors the similar claim possessed by non-autonomous humans. The conclusion of the Political AMC rejects an unreflectively and long held assumption that non-human animals have no place in the realm of political theory, but at the same time is not terribly surprising. Whatever privileged place humans may enjoy in the hierarchy of existence, the persistent assumption that they are categorically distinct from their fellow creatures is becoming ever more difficult to maintain.

¹¹⁰ Recall that I address this matter to a limited extent in Chapter 4, Section 3.

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VITA

Alex Howe was raised in a log cabin on some acreage in southern New Hampshire. At 18, he was able to escape to the sunshine of San Diego. There, he took degrees in Philosophy—emphasizing philosophy of mind—and Religious Studies—emphasizing mysticism. Alex was fortunate enough to work as a grading assistant for Dr. Brad Kirkegaard and as a research associate for Dr. Sthaneshwar Timalina. Alex received campus-based and system-wide recognition for the research thesis he produced as part of the Honors College.

At 22, Alex was unable to secure a strong offer from a graduate program. Feeling fearful and claustrophobic, he set aside a large chunk of his savings to backpack through Europe and southeast Asia. Alex returned stateside some 10 months later eager to begin his graduate career at University of Missouri.

During his tenure at Mizzou, Alex was careful to spend an inordinate amount of time engaged in leadership, agitation, unionization, and other advocacy efforts. Alex completed masters research concerning the physical grounds of conscious, qualitative experience and doctoral research concerning animal ethics and political philosophy. He currently works as a labor organizer for public school teachers.