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Martha C. Nussbaum. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge: Harvard University Press, 2006. xiii + 415 pp. \$35.00 (cloth), ISBN 978-0-674-01917-1.

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## A Truly Global Justice? Dismantling the Social Contract and Including Animals

“[A] truly global justice requires not simply looking across the world for other fellow species members who are entitled to a decent life. It also requires looking, both in one’s own nation and around the world, at the other sentient beings with whose lives our own are inextricably and complexly intertwined” (p. 406).[1] This quotation indicates the ambition of Martha Nussbaum’s important new work in political theory, a full-on critique of the social contract tradition through a detailed critique of John Rawls’s theory of justice. In this review, I will state the importance of Nussbaum’s book at this moment in time, summarize the book, address its two main components—a critique of the social contract and a theory of animal dignity—and then explore one weakness in the book: the political justification for Nussbaum’s theory. Nussbaum’s book is important reading for anyone concerned with justice to animals.

Martha Nussbaum is one of the most important public philosophers in the world today and one of the greatest living female philosophers. Beginning with her excellent commentary on Aristotle’s *On the Motion of Animals* (1978) and her much-loved work on human luck and vulnerability, *The Fragility of Goodness* (1988), Nussbaum went on to gain acceptance for literature in analytic moral philosophy (*Love’s Knowledge*, 1991), herald the rise of virtue ethics and the re-emergence of the study of Stoicism (*The Therapy of Desire*, 1993), bring philosophy to bear on law and public policy—especially in her collaboration with Nobel laureate Amartya Sen at the United Nations University, write an award-winning essay on lib-

eral arts education (*Cultivating Humanity*, 1997), develop a well-known form of international liberal feminism (*Sex and Social Justice*, 1998; *Women and Human Development*, 2000), and lead the new focus on the philosophical study of the emotions as forms of intelligence (*Upheavals of Thought*, 2001). Her influence ranges far outside professional philosophy to literary studies, women’s studies, gay studies, South Asian studies, education studies, legal studies, political science, and public policy. An honorary degree-holder from twenty-five universities, she has worked closely with the United Nations and founded the Center for Comparative Constitutionalism at the University of Chicago. Today, when Martha Nussbaum focuses on a topic, it receives a great deal of attention.

*The Frontiers of Justice* is additionally a masterwork in her philosophical itinerary. Drawn from her 2002 and 2003 Tanner Lectures on Human Values at Australian National University and Cambridge, the book is a memorial to Nussbaum’s teacher John Rawls, the most significant political theorist of the twentieth century and the most sophisticated thinker in the social contract tradition, with the exception of Rousseau. In true philosophical fashion, Nussbaum remembers her teacher by criticizing his work for the sake of the subject that guided his own life: justice. The result is a book that carefully and, to my mind, successfully criticizes the entire social contract tradition by showing how its fundamental assumptions fail to grasp justice. One third of her criticism comes from the justice owed to animals. It is thus not far-fetched to say that the issue of justice to animals has entered the very

heart of mainstream political theory through this book. Moreover, it does so as part of an argument that closes off the tradition of the social contract as a viable idea of justice.

*The Frontiers of Justice* is a continuation in the development of Nussbaum's capability approach—"one species of a human rights approach" (p. 7). Nussbaum developed the capability approach in collaboration with Amartya Sen, who won the Nobel Prize in economics for it. Together, they founded the Human Development and Capability Association, which holds an annual international conference. The capability approach looks at quality of life by looking at what we are able to do and to be, rather than looking at how much money a country has. For instance, it looks at people's ability to move about, obtain food, be educated, take part in politics, and so on. In Sen's hands, the approach advances the metric of life quality beyond gross domestic product and per capita income to examine how wealth plays out on the ground through infrastructure, institutions, distribution between humans, and in its distribution across the range of human capabilities. Sen's approach is what revolutionized the World Human Development Reports now produced yearly by the United Nations. The question is what kind of life each and every person can live. Analogously, when we turn to animals, the question will be: what capabilities does that kind of animal need to flourish?

In Nussbaum's hands, the capability approach is normative, not descriptive. She is interested in how a view that finds human dignity expressed in a variety of life activities translates into demands of justice. Her first full articulation of the approach appeared in *Women and Human Development* (2000), and she is currently writing a book entirely on the relation between capabilities and compassion (*Capability and Compassion*, forthcoming). As I will discuss below, compassion is crucial for the justification of her theory. In *The Frontiers of Justice*, Nussbaum shows how the capability approach is able to handle three problems of a "truly global justice" that the social contract tradition cannot. These problems are justice to the disabled, global justice beyond the nation-state, and justice to animals. To her mind, precisely where the social contract tradition fails—even through its most explicit and systematic exponent Rawls—the capability approach manages to conceptualize justice in the face of all three problems.

Accordingly, the book is divided into three main arguments, with a final reflection that hints at the forthcoming *Capability and Compassion* and that brings up the

problem of justification with which I will end this review. The first argument establishes that the social contract tradition, especially in its Rawlsian form, cannot give justice to disabled people. This problem is not marginal. "An elderly 'normal' person may be disabled for thirty or forty years, perhaps longer ... than the total life span of some people with a lifelong disability" (p. 144). Most of us will encounter disability in some form as we age. But because the social contract is made between people who are "free, equal, and independent" (p. 25) and who associate "to reap the benefits of mutual cooperation" (p. 118), it cannot come up with a way to give justice to the disabled, which is to say, most of us at some point in life. I will say more about this problem shortly.

The second argument establishes that the social contract cannot supply global justice beyond the nation-state. The main reason why is similar to the problem the social contract approach has with disability. Poorer nations are not the equals of wealthier ones. "There is a striking parallel between the situation of the poorer nations and the situation of people with disabilities... [T]hey are not the 'rough equal' of the contracting parties in power and capacity. For that reason, a contract for mutual advantage cannot include them as equal participants. They are a drag on the whole system" (p. 250). In fact, they are in "a condition of asymmetrical dependency" (p. 33) with respect to countries like the G8.

The third argument establishes that the social contract tradition cannot render justice to animals. Once again, the problem is that the social contract tradition has problematic assumptions about the nature of the contracting parties and the aims of justice. With animals, "there is ... no good analogue to the contractarian account of the purposes of social cooperation, no good analogue to the account of the abilities of the parties in virtue of which a contract is possible, no good analogue to their situation as 'free, equal and independent' parties" (p. 334). Most animals do not cooperate with us per se; seemingly all do not have reflective rationality of the sort that generates a self-conscious life plan; and none come close to being equal to us in power, once we consider our technological abilities.

Reflecting on these three arguments, Nussbaum claims that the capability approach can handle what the social contract tradition cannot. Because the capability approach begins with social cooperation as an aim of intrinsic value—not instrumental value for the sake of mutual advantage—and because the approach looks to what people are able to do, it can render justice to the disabled

even if they are not “normally productive.” Similarly, because the capability approach holds that “a central part of our own good ... is to produce, and live in, a world that is morally decent” (p. 274), it can render justice to the asymmetrically dependent poor countries of the world. Finally, because the capability approach “is capable of recognizing a wide range of types of animal dignity, and of corresponding needs for flourishing, and because it is attentive to the variety of activities and goals that creatures of many types pursue, the approach is capable of yielding norms of interspecies justice that are subtle and yet demanding, involving fundamental entitlements for creatures of different types” (p. 327). The capability approach doesn’t think that the only beings who deserve justice are self-consciously rational and of equal power, and it is sensitive to the needs generated by different forms of life.

Finally, Nussbaum ends the book by discussing the role of moral education in fostering a culture that could justify and sustain the capability approach politically, given especially that the approach is at the frontiers of justice, pushing against common sense. For Nussbaum, “[t]he solution to our three unsolved problems requires people to have a very great sympathy and benevolence, and to sustain these sentiments over time” (p. 409). Accordingly, “[a] society aspiring to justice in the three areas I have discussed must devote sustained attention to the moral sentiments and their cultivation—in child development, in public education, in public rhetoric, in the arts” (p. 414). This problem of forming the requisite mentality and temperament for the capability approach, however, is not trivial. The approach cannot be politically justified without the requisite mentality and temperament. But how will those be publicly cultivated, without prior political justification? There seems to be no way to have the approach take root politically.

Nussbaum’s critique of the social contract tradition—especially as this tradition reached its apex in Rawls—is convincing. It amounts to taking apart a picture of justice’s recipients and purpose. She works on fundamental assumptions. As Nussbaum writes in a sentence reminiscent of Wittgenstein’s saying that “a picture held us captive”[2]: “a particular picture of who we are and what political society is has for some time imprisoned us, preventing us from imagining other ways in which people might get together and decide to live together” (p. 414). What Nussbaum is talking about is this: the social contract tradition sees justice as promoting “mutual advantage ... among people who are ‘free, equal, and independent’” (p. 14). Moreover, the people to whom justice

is due are the same people who legislate justice, i.e., the contracting parties. However, this entire picture imprisons us.

To begin, “[t]he social contract tradition conflates two questions that are in principle distinct: ‘By whom are society’s basic principles designed?’ and ‘For whom are society’s basic principles designed?’” (p. 16). By contrast, “[o]ne might have a theory that held that many living beings, human and even nonhuman, are primary subjects of justice, even though they are not capable of participating in the procedure through which political principles are chosen” (p. 17). For the social contract tradition, equal and free people come together to choose principles to make their lives more advantageous through cooperation. Those principles express justice. But we can easily imagine a form of justice in which the people who make the rules expressing justice are not the only ones to whom justice should be served. Nussbaum thinks that disability, inequality, and animal dignity make such a form of justice imperative.

Secondly, the point of the social contract tradition is mutual advantage. But that aim does not encompass another goal of human society—fellowship. Following Aristotle and Grotius (and, one might add, Mill[3]), Nussbaum holds that while self-interested advantage-seeking is one aim of human beings, so too is the goal of living in fellowship with others. The social contract tradition has human nature wrong, focusing on only one side of our many-sided nature. “The point of the contract ... cannot be ... [only] mutual advantage.... It must [also] be human fellowship and human respect” (p. 270). As Grotius wrote, “among the traits characteristic of the human being is an impelling desire for fellowship, that is for common life” (p. 273).[4] Moreover, “[o]ur basic equipment is more Rousseauian than Hobbesian: if we are made aware of another person’s suffering in the right way, we will go to his or her aid” (p. 412). There are then numerous reasons why we should not be constrained to fit justice within mutual advantage. Fellowship and respect for another being’s dignity may be more than sufficient for many instances of justice.

Finally, the social contract tradition—especially in its Rawlsian refinement—holds that the contracting parties, and hence the subject of justice as well, must be reflectively rational. But while this may be so for people who legislate justice, it does not appear right for the subjects of justice. Just because you don’t have a fully functioning mind doesn’t mean you don’t deserve to be treated with respect. Analogously, just because an animal has im-

mediate, practical intelligence rather than self-conscious reflection doesn't mean it doesn't deserve to be treated with dignity. "Our choices affect the lives of non-human species every day, and often cause them enormous suffering. Animals are not simply part of the furniture of the world; they are active beings trying to live their lives; and we often stand in their way. That looks like a problem of justice" (p. 22). With its emphasis on self-reflective rationality as a necessary condition on making and being subject to justice, the social contract tradition cannot make sense of the obviousness of Nussbaum's claim.

Thus, Nussbaum dismantles the social contract tradition by rendering its fundamental assumptions suspect. More people and more beings deserve justice than those who make the rules. Just because you aren't self-reflective doesn't mean you don't have a dignity that demands respect. There is more to life than profiting off of each other; for human beings, fellowship and compassion are ends in themselves, too.

"When I say that the mistreatment of animals is unjust, I mean to say not only that it is wrong *of us* to treat them in that way, but also that they have a right, a moral entitlement, not to be treated in that way. It is unfair *to them*" (p. 337). The basic reason why it is unfair to them is that they have dignity, too. To my mind, the most exciting part of Nussbaum's book is her Aristotelian theory of animal dignity, according to which "there is something wonderful and worthy of awe in any complex natural organism" (p. 94).

To understand why this is exciting, it helps to backtrack. For Plato, what gives us dignity is our belonging to a disembodied form. For Western monotheistic thinkers, what gives us dignity is our other-worldly origin and the way we participate in it. For Kant, "human dignity ... [is] radically separate from the natural world" (p. 131). The Western tradition has not been very clear-sighted about our animality. But for an Aristotelian, "our dignity just is the dignity of a certain sort of animal. It is the animal sort of dignity" (p. 132). "[T]he beauty of a cherry tree in bloom could not be possessed by a diamond" (p. 132).<sup>[5]</sup>

Nussbaum sees the Aristotelian sense of dignity in non-Western traditions, too. Her argument begins with the 1999 ruling of India's Kerala High Court on the treatment of zoo animals. The ruling stated, "Though not homosapiens, [circus animals] are also entitled to dignified existence and humane treatment sans cruelty and torture" (p. 325). Reading the court's intent, Nussbaum draws the connection between its sense of animal dignity and the capability approach: "Dignified existence would

seem at least to include the following: adequate opportunities for nutrition and physical activity; freedom from pain, squalor and cruelty; freedom to act in ways that are characteristic of the species (rather than to be confined and, as here, made to perform silly and degrading stunts); freedom from fear and opportunities for rewarding interactions with other creatures of the same species and of different species; a chance to enjoy the light and air in tranquility" (p. 326). In other words, there is a cross-traditional concept of animal dignity that links dignity with "a rich plurality of life activities" (p. 346) as does the capability approach.

The significance of Nussbaum's concept of animal dignity is not trivial. For one, it takes us beyond contractarianism and even Utilitarianism, the Western moral philosophy that has historically been most sympathetic to animals. Once we accept with Aristotle that "in everything in nature there is something wonder-inspiring" (p. 348), seeing in each animal kind a specific beauty and dignity, we go "beyond the contractarian view ... [through our] basic wonder at living beings and ... wish for their flourishing and for a world in which many creatures of many types flourish.... [We go] beyond ... Utilitarianism[,] because [we] take an interest not just in pleasure and pain, but in complex forms of life and functioning" (p. 349). In other words, Nussbaum's concept of animal dignity supports a moral and political outlook that can only be described as biocentric, focusing especially on the animal kingdom, of which humans are just a part. This, in the middle of mainstream political theory!

There is one problem with Nussbaum's approach—how it is justified politically. One of the vestiges of the Rawlsian tradition Nussbaum does keep is its account of political justification. According to that account, a theory of justice is politically justified in a pluralistic world when and only when it is the result of an "overlapping consensus" between people who hold different substantive views of the good. The model for such a consensus is the agreement that issued the Universal Declaration of Human Rights. There, people from every major religion, communism, and from liberal secularism all agreed on a list of basic human rights, agreeing with the principles of justice even though they each had different motivations for holding them. Nussbaum thinks their agreement bodes well for politically justifying the capability approach: "like the framers of the Universal Declaration of Human Rights, I view ... consensus as fully available internationally across lines of tradition and religion" (p. 163). Backing slightly off this belief, she later writes that a "*hope-for-consensus* ... in a world characterized by ...

human rights” (p. 304, my emphasis) is sufficient to make her view politically justifiable in a pluralistic world.

But it is not clear why there should be even a hope-for-consensus when common sense, especially on the treatment of animals, is schizophrenic. We respect pets, and then we eat animals raised in extremely miserable conditions. Even Nussbaum admits—citing Mary Robinson—that with respect to disability, “True equality .. mandates a change in attitude in the larger social fabric” (p. 198). How much truer that is when it comes to world cultures that nonchalantly consume factory farmed meat more than once a day on a regular diet; do not blink at furs, cosmetics, zoos, and more; and do not think some *humans*, e.g., menial laborers, have an actual dignity, let alone some other animals. Although religions like Buddhism and state structures in Kerala and Germany promise hope, most world cultures have yet to show much if any “change in attitude in the larger social fabric” when it comes to animals. That being so, it is unclear how Nussbaum’s view of political entitlements can pass her own test for political justification, even if the view is *morally* justified by her view of animal dignity.

To this concern, Nussbaum might reply that her book closes with the problem of moral education. To effect a change in the larger social fabric, we must educate our coming generations in expansive compassion so that they learn to become more biocentric. Then, we can expect an overlapping consensus. But since large-scale education is itself a political initiative, it is hard to see how we can acquire the political justification for it on Nussbaum’s grounds if the conception of justice underlying

the initiative is not itself justified. Right now, on Nussbaum’s own grounds, the extension of justice to animals other than ourselves can only be a nongovernmental initiative.

#### Notes

[1]. This passage makes Nussbaum’s view appear Utilitarian, given its emphasis on sentience. Later in the review, I will show how that isn’t so. Nussbaum refers to sentience, because she thinks the minimum for being a subject of justice is being sentient (pp. 361-362). However, other statements she makes conflict with that position (pp. 347-349, 362), suggesting she is committed to full-out biocentrism (biocentric individualism, to be exact; pp. 357-358).

[2]. *Philosophical Investigations*, section 115.

[3]. See his *Utilitarianism*. Mill gives much importance to the spirit of humanity that sympathetically connects humans.

[4]. The inclusion of Grotius is important, because of his significance for the formation of international law. By drawing on Grotius, Nussbaum indirectly supports her contention that her view of justice can win international acceptance just as the Universal Declaration of Human Rights did.

[5]. Richard Sorabji’s book *Animal Minds and Human Morals: The Origins of the Western Debate* (Ithaca, N.Y.: Cornell University Press, 1993) is a good source for understanding the status of animals in the Western tradition. Nussbaum draws on his book.

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