

INTUITIONS, CAPABILITIES, AND ARISTOTLE

DAN HICKS

1. TWO CHARGES OF ‘INTUITIONISM’

In her *Frontiers of justice*¹, Martha Nussbaum briefly considers a charge that her Capabilities Approach to political justice is inappropriately ‘intuitionistic’. My project in this paper is to explicate this charge and Nussbaum’s numerous responses to it. I claim that she can respond successfully to this charge, but does not do so in *Frontiers of justice*, and that this response also makes clear her otherwise obscure relationship with Aristotle.

First, some background. Nussbaum’s Capabilities Approach has developed gradually over the past two decades, and draws deeply on both her mainstream (relative to contemporary Anglophone philosophy) Aristotle scholarship and her less mainstream work as an activist for the improved status of women in India with the economist Amartya Sen. In its most recent incarnations – most importantly *Frontiers of justice* and *Women and human development*² – the centrepiece of the Approach is the List of Capabilities³. Examples of entries on the List include ‘Life’ and ‘Senses, Imagination, and Thought’, ‘Bodily Integrity’, and ‘Bodily Health’. Each entry is composed of sub-entries that further explicate it, though Nussbaum deliberately avoids specifying the entries completely. For example, the entry ‘Life’ is explicated as ‘Being able to live to the end of a human life of normal length; not dying prematurely, or before one’s life is so reduced as to be not worth living’⁴. This List is intended by Nussbaum to be an account of basic human rights as criteria for a minimally just society: any society whose citizens do not possess the actual ability to exercise its various faculties and engage in its various activities is unjust.

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¹Nussbaum, 2006

²Nussbaum, 2001

³See, eg, Nussbaum, 2006, 76-8

⁴Ibid

Nussbaum identifies two distinct charges that she is inappropriately depending on ‘intuition’. These charges she attributes to John Rawls, citing (Rawls, 1999, 34-40).

[F]irst, . . . there is an unacceptable reliance on intuition in the generation of basic political principles [ie, the List entries]; second, that the multivalued nature of the List of Capabilities makes inevitable a reliance on intuitionistic balancing that would make political principles indeterminate and never final.⁵

We shall consider these in reverse order.

The second charge says that Nussbaum is being ‘intuitionistic’ in the application of the List to problems of justice. By the ‘multivalued nature’ of the List, Nussbaum means the fact that it enumerates ten distinct and radically incommensurable and nonfungible basic goods: we cannot, for instance, make sacrifices with respect to bodily integrity for the sake of bodily health, nor vice versa. The problem, from Rawls’ perspective, is that this makes a linear-numerical ranking of the state of each member of the community, vis-à-vis basic goods, impossible, and *a fortiori*, undermines the very statement of the Difference Principle.

Suppose we are faced with a choice between policies *A* and *B*. Taking basic goods to be at least roughly measurable in terms of monetary wealth, the Difference Principle says that we ought to choose the policy such that we maximize the monetary wealth of the least well-off (the least wealthy) person in the community. So, suppose further, that under *A*, *a* is the least well-off individual and has 100 units of wealth, while under *B*, *b* is the least well-off individual and has 120 units of wealth. The Difference Principles tells us that we are obliged to choose *B* over *A*.

But with the Capabilities Approach’s plurality of incommensurable goods, the very notion of ‘least well-off’ is ill-defined: *a* might be less well-off than *b* in terms of bodily integrity under *A*, say, but more well-off in terms of bodily health compared to *b* under *B*.⁶ The determination between *A* and *B* – whether *b* is better off under *B* ‘overall’ than *a* is under *A* – must therefore depend on intuitions concerning which ways of sacrificing basic goods for the sake of other, incommensurable goods

⁵Nussbaum, 2006, 173

⁶To make this still more concrete, one might consider the case of Mary Mallon, aka Typhoid Mary.

are consistent with justice – for ‘balancing’ or managing ‘trade-offs’ between or ‘aggregates’ of these goods.

Nussbaum responds by pointing out that the List of Capabilities is simply not meant to provide a total decision procedure of the same sort as the Difference Principle. In particular, it is meant only to be an account of the ‘minimum requirements of justice’⁷, so that a community which falls short of guaranteeing every one of the various capabilities to its members is unjust. No intuitionistic balancing or management is needed simply because ‘the theory does *not* countenance intuitionistic balancing or trade-offs among them’⁸. In the example above, assuming *a* is below the threshold for bodily integrity under *A* while *b* is below the threshold for bodily health under *B*, the Capabilities Approach declares *both* policies unjust; it may be necessary in emergency situations or as an interim measure (as a preliminary step to achieving a just society) to choose one or the other, but these choices are not made under the heading of justice.

The second charge is more significant, and is essentially a charge that Nussbaum has begged the question in favour of some preconceived vision of a minimally just society in the formulation of the List itself. In the context of *Frontiers of justice*, this can be specified in two ways: it may be a charge against the justification of the original List, or it may be a charge against the extension of the account to the inclusion of the three cases of disability, nationality, and species membership.

To understand the force of this, we take a moment to examine her own sketch in *Frontiers of justice* of the justification of the List:

[The Capabilities Approach] starts from the outcome: with an *intuitive* grasp of a particular content, as having a necessary connection to a life worthy of human dignity. It then seeks political procedures (a constitution, various allocations of powers, a certain type of economic system) that will achieve that result as nearly as possible Justice is in the outcome, and the procedure is a good one to the extent that it promotes this outcome.⁹

⁷Ibid, 175

⁸Ibid, her emphasis

⁹82, my emphasis

But, of course, Nussbaum's List of Capabilities is *not* a list of political procedures. If the List is taken to be the end product of the theoretical approach (the translation of the generic, abstract items on the List into laws and concrete institutions being the practical-political work of particular communities, Nussbaum's 'rather strong separation between issues of justification and issues of implementation'¹⁰), then the whole approach would indeed seem to be nothing more than Nussbaum writing down her precritical intuitions about what makes for a minimally just society. Presented like this, question-begging is a real possibility.

In the next section, we will consider a series of progressively more sophisticated responses to this objection. This will lead naturally to a discussion of exactly what sort of foundation Nussbaum's List is supposed to have. Only after we understand this will we return to the issue of extension to the three cases of *Frontiers of justice*.

2. FIVE RESPONSES TO THE CHARGE OF QUESTION-BEGGING

There are five responses. Two of these are given directly by Nussbaum in *Frontiers of justice*, one is the approach of *Women and human development*, and the remaining two are found in her earlier paper, 'Aristotle on human nature and the foundations of ethics'¹¹.

The first response is of the type I call 'so's your mother' responses:

there is no more and no less reliance on intuition in the capabilities approach than in justice as fairness In justice as fairness, intuitions and considered judgments are consulted in the design of the Original Position; in the capabilities approach, they are consulted in the making of the capabilities list.¹²

The claim here is that the Original Position, in which agents abstract away their gender, race, socio-economic position, &c., deliberately builds equal respect for persons regardless of their particular gender, &c., into the conclusions generated by the procedure; and since the rational basis for substantive ethical judgements is meant

¹⁰Ibid, 80

¹¹Nussbaum, 1995

¹²Nussbaum, 2006, 173; note that this is Nussbaum's own response to the charge in *Frontiers of justice*

to be the procedure itself, equal respect (and other features that develop out of justice and fairness in a similar way) is only ‘justified’ by appeal to the ethical intuitions that went into the design of the Original Position. Rawls has no answer to the radical aristocrat who rejects the egalitarianism motivating the Original Position. In the historical sketch of contractarian theories of political justice¹³, Nussbaum argues that this utilization of ethical intuitions plays a significant rôle in, not just Rawls, but also Locke and Kant.

Hence, if Nussbaum is guilty of unjustifiably deploying substantive ethical intuitions in the development of the List of Capabilities, then so is Rawls. I find this response completely inadequate. Pointing out that the alternative to one’s own theory is just as vulnerable to a certain criticism doesn’t remove the criticism. Perhaps, if the alternative was the only other theory available, it would show that the objection is not a good reason to decide in favour of one over the other. But it is certainly not the case that Justice as Fairness and the Capabilities Approach are our only two theories of political justice. And even if they were, we might simply despair at the lack of *any* good theory of justice.

A marginally better response is to look more closely at the distinction between ‘procedural’ and ‘outcome-oriented’ approaches to political philosophy (and ethics more generally). ‘Procedural’ describes contractarian approaches, especially Rawls’, that are designed to generate a large body of substantive principles for a just society (such as the Difference Principle) out of a minimal set of assumptions (such as the egalitarian features built into the Original Position identified above). Nussbaum’s own Capabilities Approach is ‘outcome-oriented’, and sees no reason to waste time worrying over elaborate justificatory schemes when it is far simpler and efficient to compare a given account of just society against our pre-existing ethical intuitions.

This is not quite as implausible as it sounds. Nussbaum points out that we already utilize ethical intuitions in rejecting ‘any procedure, however elegant, if it doesn’t give us an outcome that squares well with our intuitions about dignity and fairness’¹⁴. For example, the standard criticism of Consequentialism for permitting (or,

¹³Ibid, §1.v, pp 35-54

¹⁴Ibid, 83

in sharper versions, requiring) the harming of innocents – set against our intuitive repugnance at such judgements, we are driven to at least require the consequentialist to adjust their theory.

However, even as this response recognises the rôle intuitions play in *criticising* a *given* ethical theory, it fails to motivate the use of intuitions in *designing* a *new* ethical theory. In addition, it provides no room for the use of ethical theory in criticising our intuitions. If this is the response she takes, Nussbaum has no way to use the List of Capabilities against, say, the defender of female genital mutilation, who simply denies the intuitions justifying the inclusion of bodily integrity and bodily health on the List (or the interpretation of these which condemns female genital mutilation). And, of course, being able to engage with a hostile opponent is the basic reason for answering the charge of question-begging in the first place.

The third response, then, is to avoid this problem by allowing room in one's theorizing for simultaneous dialectical engagement of both theory and intuition. In less Hegelian language, we can allow both for theory to challenge intuition and intuition to challenge theory, so that sometimes we reject a theory for not living up to the standards presented by intuition, and sometimes we reject intuitions that conflict with a robust theory that works well in many other cases. Dressed up as an iterative process, we have, essentially, Rawls' method of working towards a reflective equilibrium in ethical theory¹⁵. This, I think, is actually the methodological heading under which Nussbaum's narrative of the genesis of the List of Capabilities falls:

The list represents the result of years of cross-cultural discussion, and comparisons between earlier and later versions will show that the input of other voices has shaped its content in many ways. Thus it already represents what it proposes: a type of *overlapping consensus* on the part of people with otherwise very different views of human life.¹⁶

'Discussion' actually slightly oversimplifies the approach Nussbaum takes in *Women and human development*. Responding to a strong cultural relativist, anti-realist attitude towards political justice, Nussbaum argues¹⁷ that the List articulates principles

¹⁵Rawls, 1999, 20-2, et al

¹⁶Nussbaum, 2001, 76, her emphasis

¹⁷Ibid, §1.II, pp 41-59

of justice that are literally universal to human experience. Interacting with other cultural traditions (Anglophone and Indian are the two most prominent in *Women and human development*), we recognise common ground and utilise apparent differences as starting points for critical self-examination. Keeping this process open-ended means we can always return to the conversation once we have made revisions to our own intuitions.

This sort of historicist, somewhat anti-foundationalist approach can be seen in several of the most prominent projects in ethics of the last few decades – Rawls was already mentioned (though I neither assert nor deny here that Justice as Fairness itself qualifies as either a historicist or anti-foundationalist project), but a cross-cultural dialectic is also at the centre of Alasdair MacIntyre’s approach. This method of dialectical, historical, anti-foundational engagement with the world in which we live as concrete, historically-situated beings makes Nussbaum and MacIntyre at least somewhat resemble the philosophers of science Dewey and Neurath: for all four thinkers, we never create theory (whether of ethics or of epistemology) *a priori, ex nihilo*, or from some other sort of ‘external’ standpoint, but rather make internal and piecemeal modifications to our current best, received theory in the face of challenges presented by rival or alternative theories. To the extent that one finds the work of these philosophers of science attractive (and I will readily admit that I do), then, one has reason to also find the projects of Nussbaum and MacIntyre attractive. Hence, for a certain definition of ‘naturalist’¹⁸ it is reasonable to call all four of these philosophers naturalists.

But the two naturalist philosophers of science are both vulnerable to a certain worry from the point of view of scientific realism: what reason do we have for believing that this dialectical approach will ever converge on the true theory of the natural world? And an exactly parallel worry can be levelled against Nussbaum and MacIntyre by the ethical realist: what reason do we have for believing this dialectical approach will ever converge on the true theory of the ethical? While Dewey and

¹⁸Specifically, Helen Longino’s definition: treating ‘the conditions of knowledge production by human cognitive agents, empirical rather than transcendental subjects, as the starting point for any philosophical theory’ (Longino, 2002, 10). Note this is not ‘naturalist’ in the sense of either Moore’s target in *Principia ethica* or ‘metaphysical naturalism’.

Neurath are liable to suggest we give up on the strong scientific realism behind the charge brought against them, the parallel move in the case of ethics would seem to be ethical nihilism, a move which seems right to resist. Hence, can we find at least some small point on which to anchor Nussbaum (and, hopefully, MacIntyre as well)?

To do this, we shall turn to the figure whom both Nussbaum and MacIntyre cite as their primary inspiration: Aristotle. Specifically, we shall consider two aspects of the argument Nussbaum attributes to Aristotle in her article ‘Aristotle on human nature and the foundations of ethics’¹⁹, and ask whether these can lend some support to her List of Capabilities.

Nussbaum explicitly²⁰ sets as her task in this paper responding to Bernard Williams’ critique of Aristoteleanism in *Ethics and the limits of philosophy*²¹. Williams believes that, without the baroque and outdated edifice of Aristotle’s metaphysics, a contemporary Aristotelean cannot justify their notion of a more-or-less determinate human nature (*phusis*) for grounding normative/evaluative judgements. Nussbaum examines the structure of the arguments in the *Nicomachean ethics*, identifying the following ‘general strategy’:

Aristotle assumes that ethical well wishing is aimed at realizing a good life for me and my friends, not at the realization of some ideal situation in which none of us exists. So our views about who we essentially are and what changes we can endure while remaining ourselves set limits of a kind upon what we can wish, on what our ethical theories can commend.²²

This strategy is illustrated by discussions of the ethical value Aristotle attributes to affiliation in political communities and the use of practical reason. Two important features of this strategy form what I will identify as the fourth and fifth responses to the charge of question-begging.

¹⁹Nussbaum, 1995

²⁰Ibid, 87

²¹Williams, 1985, ch. 3; the details of her response to Williams, while interesting and important, will not be directly examined here.

²²Ibid, 91

Since it is the less successful of the two, we shall first consider what Nussbaum calls the ‘self-validating’ structure of the strategy:

this argument . . . is self-validating; by participating at all in Aristotle’s inquiry about *eudaimonia*, an inquiry that explicitly announces that its results will be drawn from the active practical reasoning of each participant, the interlocutor grants implicitly the importance of practical reasoning in a human life.²³

Essentially, Nussbaum’s point here is that, in order to engage in any philosophical discussion of ethics at all, we must live in a community of beings sharing, among other things, a concern for the ethical, and we must be able to exercise (practical) reason. Hence, to the extent that Williams believes philosophizing – even philosophizing in an ethically sceptical mode – is a valuable activity (and it is hard to see why he would have done so much of it for so long if it was completely without any value whatsoever), he has already recognised that living in a community and using one’s practical reason are valuable and essential features of the good human life.²⁴

This argument has the air (or perhaps the stench) of Gewirthian cleverness about it, and it is easy to see how it completely falls apart if one takes Nussbaum’s interlocutor to be a thoroughgoing ethical sceptic. What’s more, even if it does work for the List entries Practical Reason (#6) and Affiliation (#7), it does nothing at all for such entries as Emotions (#5), Other Species (#8), Play (#9), and Control over One’s Environment (#10). One does not need emotions to engage in Aristotelean rational inquiry, &c.

We turn, then, to the second feature of this general Aristotelean strategy: a closer look at its ‘internal’ (or, to minimise the number of misleading non-neologisms, I shall prefer ‘naturalist’, in the sense already discussed) character. This is in contrast with Williams’ ‘external’ perspective:

[W]hat a being who stands apart from our experiences and ways of life thinks seems to matter little, if at all. Human nature cannot, and need not, be validated from the outside, because human nature

²³Ibid, 117

²⁴Indeed, cf Williams, 1985, 51

just *is* an inside perspective, not a *thing* at all, but rather the most fundamental and broadly shared experiences of human beings living and reasoning together.²⁵

This is a fascinating passage, but we only have space here for a narrowly-focussed examination of it – and then only in the next section.

3. ARISTOTLE AND ETHICAL NATURALISM

The key move here is noticing the close connection between Nussbaum’s naturalistic general strategy and a more-or-less determinate notion of essential features of humanity as a quasi-natural kind. Recall again the first sentence of Nussbaum’s description of the general strategy: ‘Aristotle assumes that ethical well wishing is aimed at realizing a good life for me and my friends, not at the realization of some ideal situation in which none of us exists’²⁶. Asking after the ethical is *my* asking after what is good *for me* and others *like me*. In order for any answer to be valid, it first requires an account of just what it is to be like me – to be the sort of thing I am – so that we are sure, once we’ve done some normative ethics, that we’ve found the or a good for me and others like me, and not some other kind of being.

Now, the sort of thing I am might be a white, straight American man in the early twenty-first century CE, it might be a human being, or it might be an animal or physical object. Each of these describes a distinct context in which I can ask about the ethical, and hence will yield very different answers. The right context is that which captures all and only my ‘essential’ features, and following Aristotle, Nussbaum asserts that this is the one where I am considered as a human being, neither more specifically nor more generically: ‘Now for Aristotle . . . continued existence as a member of the species one is in [viz, humanity] is at least a necessary condition of continued personal identity. For Aristotle, it is probably (if we add a fuller account of “continued”) a sufficient condition as well’²⁷.

We can ask after the essential characteristics of human beings in many different ways. For the purposes of ethical inquiry, the particular question we want to ask

²⁵Nussbaum, 1995, 121, her emphasis

²⁶Op cit

²⁷Ibid, 91, her parentheses, my brackets

is the following: What are the morally salient features of a being? That is, what qualities give a particular being its ethical status? Combined with the question of essential characteristics of human beings, we arrive at the following: What are the morally salient features of being human?

It is important to note that this question is *not* asked from Williams' 'outside point of view'. The asker is not a god, or God, or a sapient octopod or angel or other radically non-human being, giving a dispassionate classification of the beings with and beings without ethical status from the view from nowhere. Instead, we are asking what features *we* take to be morally salient features of being human – why do (or should) *we* take this to have ethical status as a person (eg, a comatose human being) but not that (eg, an avocado tree)? Hence, we have no need for the whole Aristotelean metaphysics, nor even the notion of natural kinds in any realist sense (whence the locution 'quasi-natural kind'). The naturalist project is simply to specify and refine our own initial, pre-critical body of judgements about ethical salience, and neither presupposes nor implies a metaphysics of personhood or ethical status.

With that much of the general strategy clear, we can now understand how the actual justification of the various purported features of the good human life is supposed to go. We engage in a thought experiment, imagining a life without the feature in question, and ask ourselves whether *we* could continue to be human beings *in the fullest sense of the term* if *we* lived that life. For example, discussing affiliation, Nussbaum argues that

[i]t is, of course, in some sense physically possible to live without others. Aristotle simply points out that we do not choose that way and we do not approve of people who move in that direction [eg, hermits and shut-ins] [W]e have here not so much a knock-down proof of something from some fixed area of eternal fact, but rather an appeal to the reader to consider whether the opponent's project does not deal in an odd sort of incoherence, promising the *eudaimon* life to *us*, while depriving the *eudaimon* person of something without which

we (including the opponent) believe no human life would be possible or worthwhile.²⁸

When we discover an incompatibility between our intuitions about the good human life and our theoretical account of the good human life, we either reject and emend our intuitions or reform our theory. The naturalist or internal point here is that ethical inquiry is always done by and for human beings, ie, within the given context of human concerns and interests. This does not mean we cannot criticise and change the ethical intuitions constituting that context based on our reflections (just as the Deweyan freely but not uncritically utilises the best science of the day to give an epistemology both descriptive and normative); the whole project just is one of critical self-examination and refinement, but one that is acutely aware of who is carrying it out and how this frames the discussion. This prevents the project from deteriorating into uncritical pronouncements or anything-goes relativism – it must be accountable (though not absolutely so) to ‘common-sense’ observations about the universal features of the way we make ethical judgements.

To return to the List of Capabilities, note that Nussbaum’s reading of Aristotle is basically identical to her description of the ‘intuitive’ genesis of the List:

The basic idea is that with regard to each of these, we can argue, by imagining a life without the capability in question, that such a life is not life worthy of human dignity. The argument in each case is based on imagining a form of life; it is intuitive and discursive.²⁹

Indeed, in an endnote at the end of the first sentence, Nussbaum refers the reader back to the ‘Aristotle’ piece.

Now we can consider whether this naturalist project evades the charge of question-begging. Nussbaum argues that the opponent of Aristotle has four distinct ways to respond to the defence of the value of affiliation:

she must either [1] show that our conception of our identity is not what Aristotle says it is – that it does, after all, accommodate [unaffiliating beings] . . . ; or [2] she must persuade us that other aims and

²⁸Ibid, 104-5, her emphasis and parentheses, my brackets

²⁹Nussbaum, 2006, 78

beliefs require us to *revise* these deep beliefs about identity; or [3] she must grant [the argument] . . . ; or, finally, [4] she must dissociate herself from the other parties to the argument, announcing that her conception of identity and nature is truly and deeply not the same as theirs, and acting, henceforth, accordingly.³⁰

The difference between 1 and 2 is subtle, but I think the idea is that, in the first case, we must modify our theory to conform to our intuitions, while in the second, we must modify our intuitions to conform to our theory. For our purposes, numbers 2 and 4 are the most important, as they are the only places where the opponent might claim that Nussbaum is inappropriately relying on her intuitions to prop up the List entry (in the other two, the opponent's intuitions do not differ from Nussbaum's).

In the second case, an objection based on theory can readily be incorporated into Nussbaum's project: if the objection is good, its advice can be taken, and intuitions modified; or the objection can be rejected as bad without any more question-begging that is used to make the objection itself in the first place. Hence there is no question-begging here.

The reasoning in the fourth case cannot be incorporated in the same way, because it is a radical rejection of the human perspective used to define the inquiry – the opponent is engaged in a completely different project. Nussbaum asserts that this particular feature is essential to the life of beings like her; her interlocutor asserts that this feature is not essential to the life of beings like him. In the extraordinarily unlikely event that the interlocutor does not back down once it is clear how radical his objection really is, we conclude that he is simply not the same sort of being as Nussbaum. Here there is still no question begging, because Nussbaum is only talking about beings like herself; her theory will need to accommodate interactions with beings unlike her and like her interlocutor, but this does not imply that she has made any unacceptable assumptions about what is essential to beings like herself.

To make this somewhat more concrete, and illustrate just how radical the fourth case would have to be, we can imagine trying to do ethics with a sapient octopod. Supposing the octopod to be a hermit by nature (as all real octopod species are), we

³⁰Nussbaum, 1995, 108-9, my brackets, her emphasis

can imagine it rejecting the intuition justifying the List entry concerning political and social affiliation. But this rejection tells us absolutely nothing about the good *human* life; it just indicates the distance between the good for sapient primates and the good for sapient octopodes. Now, both species will, as part of their ethical theorizing, need to develop principles for peaceful interaction with the other, very alien species, but this is a problem for the extension of the List, not the original, single-species, List. And with the original List now secured against the charge of question-begging, we can turn to this problem of extension.

4. EXTENDING THE LIST OF CAPABILITIES

We start by noting, briefly, that Nussbaum considers this problem in the ‘Aristotle’ paper: do we need an external, intuition-free perspective (perhaps consulting biology) for determining the ethical status of creatures who lack some of those features essential for ethical salience, eg, Aristotle’s ‘natural slaves’, or, for us, human beings with severe mental impairments and non-human animals? Nussbaum’s response is, at best, one of vague optimism, asserting without further elaboration that

there will be another account of our obligations to the varied levels of beings in the world around us; and this account, which in Aristotle will be based on the level of capability of each creature, is well equipped to generate an attractive story of the ethical foundations for our treatment of all animate beings.³¹

To improve on this, we must distinguish between asking *why* this extension is to be made and asking *how* it is to be made, and what sort of answer is to be given to these two very different questions.

Based on the discussion of impairment and care in chapter two of *Frontiers of justice*, I suggest first that explaining why an extension is needed is no different from – indeed, is nothing more than – identifying the morally salient features of the beings already identified as subjects of justice, and is motivated by our pre-critical judgements about ethical status: if we do, as a matter of fact, recognise the ethical

³¹Ibid, 122

status of a certain class of beings, this is just because they have at least some of those features we already consider morally salient about ourselves. We need not seek any high-level principles beyond the general strategy to determine the proper extension of the concerns of justice.

For example, Nussbaum gives two arguments that the status of the physically and mentally impaired need the attention of a theory of justice. First, ‘we are like the impaired’: impairment (compared to the abilities of a normal adult human being) is not an extraordinary state of being, but one that all humans go through at the beginning of life, almost all of us go through temporarily at some point due to severe injury or disease, and many of us in the upper middle and wealthy classes will have to face in the last years (or even decades) of life.

So the way we think about the needs of children and adults with impairments and disabilities is not a special department of life, easily cordoned off from the “average case.” It also has implications for the way “normals” . . . think about their parents as they age – and about the needs they themselves are likely to have if they live long enough.³²

Second, ‘the impaired are like us’: when given the opportunity, even severely mentally impaired human beings often demonstrate physical and mental capacities for loving and friendly relationships, aesthetic appreciation, athletic ability, independent living, and general psychological and intellectual development that belie stereotypes of ‘the impaired’.³³ These two arguments are united in the Aristotelean general strategy: there is no real discontinuity between ‘normal’ and ‘impaired’ human beings, especially in terms of those features identified as morally salient in generating the original List, and hence the ethical status of ‘impaired’ human beings is comparable to that of ‘normals’. Extension is justified in exactly the same way the List entries were justified.³⁴

³²Nussbaum, 2006, 101

³³Cf *ibid.*, 96ff.

³⁴Nussbaum actually has a third argument, that justice is already concerned with the status and situation of ‘normal’ humans who give care to ‘impaired’ humans, both in the market (eg, employees at a nursing home) and outside of it (eg, a mother caring for young children and a daughter caring for elderly parents) (Nussbaum, 2006, 100-3). However, as this argument tells us little about the ethical status of ‘impaired’ humans, I do not feel it is important for my purposes here.

The other question, how our theory is to be extended to newly-identified cases, is probably best done on an *ad hoc* basis. Each group of beings identified as subjects of justice will have some particular deficiencies and needs under the status quo, will be subject to differential treatment that may or may not be consistent with justice, and will be composed of individuals whose individual situation will be *sui generis* in important respects. The guidelines developed by political philosophers for the political and legal system will have to take all these variables into account, as well the policies and laws adopted. Each extension will therefore require careful reflection of the items on the List, taken both as fixed standards for justice and as possibly needing revision so as to accommodate all beings with ethical status. Both creativity and practical reason will be needed here, and hence general principles seem ill-advised.

It is thus inappropriate for me to make declarations here about how justice is to be served in the case of mentally and physically impaired humans, or other cases to which the principles of justice are to be extended. That is the task of extended philosophical discussion – the sort Nussbaum devotes entire chapters to in *Frontiers of justice*. A short term paper is not the appropriate venue for this sort of in-depth examination. Nonetheless, it is at least clear that carrying out this extension is of a kind with the critical self-examination that generated the original List. Hence, given that this approach was not guilty of question-begging then, it is also not guilty of question-begging now.

REFERENCES

- Longino, H. (2002). *The fate of knowledge*. Princeton.
- Nussbaum, M. (1995). Aristotle on human nature and the foundations of ethics. In J. Altham R. Harrison (Eds.), *World, mind, and ethics* (p. 86-131). Cambridge.
- Nussbaum, M. (2001). *Women and human development*. Cambridge.
- Nussbaum, M. (2006). *Frontiers of justice*. Belknap.
- Rawls, J. (1999). *A theory of justice* (Revised ed.). Belknap.
- Williams, B. (1985). *Ethics and the limits of philosophy*. Harvard.