

MARTHA NUSSBAUM, *Frontiers of justice: Disability, nationality, species membership (The Tanner Lectures on Human Values)*, BELKNAP (HARVARD), 2006, 512 PP, \$35.00 (HBK), ISBN 0674019172

Reviewed by Dan Hicks

Frontiers of justice is an extension and development of the central arguments of Martha Nussbaum's 2003 Tanner lectures, which in turn extend and develop her Capabilities Approach to political justice. Although she presents her primary target as Rawls' general framework of justice as fairness (especially as in *A theory of justice* and *Political liberalism*), Nussbaum's attack is simultaneously much more specific and much broader. Locating Rawls within one of the strongest traditions of Western political theory, Nussbaum identifies three assumptions at the foundation of this tradition, and much of the argumentation of the book goes after these instead of features particular to Rawls.

This tradition is the Social Contract tradition, with its basic notion that the principles of a just society can be derived from a model or thought experiment of roughly equipotent rational beings entering into a legal contract for mutual advantage. The first foundational assumption here is that the primary subjects of justice – those beings whose well-being is the concern of the principles of justice – are roughly identifiable with the beings entering into the contract, ie, the parties in the contract are formulating principles (as though) they will live under them themselves. This, combined with the contractarian structure, yields the second and third assumptions: that the primary subjects of justice are rational beings roughly equal in power; and that the only reason any individual has for entering into the contract is their own personal advantage. These two are closely linked by Rawls' Humean Circumstances of Justice: if there were great disparities in physical or mental ability between the contractors, then the more powerful would have nothing to gain from entering into a contract with the weaker, and indeed would probably benefit far more by enslaving or eliminating the weaker. Looking at both early Modern and contemporary political philosophers and ethicists, Nussbaum makes a firm (but not completely solid, as we shall see below) case that almost anything that calls itself a Social Contract theory both does and must make these assumptions.

Her negative argument, then, is fairly straightforward: these three assumptions are completely incompatible with providing a good account of justice in three cases – cases where, not coincidentally, there is desperate need for a good theoretical account of justice. The positive part of her argument is just as straightforward: where the Social

Contract tradition has failed, Nussbaum's own Capabilities Approach offers at least a promising new direction. There is a certain amount of subtlety here, as Nussbaum frequently goes out of her way to stress that she means for the Capabilities approach to extend, rather than replace outright, Rawls' justice as fairness, but it is not entirely clear what is left of Rawls with these three assumptions removed. Whether it was her intention or not, when combined with Sen's criticism of Consequential-economic approaches in *Development as freedom, Frontiers of justice* certainly feels like the Capabilities Approach knocking out the competition for the title of best theory of social-political justice.

The three cases that so desperately need the attention of an account of justice are those of the subtitle: humans with mental and physical impairments, international human rights, and non-human animals. The Introduction and long first chapter (roughly the first quarter of the book) locate the three assumptions within the contemporary and historical articulations of Social Contract theories, and briefly sketch the Capabilities Approach and the negative argument. The three cases then each get individual treatment, as Nussbaum first gives an astute analysis of the tension between the case and each of the three assumptions (ch. 2, 4, and the first half of 6), and then 'extends' the Capabilities Approach to give both a theoretical account of justice and fairly specific policy recommendations (ch. 3, 5, and the second half of 6).

The first part of the individual treatment of each case – the discussion and development of tensions between the particular case and the three assumptions of Social Contract theory – is by far the strongest. Nussbaum's aim in these sections is deadly, and her analysis is subtle and tied closely into the history of the Social Contract tradition and the Humean Circumstances of Justice. But surprisingly, despite the effectiveness and analytic power of Nussbaum's offensive, and more than twenty years' work by Sen, Nussbaum, and a handful of other proponents, the Capabilities Approach receives a remarkably sketchy treatment here. Partly this is a feature of the approach itself; it is 'not intended to provide a complete account of social justice' (75), and is instead designed to be a framework which each community (nation-state) is to fill in on its own. And partly this is because Nussbaum thinks the foundational work has been done elsewhere, most importantly in her *Women and human development*. But the extension of the approach to the problem cases has not been accomplished in previous pieces (otherwise it wouldn't be an extension, of course), and it is often unclear how this extension is supposed to work. It certainly yields some nice, concrete policy goals, but these are not given a solid foundation in

the basic List of Capabilities. This is at its worst in the discussion of relations between liberal and illiberal nation-states, when Nussbaum actually utilizes a distinction of Rawls (and one she criticizes early on in the chapter) to make the ‘extension’.

Nussbaum does seem to recognize at least some version on this problem, and periodically grapples with the charge that the Capabilities Approach ‘seems to rely on intuition to a greater degree than procedural approaches’ (83); the charge here seems to be one of question-begging on the part of a preconceived notion of justice. It would seem she has two or three ways to respond to this charge: either give an *a priori*, foundationalist justification of the extended List of Capabilities, or refurbish the *a posteriori*, naturalist, case she made in *Women and human development*, viz., that the new items on the list emerge from the way distinct yet interacting accounts and traditions of the conditions under which human and non-human life flourishes intersect and find mutual agreement. Or perhaps the whole question of justification is to misunderstand Nussbaum’s articulation of the Capabilities Approach. It may be that, instead of *emerging* from some given or found common notion of flourishing, the items on the list are meant to *constitute* and *articulate* the most basic and abstract modes of that flourishing; rather than needing a foundation, perhaps it is meant to serve as one.

While none of these responses would satisfy everyone, they would at least be responses. Nussbaum makes use of none of them, and instead puts forth the rather bizarre claim that Social Contract theorists rely on intuition just as much as, if not more than, the Capabilities Approach, in the design of the contracting situation itself (183). That is, the response is that Rawls’ Original Position is just as question-begging as Nussbaum’s list. Whether this is true or not, I’m not sure how dragging one’s opponent down can serve as a response to a criticism of one’s own account.

This underdevelopment of the Capabilities Approach wouldn’t be so bad by itself – perhaps the extension project is straightforward if the reader has just re-familiarized herself with *Women and human development* – but Nussbaum seems to have a remarkable knack for leading the reader right to these sorts of deep and intriguing philosophical knots, only to leave them almost completely untied. More striking examples than the charge of question-begging are references to Thomas Scanlon and Brian Barry and problems that crop up in the case of non-human animals.

Scanlon and Barry are significant because they offer an account of ethics and political philosophy that is simultaneously deeply embedded in the Social Contract tradition and explicitly *rejects* the fatal

assumption that the purpose of a contract is to secure mutual advantage; indeed, Nussbaum goes out of her way to mention that ‘Barry makes effective objections to the classical social contract idea of mutual advantage’ (151). Her subsequent analysis of Barry’s (in)ability to solve the problems posed by mentally impaired humans is just a few pages long, and the obvious question – is Social Contract theory viable without mutual advantage, or not? – isn’t even posed.

In the case of non-human animals, Nussbaum’s primary foil is the strong tradition of attention to animal suffering amongst Consequentialists. The difference she draws out is an emphasis on the dignity of the individual at the centre of the Capabilities Approach that, obviously, plays no rôle in Consequentialism. Based on this emphasis, she argues that the obligations humans have to non-human animals extend at least as far as going out of our way to make positive interventions in the lives of many wild animals. This immediately leads to one of the most difficult issues for non-Consequentialist advocates for the moral status of non-human animals:

Some forms of affirmative protection are required. What implications should this observation have for the question of harm, as we have raised them in the previous section? It is one thing to say that a tiger in a zoo should not be given a gazelle to eat: but what about the tiger in the wild? Should humans police the animal world, protecting vulnerable animals from predators? (379)

Consequentialists have an easy way of answering this question, whatever the precise details of their scheme: such policing is required up to the point where the negative consequences of such policies outweigh the positive consequences. Others, like Tom Regan, who give some non-human animals at least some of the rights of humans, would seem to be compelled to conclude that these animals each deserve just as much protection of their rights as we accord to each human. Hence, just as we cannot sacrifice the rights of an individual human because it’s easy or convenient to do so, we cannot sacrifice the rights of an individual non-human animal because it’s easy or convenient to do so. But does justice for non-human animals really require this?

If Nussbaum’s approach is supposed to be a significant improvement over Regan’s, one would expect her to show how this extension provides at least a useful starting point for grappling with this problem. Instead, Nussbaum argues with herself over what’s to be done, suggests

sterilization is preferable to the introduction of predators for population control, and drops the issue pretty much completely after slightly more than a single page of discussion.

Over all, the effect is frustrating. The introduction points out that political philosophy (like ethics) must have both an abstract, theoretical core and yield concrete starting points for action and advocacy in the world. In *Frontiers of justice*, Nussbaum has given us some very good concrete starting points for action and advocacy, and done some solid theoretical work that is fairly persuasive in its claim that a major tradition of political philosophy is not really a viable way to deal with some important contemporary issues. And her vivid, deeply humanistic portrayals of these issues make it clear that a discussion of them amongst political philosophers needs to be given high priority. But, in terms of really starting that discussion, the reader is left unclear where to go from here. Gestures are made in a particular direction, but some brush needs to be cleared away before we can tell whether that path leads out of, and not further into, the current theoretical quagmire.

REFERENCES

- Nussbaum, M. (2001). *Women and human development*. Cambridge.
Rawls, J. (1999). *A theory of justice* (Revised ed.). Belknap (Harvard).
Rawls, J. (2005). *Political liberalism* (Second ed.). Columbia.
Sen, A. (2000). *Development as freedom*. Anchor.