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Review of *Frontiers of Justice: Disability, Nationality,
Species Membership* by Martha Nussbaum

Margaret Urban Walker

Marquette University, margaret.walker@marquette.edu

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Margaret Urban Walker was affiliated with Arizona State University at the time of publication.

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For two decades Martha Nussbaum has refined her version of a capabilities approach in ethics, first, as a thick vague conception of the good on which to anchor a nonrelative Aristotelian ethics of virtue and, later, as a superordinate substantive conception of the good to serve as a platform for an outcome-centered theory of justice, especially with regard to sex equality. In *Frontiers of Justice: Disability, Nationality, Species Membership* Nussbaum squarely lays down her marker on the terrain of contemporary Anglo-American justice theory, placing her own view in direct but respectful competition, indeed in extended point-by-point parallel, with that of John Rawls. Along the way and more incidentally, Nussbaum draws comparisons with the views of Amartya Sen, Brian Barry, Thomas Scanlon, Eva Kittay, Charles Beitz, Thomas Pogge, Onora O’Neill, and Peter Singer. The book is grand in conception and complex in construction. It is both a major contribution to twenty-first-century post-Rawlsian theory of justice and a persuasive analysis of the limits and possibilities that modern Western philosophy has bequeathed to the project of justice theory generally. As both a treatise and a historically situated assessment of the field, the book might (and certainly should) be reviewed along a number of different dimensions that beg close examination. There is a sustained and detailed critique of Rawls’s theory of justice (although the book is dedicated to his memory and the radical critique is hedged by repeated homage to Rawls’s “brave and fascinating approach” [406]). There is an instructive and useful critique of modern contractarian thought or at least of some strands in that tradition that have affinities with Rawls’s theory. There is the renewed and more integrated presentation of Nussbaum’s own capabilities-based (partial) theory of justice, which she describes as another member of the family of politically liberal conceptions of justice (6). Finally, there are those “frontiers” of the book’s title: the topics of justice to human beings significantly impaired physically or mentally; justice among human beings around the world and across national boundaries; and justice, if that is indeed the relevant moral category, as Nussbaum claims, to nonhuman

animals. I shall focus on Nussbaum's powerful constructive contribution to the field: her defense of the capabilities approach as a politically liberal conception of justice and her sallies beyond the frontiers that limit Rawls's (and some other) theory. This still leaves too much to address in detail, for the ethical vision is unified but the style is dialectical, a rapid progression of arguments that thrust and parry with Rawls's position, with the views of other philosophers, and with anticipated objections and alternatives.

The first one hundred pages cut a path to the frontiers. The path leads us through a diagnosis and critique of component assumptions of the social contract tradition, or more precisely, assumptions in some parts of that tradition, as well as in contemporaneous modern political philosophy, that converge in Rawls's theory, the "strongest and most convincing theory in the tradition" (57). There are four key assumptions: first, a Humean understanding of the circumstances of justice in which roughly equal parties seek to satisfy similar interests under conditions of moderate scarcity and limited benevolence or mutual disinterest; second, the parties to the contract are assumed to be free, equal, and independent in ways that bypass or rule out profoundly unequal capacities, asymmetrical dependencies, and essentially shared interests; third, parties contract in order to secure benefits unavailable without social cooperation, without regard for justice or for others' interests for their own sakes; and fourth, the parties are parsimoniously assumed to be moved by their own prospective advantage, conceived egotistically or not.

Nussbaum's capabilities approach confronts the Rawlsian-contractarian model point for point. First, the "Aristotelian-Marxian" conception of human beings is inherently sociable and political; we are fulfilled by relations with others and moved by "relations characterized by the virtue of justice," however understood (86). We do not require roughly equal power or the strains of scarcity to have interests in justice; rather, large asymmetries of power among human beings, or among human and other active beings, "might make questions of justice more urgent," and in any case "questions of justice are always on the table" concerning goods centrally involved in living well with others (87). Second, a "political conception of the person" insists that a human being has an animal body, with material needs and a temporal trajectory entailing asymmetrical dependencies at many times or throughout a life, and a political nature in which shared interests are central. Third, social cooperation is not an objective to which principles and relations of justice are merely instrumental; justice is "one thing human beings love and pursue" as an end (89). Finally, the inherently sociable parties to principles of justice are moved by concern for others' interests and by sympathy and compassion that are capable, and needful, of wide extension (91). Nussbaum thus rejects on each constitutive element "society as a contract for mutual advantage . . . among people who are 'free, equal, and independent'" (14); she indicts contractarian theories for conflating those by whom the contract is designed with those for whom basic principles must provide just arrangements (16).

Rawls himself, as Nussbaum repeatedly says, recognized the three frontier issues as "unsolved problems" (ix). In later chapters, Nussbaum, in great detail I cannot summarize here, argues that these admittedly unsolved problems cannot be solved, or can be addressed only inadequately, within the constraining

contractarian assumptions she identifies. The constructive argument of the book is that her own capabilities approach suggests “insights superior to those suggested, for those particular problems, by the social contract tradition” (5). Nussbaum, in a consistently modest and undogmatic tone, demurs from claiming that the capabilities approach to justice is “better overall” (6) and offers her view as an alternative within the family of liberal political conceptions of justice that are committed to wide scope for individual freedom and egalitarian commitment to securing well-being, including robust freedoms, for each and every human individual.

Nussbaum’s capabilities approach is by now familiar to many from her previous work. The presentation in *Frontiers* is not so much deepened or nuanced as it is slightly elaborated. Nussbaum provides a list of central human capabilities that provide the “relevant benchmark to use in asking whether a given society has delivered a minimal level of justice to its citizens” (74). Capabilities involve both abilities and opportunities, especially for activity and choice, in ten fundamental areas of human existence: life; bodily health; bodily integrity; sense, imagination, and thought; emotions and attachments; practical reasoning; affiliation with others (encompassing the social bases of self-respect); relation to other nonhuman beings and nature; play; and political and material control over one’s environment (76–78). A capabilities-based approach to justice requires that societies achieve a threshold level of each and every capability for each and every individual, treating each as an end and none as a mere means to the ends of others (70). Achievement of the threshold is a “core human entitlement that should be respected and implemented by the governments of all nations” (70). The capabilities approach is “only a partial and minimal account of justice” that does not, for example, address inequalities above the minimal threshold (71).

Rawlsian political liberalism reenters Nussbaum’s account in her justificatory appeal to the possibility of “an overlapping consensus among people who otherwise have very different conceptions of the good” on the requirements of “a life worthy of human dignity” for any individual and on the entitlement of each and every person to such a life (70). Her appeal to human dignity is more integrated than in previous work by the claim that dignity is not to be understood independently of or prior to capabilities; instead, the capabilities constitute, at least in part, a dignified life (162). These “deep moral intuitions and considered judgments about human dignity do play a fundamental role in the theory, although they are never immune from criticism in the light of other elements of the theory” (83). In her discussion of transnational justice, Nussbaum argues that this rich and completely egalitarian “freestanding reflective intuition” is a viable object of overlapping consensus not only in a society such as ours but in the world community, claiming that “the idea of what human beings need for fully human living is among the most vivid intuitive ideas we share” (279). She disapproves of Rawls’s situated justification of his political conception of justice in the overlapping consensus available in a society with a particular history of religious conflict and tradition of liberal democratic constitutionalism. Nussbaum finds this insufficiently ambitious; there is hope for the relevant consensus in “any nation living under modern conditions in a world characterized by a world culture of human rights” (304). I believe that this concedes the deeper

point that such consensus is a hard-won historical achievement, as such ideas “have gradually taken center stage” (305) and continue to reshape what is “implicit” in the idea of human dignity (and the fundamental moral equality she takes to be part of that notion). In the same discussion, Nussbaum concedes that “equality of capability is an essential social goal where its absence would be connected with a deficit in dignity and self-respect” (292) but that equality is not a reasonable goal with regard to all central capabilities and that, for some capabilities, adequacy suffices (295); she places political liberty in the former category, shelter and property in the latter, and education and health as requiring a “very high minimum,” if not strict equality (294). It seems that the implicit content of the idea of a life worthy of dignity is not simply intuitive or freestanding; it is a function of progressive interpretation informed and limited by the historical influence and confluence of particular religious, ethical, social, and legal cultures in the context of transformations that may have nothing to do with political or philosophical thought.

What, now, of the frontier issues that occupy such a large part of this book? The chapters dealing with disability, nationality, and relations with nonhuman animals are densely packed and vibrant with bold ideas. A tremendous strength of *Frontiers* is Nussbaum’s unabashed forcing and eventual outrunning of anything one might claim to be “intuitive” on these matters; this is what we need normative theory to do. In chapters 2 and 3 on people with severe impairments, Nussbaum rejects the contractarian account that entitles “fully cooperating members of society” to the mutual advantages of cooperation (98) and the Kantian conception of persons that disowns human animality (132). She proposes a “moralized conception of the benefits of social cooperation . . . that includes the good of inclusion, respect for human dignity, and justice itself among the benefits” (121); this conception, she acknowledges, requires “extensive and deep” benevolence of human beings (122). The capabilities approach insists on the entitlement of each and every citizen to threshold achievement of every capability he or she could attain, and Nussbaum reaps the benefits of a literature on disability that makes clear that many disabling conditions, including ones thought “severe,” involve recalcitrant but transformable physical and social environments. The relevant question is “has the public political arrangement in which she lives extended to her the *social basis of all the capabilities on the list*? If so, then the public conception has done its job, even if her own impairments may prevent a full choice of functioning in one or more areas” (193–94; Nussbaum’s emphasis). Where “direct empowerment” is not possible, societies should resort to generous and humane arrangements of guardianship that are currently far more advanced in a number of affluent societies than they are in the United States (195–210).

Chapter 4 is devoted almost entirely to a discussion of the failure of Rawls’s conception of international justice in *The Law of Peoples*, while chapter 5 argues that “human development and human global fellowship” must supplant the contractarian idea of justice as an arrangement for mutual advantage of roughly equal actors (323). Rawls’s own two-stage approach to international justice as justice among peoples is criticized for accepting, indeed affirming through misplaced tolerance, the status quo of staggering global inequalities among states and unacceptable political inequalities within them. Rejecting Onora O’Neill’s

argument for the priority of duty to entitlement, Nussbaum argues that we need an account of “what treatment human dignity requires from the world” prior to solving the problem of who bears the corresponding duties (277). Like O’Neill, however, Nussbaum believes those duty bearers will include governmental and nongovernmental agents, with primary responsibility assigned to institutions (307–8). She enumerates without elaboration ten principles for a “thin and decentralized” (314) and multiply redundant global structure of responsibilities (315–24). Nussbaum’s stance on intervention is unclear; drawing on Grotius, she champions a moral presumption in favor of the state as “a key focus for persons’ exercise of their freedom” (257), at least where the state rises to some bar of “reasonable accountability” to its citizens (259).

In the final lengthy and difficult chapter, Nussbaum argues that her capabilities approach treats at least sentient animals as agents and subjects of justice, creatures “to whom something is due” (337). I was not convinced that the many parts of this discussion added up to a consistent whole. Animal entitlements, like human ones, are determined by a “species-norm” of what counts as flourishing, a dignified life, for a particular kind of animal (365). Nussbaum denies that any natural form of life is intrinsically more worthy than another, although sentience is a condition for entitlements (361). She holds that we ought not to “aggregate the good of lives or types of lives” (351); the subject of justice is the individual animal (357). Yet she argues that research on animals for medical advantages to humans and other animals is at least sometimes permissible, if “tragic” (402–3), and that sterilization or extermination of animals as complex as rats in the interests of humans might be acceptable if pain is avoided (387). While part of the flourishing of a complex animal is “to settle certain very important matters on its own” (373), she advocates intervention even in the wild to divert predators from causing pain to prey and to prevent assaults on infant, sick, disabled, or elderly animals (399), and she approves “careful use of zoos and animals parks” to build interspecies “friendship” (375–76). Nussbaum’s vision for interspecies relations begins with the Aristotelian idea that it is good for a being “to persist and flourish as the kind of thing it is” (349) and ends in a call for “the gradual supplanting of the natural by the just” (400). I welcomed Nussbaum’s exploration of the morally foundational proposition that human beings flourish as a kind in part through their need for and love of justice and of others (11, 156–57). I found unsettling some implications of Nussbaum’s “paternalistic” approach to the lives of other animals (375).