

Frontiers of Justice

Martha Nussbaum (2006) *Frontiers of Justice*. Harvard University Press

Reviewed by Stephanie Jenkins¹

With *Frontiers of Justice*, Martha Nussbaum makes her hefty contribution to debates concerning contemporary, global concerns. *Frontiers* tackles “three unsolved problems of social justice whose neglect in existing theories seems particularly problematic” (2006: 1): disability, nationality, and species membership. These three problems demand new ways of thinking about the subject of justice, purpose of social cooperation, and significance of caring for individuals of radically unequal powers. As Nussbaum explains, “the primary topics of this book are all, in different ways, problems of globalizing the theory of justice, that is, extending justice to all those in the world who ought to be treated justly” (2006: 92).

Nussbaum argues that the “strongest and most enduring” (2006: 2) approach to social justice in the Western tradition has been the social contract. However, she believes that classical social contract theory contains constitutive elements that condemn it to inevitable failure on these three unsolved problems of justice. These suppositions concern the bargaining conditions of the initial social contract: social contract theory presumes that the parties of the agreement are in a situation of moral and physical rough equality and that mutual advantage is the purpose of social cooperation. For Nussbaum, justice for people with disabilities, non-human animals, and poor nations will not be plausible with this set of assumptions; social contract theorists cannot account for how and why individuals of disproportionate power would aid people with impairments, non-human animals, or other nations when it is not to their economic advantage to do so. *Frontiers* is organized around these three problems, containing two chapters on both disability and nationality and another on species membership. Additionally, there is an introductory chapter on social contract theory and a concluding chapter on moral sentiments.

Nussbaum’s project is not only critical but also constructive. As an alternative to traditional social contract theory, she proposes her capabilities approach, which she believes

¹ Stephanie Jenkins can be contacted at Pennsylvania State University, University Park, PA 16801, 240 Sparks Building. Phone. 732-328-8647. E-mail. scj121@psu.edu

“advances, rather than displaces” (2006: 6) the Rawlsian theory of justice. The foundational idea of the capabilities approach is the value of dignity. This theory articulates basic entitlements that “should be respected and implemented by governments of all nations, as a bare minimum” to support this dignity (2006: 70). These entitlements are intended as capabilities insofar as they focus on what “people are actually able to do and be” (2006: 70). The capabilities approach is outcome-oriented; it establishes a “threshold level of each capability”, beneath which species functioning is not possible, that a just society must provide for its subjects. Unlike social contract theory, the capabilities approach begins with a social and political conception of the human being. Because, from this perspective, human beings have fundamental sociability and sense of justice, Nussbaum’s approach avoids the problems of how people with disabilities, non-human animals, and other nations become subjects of justice.

Because it will be of interest to readers of this journal, I will focus my attention to Nussbaum’s treatment of species membership as an issue of social justice. Her approach to the question of human treatment of animals in *Frontiers* is surprising, because it advances a far-reaching agenda for a mainstream political theory text that is outside the field of critical animal studies. While it is clear that Nussbaum is not a critical animal studies scholar, *Frontiers* shares some common ground with and offers resources for those of us working in this developing field. There are five components of Nussbaum’s work that critical animal studies scholars will find helpful. While these claims are not groundbreaking, since they have been made by others, their appearance in Nussbaum’s book affords them additional legitimacy as mainstream questions of social justice, rather than the interests of a niche group of “radical” activist scholars.

The first point of interest is that Nussbaum recognizes human treatment of non-human animals as a question of justice with considerable urgency. She makes it clear that the extreme asymmetry of power in the human domination of non-human animals makes interspecies relationships a pressing contemporary problem that just societies must contend with. She writes, “these relationships ought to be regulated by justice, instead of the war for survival and power that now, for the most part, obtains” (2006: 326). To say that animal cruelty is a question of justice is to explicitly distinguish it from matters of compassion and even those of ethics proper. First, to frame the debate in terms of justice is to highlight that humans are accountable for the wrong done to non-human animals. Second, as a question of justice, we must now speak in terms of entitlements that animals have to be treated or not treated in particular ways. As Nussbaum states, “The sphere of justice is the sphere of basic

entitlements. 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” (2006: 337). As a philosopher who works on ethical questions, my predisposition has been to frame my work on animals and veganism in terms of ethics. *Frontiers* convinced me that I must begin to think about these issues in terms of justice.

Second, Nussbaum contends that non-humans animals are inviolable subjects of justice who cannot be used as a means to an end. For Nussbaum, this means two things. First, non-human animals are subjects of the initial social arrangement. While they may not be able to participate in the creation of the political principles themselves, Nussbaum maintains that they remain primary subjects of justice through “prudent guardianship” (2006: 376). Here, she seeks to distinguish herself from social contract theory, which she believes conflates the questions of “for whom” and “by whom” the social contract is created. Animals, from this perspective, will be treated “as we currently treat children and many people with mental disabilities, who have a large menu of rights and are in that sense far from being ‘mere property,’ although those rights must be exercised through guardianship” (2006: 376-7). Such relationships would not exclude training and interspecies friendship, but are intended to prevent abuse and cruelty. Second, animals are subjects of justice insofar as they are entitled to pursue their own natural goods. This is to say that an animal is an agent and a subject, “a creature to whom something is due, a creature who is itself an end” (2006: 337). An animal is a someone, rather than a something.

The third point of interest in *Frontiers* is that Nussbaum presents an understanding of dignity that departs from the Kantian conception of personhood that contrasts moral personality and animality. For Nussbaum, there is a continuity between human and non-human animal capacities. Nature offers a “rich continuum of types of intelligence, and practical capacities of many types” (2006: 133). Rationality is only one human capacity among many; it does not exhaust or define human existence. Our dignity is founded in our sociality that we share with animals. More strikingly, Nussbaum contends that animals have a dignified existence of their own. The capacities approach, she argues, recognizes the potential for many different types of animal dignity. At the same time, Nussbaum is only able to offer a negative definition of what this dignity might look like; a dignified existence does not consist of cruelty, starvation, or abuse. She writes, “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... 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” (2006: 326).

The fourth component of *Frontiers* that will interest critical animal studies scholars is the interconnectedness of the three unsolved problems of justice. While Nussbaum does not make this argument explicitly, it is difficult to finish the book without getting a sense for how struggles for human liberation are inextricably intertwined with the fate of non-human animals. In the case of global inequity, Nussbaum speaks of how people of poor nations are reduced to the subhuman.² Nussbaum draws clear connections between the domination of people with mental disabilities and non-human animals; the hegemony of rationality is used in both instances to perpetuate asymmetrical power relations. Nussbaum’s work provides a resource for working through the ableism within some animal rights literature, in which animal capacities are compared to disabled humans in order to “level up” their moral status.

Finally, Nussbaum offers critical animal studies scholars some much needed hope: she believes that it is possible to come to a public consensus that the mistreatment of animals is unjust and that our society will eventually take measures to end their suffering. While she warns against the human tendency to be self-serving in this area (e.g. one’s desire for meat), she believes that humans are compassionate creatures who accept the good of others as their own. What is needed, in her view, is a solid educational institution for developing the moral sentiments that will support such a system of justice.

While Nussbaum’s capacity approach may be of interest to critical animal studies scholars on these five points, it is on this last insight- her hopeful vision for the future- that her project loses its “critical” edge. In fact, it seems that she loses her focus on justice altogether. In the name of political expediency, Nussbaum ultimately advocates policies that perpetuate human violence against non-human animals. While she does propose the banning of killing for sport and luxury items, she adopts a welfarist approach towards animals that are slaughtered for food. She writes, “It seems wise to focus initially on banning all forms of cruelty to living animals and then moving gradually toward a consensus against killing at least the more complexly sentient animals for food” (2006: 393). Additionally, she believes

² Maneesha Deckha examines the subhuman/human divide and its role in perpetuating violence against humans and non-human animals in the most recent issue of this journal. See M. Deckha (2010), “The Subhuman as a Cultural Agent of Violence,” *Journal of Critical Animal Studies* Vol. VIII (III), 28-51.

that experimentation on non-human animals will continue to be necessary. She acknowledges that this contradicts her emphasis on entitlements, saying that such research is “morally bad” (2006: 404), but argues that it is necessary to “promote human health and safety” (2006: 404). In the end, Nussbaum’s political recommendations contradict the moral foundation of her capabilities approach.

Additionally, Nussbaum’s hesitancy towards banning killing for food comes from a misplaced concern about the consequences of a vegetarian diet. She explains, “The use of animals for food in general is a much more difficult case, since nobody really knows what the impact on the world environment would be of a total switch to vegetarian sources of protein, or the extent to which such a diet could be made compatible with the health of all the world’s children” (2006: 402). Unfortunately her research falls short in this area and she would have benefited from reading documents discussing the acceptability of vegetarian and vegan diets for all stages of life and the necessity of a global shift towards a vegan diet to lessen the impact of global climate change, poverty, and hunger.³

Because of her commitments to political liberalism, Nussbaum’s theory of justice must be able to pass a requirement of overlapping consensus. For this reason, she elects to remain agnostic towards the question of whether there is equal moral status across species, a principle that is a starting point for work in critical animal studies. Since the idea of cross-species dignity would not be “readily accepted” (2006: 384), she holds the question of equal dignity as a metaphysical question, rather than a political or moral one. Considering the possibility that the whole schematic of justification is an anthropocentric endeavour, Nussbaum concedes that the sheer fact of animal suffering “raises profound metaethical issues that go beyond the arguments of this book” (2006: 389). In response to this gap, she states, “we do need to think further about how the perceptions and experiences of other sentient creatures enter into the account of what justification is, and I have not solved that problem to my own satisfaction” (2006: 389). It is this problem of justification- or an interspecies ethics- that I hope to see critical animal studies scholars address in the future.

³ For recent examples, see: American Dietetic Association (2009), “Vegetarian Diets,” Vol. 109 (7): <http://www.eatright.org/about/content.aspx?id=8357> and United Nations Environmental Programme (2010), “Assessing the Environmental Impacts of Consumption and Production”: http://www.unep.org/resourcepanel/documents/pdf/PriorityProductsAndMaterials_Report_Full.pdf