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ANIMAL DIGNITY AND SYMPATHETIC IMAGINATION: MARTHA NUSSBAUM AND AN ANALYSIS OF THE TREATMENT OF NON-HUMAN ANIMALS

ABSTRACT

In this paper, I analyse Martha Nussbaum's view of how we should treat non-human animals, which she links to her capabilities approach. This approach offers a conception of justice or, as Nussbaum puts it, a collection of fundamental rights that specify some of the necessary elements for a just society. In addition to justice for human beings, this approach includes animal rights. The basis for the discussion consists of two elements that justify the claim that every animal deserves to live a life that is characteristic of a member of its species. The first element is dignity, and the second is sympathetic imagination. The intention of Nussbaum's approach is to represent an improvement on the social contract tradition (in particular, in the Rawlsian version), by offering a more encompassing theory of justice. In her view, the capabilities approach, contrary to the theories of social contract, has principled resources that allow it to include, among else, non-human-animals in the domain of justice. However, the contribution of my paper consists in showing the problems I observe in Nussbaum's theory. These problems are related to the insufficient definition of basic concepts and to the fact that in Nussbaum's theory, non-human animals remain, across various situations, only a means of serving human needs. The consequence is that non-human animals are not included in the domain of justice which, after all, is Nussbaum's fundamental ambition.

KEYWORDS

dignity, justice,
capabilities approach,
non-human animals,
Martha Nussbaum,
Christine Korsgaard,
sympathetic
imagination

Introduction

Martha Nussbaum (2006a) emphasizes the importance of the social contract tradition in the history of disputes that aim to establish theories of justice. This importance is particularly visible since, being a valuable alternative to utilitarianism, the social contract tradition insufficiently protects individual differences. A further merit of the social contract tradition consists in establishing

the basis of the affirmation of some fundamental rights, as well as equality, as opposed to hierarchical societies. Yet, she notices the problem of social contract theories of justice in that they cannot account for subjects who are not free, equal (in their abilities) or independent. Among them, there are non-human animals, which I discuss in the present paper. That is why Nussbaum believes that an alternative paradigm needs to be developed and adopted. She calls this alternative the capabilities approach. The disadvantage of social contract theories is that, in a system of justice, they can only include beings that are able to make an approximately equal contribution to cooperation that is inspired by mutual advantage, or that is rational. She says that her proposal may be more inclusive because it is able to recognize a wide range of types of animal dignity and corresponding needs for prosperity, which form the basis for inclusion of animals in the domain of justice. Thus, the approach is specific, as it recognizes the diversity of activities and goals of different species by adopting subtle norms of interspecies justice, which include the fundamental rights of creatures of different types (Nussbaum 2006a: 327). Like John Stuart Mill, who insists on the qualitative heterogeneity of pleasures and is interested not only in pleasure and pain but also in complex forms of life and functioning, Nussbaum states that the capabilities approach seeks to see every being develop as it is [as it flourishes] (Nussbaum 2006a: 346).

The general thesis of Nussbaum's capabilities approach is that no animal should be denied a chance to live with a kind of dignity relevant to that species and that all sensitive animals should enjoy certain (positive) opportunities to flourish (Nussbaum 2006a: 384).

Once the importance of the notion of dignity for the inclusion of animals in the domain of justice has been established, Nussbaum needs to determine how we will establish *what* constitutes animal dignity and *how* we will respect it. Despite our approach to animals being negatively affected by our interference and greed, we can transcend selfish interests and experience the inner life of a non-human animal – a sympathetic imagination. In this way, we view them as potential subjects of justice. By using sympathetic imagination, Nussbaum argues, we expand and refine our moral judgments, and then, by using theoretical insights into dignity, we correct, refine, and expand both judgments and imaginations (Nussbaum 2006a: 355).

I think that Nussbaum's criticism of the social contract tradition, in this domain, is successful. In particular, I will focus on her discussion of the Kantian paradigm. However, in my view, Nussbaum's proposal is facing difficulties, as well. Its notion of dignity in non-human animals seems to remain, still, in need of a more detailed definition. Furthermore, the approach of sympathetic imagination is problematic. Contrary to Nussbaum's intention, her attempt can seem paternalistic and potentially used to benefit humans to the detriment of non-human animals, which I will discuss in more detail later.

In the paper, I will proceed as follows. First, I will discuss Nussbaum's notion of dignity. I will follow her argumentative structure that is based on a comparison with Kant's notion of dignity. After that, I will compare Nussbaum's

proposal with the influential contemporary Kantian theory of Christine Korsgaard. Again, I will show that Nussbaum is successful in her criticism of the Kantian paradigm. However, at that point I shall demonstrate that even Nussbaum's employment of the notion of dignity is not sufficiently satisfactory. I will support my claim in two ways. Firstly, I offer general reasons to show that the model of justification of a theory of justice that Nussbaum endorsed, a specific variation of political liberalism, is excessively concessive to the human perspective. Secondly, I will elaborate several illustrations represented by Nussbaum's evaluations of specific case that confirm my general assessment. Finally, I will discuss the notion of sympathetic imagination that is crucial for the accomplishment of Nussbaum's project of offering a fully satisfactory theory of justice for non-human animals. As I have indicated, I believe that this approach does not entirely cover Nussbaum's intention to establish a proper position of non-human animals in a theory of justice.

1. Nussbaum's Notion of Dignity, as Opposed to Kant's Notion of Dignity

Nussbaum introduces the notion of dignity in non-human animals as a contrast to the notion of dignity that Kant wrote about (Nussbaum 2006a: 159). The main objection to Kant is based on a critique of his theory of the social contract, as well as of that paradigm in general. In Kant's formulation, social contract theory is incapable of accounting for non-human animals in the context of justice, because it assumes that the human form of rationality is the only foundation of dignity and because it describes the political principles arising from contracts among equals (Melin, Kronlid 2016: 55).

Contrary to Kant's social contract theory, Nussbaum argues that individual beings have a form of dignity that is tied to their animal characteristics, which is different from that dignity to which the concept of *rationality* is tied (Sunstein, Nussbaum 2004: 281). She goes on to state that the core of the theory she advocates, that is, the capabilities approach, is that it shows that non-human animals are entitled to a wide range of capabilities in their natural lives, appropriate to the dignity of every creature, and that their rights are based on justice (Bilchitz 2009: 63). Extending the reach of justice, which includes non-human animals, is possible in Nussbaum's theoretical framework given the basis for attributing the moral status she emphasizes. Contrary to Kant, who finds this basis in rationality, and therefore cannot include non-rational beings in the reach of justice, Nussbaum establishes the dignity of non-human animals, and thus their protection through justice, in specific opportunities that must be provided for all members in virtue of their particular species belonging. Thus, Nussbaum does not limit the scope of justice by possessing a trait specific to the particular human species. Such, in Kant's conception, is rationality. Instead, she says that the basis of dignity, and thus of justice and the basis for attributing rights, when non-human animals are concerned, is

specific to each species. Simply put, Nussbaum does not limit the reach of justice by possessing a trait specific to the human species, such as rationality, but seeks to base dignity on the capabilities that are characteristic of each species (Nussbaum 2006a: 326).

In short, Nussbaum argues that non-human animals, as well as humans, have the right to follow the good that is *specific to them*, and the harm that prevents a being from seeking such good represents injustice. This view opposes social contract theories because they do not take non-human animals as subjects of justice, as they do not have the qualities that allow them to participate in the contract. This incapability excludes them from the domain of justice, since the social contract tradition identifies the subjects involved in the formation of the contract with those to whom the contract applies. The consequence is that Kant's theory lacks a sense of the non-human animal itself as an agent and subject, a being to whom something is owed, a being who is an end in himself. This is a disadvantage, since animals as well as humans want to develop and search for the good (Nussbaum 2006a: 337).

To protect the dignity of non-human animals, in addition to stopping the fur trade and other cruel practices, Nussbaum argues that human beings should let (or ensure appropriate surroundings for) the non-human animals practice their predatory nature.¹ (Nussbaum 2006a: 370). In order to show a case of positive respect attributed to non-human animals, she says that, perhaps zoos should provide large predators with equipment to practice their predatory capabilities, but so as not to give them the prey of animals to kill them (Nussbaum 2006a: 371). Nussbaum explains this using the example of a tiger in a zoo:

A tiger's capability to kill small animals, defined as such, does not have intrinsic ethical value, and political principles can omit it (and even inhibit it in some cases). But a tiger's capability to exercise its predatory nature so as to avoid the pain of frustration may well have value, if the pain of frustration is considerable. Zoos have learned how to make that distinction. Noticing that they were giving predatory animals insufficient exercise for their predatory capacities, they have had to face the question of the harm done to smaller animals by allowing such capabilities to be exercised. Should they give a tiger a tender gazelle to crunch on? The Bronx Zoo has found that it can give the tiger a large ball on a rope, whose resistance and weight symbolize the gazelle. The tiger seems satisfied. Wherever predatory animals are living under direct human support and control, such solutions seem the most ethically sound. (Nussbaum 2006b: 6)

Citing the example of a tiger in a zoo, Nussbaum argues that it indicates how to meet the needs of a non-human animal in specific circumstances, so as not to violate its dignity – defined through the development of species-specific capabilities.

I find that Nussbaum makes well-founded criticisms of Kant's notion of dignity. However, before concluding that her proposal is superior in contrast to

1 Thanks to a reviewer for this point.

the Kantian paradigm, I will discuss the sophisticated contemporary Kantian proposal of Christine Korsgaard (2018). She argues that Kant's interpretation of dignity does not prevent non-human animals from being able to be subjects of justice. Namely, as a Kantian, Korsgaard establishes that only rational beings, and, thus, in the world as it is, only humans can be moral legislators. However, there is no reason why they must limit the inclusion in the domain of justice to themselves, and see only in rationality a source of normative claims. As rational beings, humans legislate through universal laws. But, the scope of universal law may include someone who has not been able to actively participate in the creation of a system of moral legislation (Korsgaard 2018: 240).

We, humans, consider ourselves a source of legitimate normative requirements. In this way, we bring a world of normative reasons and values. However, these normative reasons and values are not limited to our rationality and autonomy. Since we are animals, there is also a natural good for us. Therefore, our animal nature is also our ultimate goal, not just our nature linked to our rationality. Even when we engage in activities that involve our rationality, we also value our animal nature because we assign it a normative value. But the moral law is universal, and, thus, we cannot limit normative value exclusively to our own animal nature. Thus, Korsgaard argues that when we consider our nature as a source of normative claims, we see that the nature of non-human animals is also a source of normative claims. To the extent that we pass laws in favour of natural goods, we are morally obligated to non-human animals. Thus, Korsgaard accepts the Kantian notion of dignity and nevertheless concludes, unlike Nussbaum, that humans have moral obligations to non-human animals, in the Kantian paradigm (Leukam 2011: 20).

Furthermore, Korsgaard includes in the normative space values that are specific for non-human animals, and, not only, universalisations of what have we identified as values. She argues for this peculiar Kantian inclusion of non-human animals in the scope of justice, through a denial of the absolutization of sources of normative claims. Namely, Korsgaard argues that nothing can be important without it being important *to* and *for* someone - some person or animal (Korsgaard 2018: 41). Given that everything that matters must be important to someone, the question of which beings are more important in an absolute sense, is, simply, not reasonable. A variety of things and beings can be important, depending on who sees them as important. All normative importance is relative - subjectively, certain things are important to us, but there is nothing that is important absolutely. For example, things that would not be important to a non-human animal, such as social status, may be important to humans. On the other hand, it will be important for a non-human animal (as a minimum of what is important to it) at least that it has enough space to spread its limbs and not live a boring life doomed to just consume food that is being brought to them. We demonstrate our inability to empathize with other beings by claiming that animals do not care about their lives as much as we do. In order to avoid this defect, we must recognize that non-human animals are sources of values, and, precisely, of specific values (Martinić 2020: 56).

Through the denial of the absolutization of the sources of value, Korsgaard refuses a hierarchy of the importance of beings, as well. By this, Korsgaard does not mean that non-human animals are as important as humans, but that such a comparison is simply incoherent. Judgments about the comparative importance of humans and non-human animals make no sense if everything that matters is important to someone – human or non-human animals (Martinić 2020: 57). In this way, Korsgaard rebuts the denial of rights to animals.

Despite the fact that Korsgaard provides an improved version of Kantian theory, it is insufficient to address Nussbaum's criticism of the Kantian paradigm. The difficulty is that Korsgaard's version of Kant's interpretation of the notion of dignity does not recognize non-human animals as the primary subjects of justice. Instead, they are included in the scope of justice, only because humans recognize a moral obligation to them based on their own recognition of the value of vitality. Here we see the problem of a constructivist foundation of values and normative claims. That is to say, as a Kantian, Korsgaard is not a moral realist, in the sense that she does not endorse the idea that values and normative claims are objective, in the sense that they have an existence that is independent of some subjects that discovered them. Thus, we need to identify some subjects that discovered values and normative claims. Such subjects must be, in some sense, qualified, in virtue of their capacities. The obvious candidates for this role are human beings. To be sure, Korsgaard avoids the criticism that Nussbaum directs to the social contract tradition, that those subjects that construct justice, are the only ones that are beneficiaries of justice. She, also, remarks the variety of normative sources, and that non-human animals are among such sources. But human beings establish what has value for non-human animals. In general, Korsgaard's moral legislators extend justice to other beings, and are careful about what is valuable for them. Still, their role is crucial, and this opens the door to the possibility that all normative work will be strongly influenced by the legislators' perspective. The problem with Korsgaard proposal is that, by basing values and normative claims from a primarily human perspective, we block the possibility of a fair consideration of non-human animal normative claims.²

1.A. Undefined Notion of Dignity in Non-human Animals

In the previous part, I have shown that the Kantian paradigm, even in the sophisticated contemporary version of Korsgaard is not able to address Nussbaum's challenge. In other words, non-human-animals are not adequately included as subjects in the scope of justice. Their inclusion derives from the moral legislation of human beings. However, in my view, Nussbaum's appeal

² A similar argument about the acceptability of a certain perspective, having in mind those properties that are evaluated in central cases in accepted moral practices, can also be found in the article *Morally Relevant Features and Experimentation on Animals* (Baccarini 2017: 33–45).

to dignity is not sufficiently efficacious for the inclusion in the scope of justice of non-human animals that she intends to obtain.

The notion of dignity plays a major role in Nussbaum's approach, but it seems insufficiently defined. Namely, based on her texts, we cannot say with certainty how exactly, in the full sense, humans could determine what dignity is for a non-human animal. As Nussbaum herself sees, non-human animals will not be directly involved in shaping political principles, so there is a great danger that a way of living would be imposed on them, such that they would not themselves opt for it. The danger is present, as our assessment of the dignity of the lives of non-human animals is difficult for two reasons. Firstly, because we evaluate the life of a being that is largely different from our own, and, secondly, because most non-human animals cannot be expected to give up or suppress undesirable instincts simply because they do not attain the ethical level (Nussbaum 2006a: 352).

The main problem with interpreting the dignity of non-human animals is that the recommendations on how to treat them are derived from the basic list of capabilities that Nussbaum has elaborated in relation to humans. Consequently, the list of capabilities reflects a human perspective. This can represent the basis to reflect on more specific issues for the coexistence of non-human and human animals, such as how much light they need, how much food and what conditions are needed for the life of a non-human animal, under human care, to be considered dignified (Nussbaum 2006a: 352). However, clearly defined answers are missing and Nussbaum does not indicate how to look for them.

The problem with identifying dignity in non-human animals is that they do not have the equivalent of certain capabilities that humans have. The tiger example arouses the question of why the capability to kill small animals has no intrinsic ethical value and does not represent the dignity of the tiger that we need to acknowledge (Wissenburg 2011: 398). Consequently, it is not clear that the ball on the rope is a genuine substitute for the gazelle, in the sense that it can genuinely satisfy the tiger's capability for hunting. In general, in the cases of most non-human animals under human control we have arbitrary representations of the selection of capacities created by humans to meet human needs, i.e., replicating man-made habitats and systematically modified accordingly and drawing attention to their responsibilities to the natural world (Momand 2016: 227).

Thus, Nussbaum's position has the same shortcoming as that of Korsgaard. In both cases, the notions of dignity rely on humans who should give value to non-human animals in the context of justice. Therefore, I believe that her interpretation does not represent a solution to the problem of the defining dignity of non-human animals as subjects of justice. The reason why Nussbaum's proposal is not fully satisfactory is similar to that present in Korsgaard case, although in a different context. Like Korsgaard, Nussbaum does not offer a realistic (in the sense described above) foundation of values and normative claims. This is essential for her theory, since she wants to situate her approach in a political-liberal context. In such a context, values and normative claims are

established because qualified beings can accept them as freestanding in relation to engrained/deep metaphysical and doctrinal foundations. Still, some agents play the role of those who count in the identification of values and normative claims. Again, here, humans are privileged. This is the cause of the limits of the approach, that is not entirely satisfactory for Nussbaum's goal of paritetical inclusion of animals' dignity in considerations of justice.

We can, further, see that Nussbaum's approach is not entirely satisfactory for the protection of animals in her discussion of cruel practices in the treatment of non-human animals. This discussion shows that her proposal does not confirm her claim that the capabilities approach is founded on species-specific capabilities, i.e. that the realization of non-human animal goods is derived from their (non-human) specific needs rather than human expansion. I will explain the problem in the next section of the paper.

1.B. Cruel Practices in the Treatment of Non-human Animals and the Capabilities Approach

To clarify the consequences of the insufficiently strong foundation of non-human animals' status in the context of justice in Nussbaum's theory, I show her attitude toward cruel treatment of non-humans.

Namely, Nussbaum claims that humans are respectful of important values present in the lives of non-human animals when they treat them in accordance with the capabilities approach (when they care for them, show interest in them and pay attention to their needs and feelings). Such respect expresses the idea that non-human animals' individual lives are intrinsically valuable. In fact, Nussbaum does not explicate this idea coherently, since she says that we should be able to experiment on non-human animals and that we should continue to kill and eat them. (Schinkel 2008: 51). To explain her position, Nussbaum states that the world we live in contains lasting and often tragic conflicts between human and animal welfare. Some mistreatment of animals can be eliminated without serious loss to human well-being: such is the case with the use of animals for fur and the brutal and limited treatment of animals used for food (Nussbaum 2006a: 402). However, the view expressed by Nussbaum is that we do not necessarily need to condemn the practices of using and killing non-human animals for food absolutely.

I believe, however, that this is not a consistent solution within her theory. Namely, these practices cannot be consistently allowed within the framework of Nussbaum's capabilities approach, which implies a thorough respect for the dignity of non-human animals. As noted earlier in the paper, Nussbaum's capabilities approach implies that no creature is used as a means to achieve the goals of others or society as a whole (Schinkel 2008: 60-61).

Nussbaum's position is evident in the following quote:

Killing for luxury items such as fur falls in this category, and should be banned. So, too, should all cruel practices and painful killings in the process of raising

animals for food. On the other hand, intelligently respectful paternalism supports euthanasia for elderly (and younger) animals in irreversible pain. (...) 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. (Nussbaum 2006: 393)

Given that, in Nussbaum's view, non-human animals have an interest in their continued existence; it is not clear why their premature death could be justified at all. It is in their interest to continue to exist, and thus, premature death harms them (Pepper 2017: 129). In addition, the quote shows that Nussbaum describes the more complexly sentient as those entitled to higher respect for dignity (in terms of the urgency of their protection, in the case of cruel practices). It is unclear why this should be the case, or why an animal's dignity would be worthy of higher or more urgent human respect in the treatment of cruel practices if the capabilities approach argues every being should "flourish" as it is, given the species to which it belongs.

Some of the policy recommendations expressed by Nussbaum are not well founded from the point of view of coincidence with empirical facts. Namely, in favour of certain instrumental behaviours towards non-human animals, Nussbaum states that banning the use of animals for food is problematic because it is not known what impact a complete switch to vegetarian protein sources would have on the world's environment or to what extent such a diet could be compatible with the health of all the world's children (Nussbaum 2006a: 402). This viewpoint could be quickly dismissed because the impacts of the environment and plant nutrition are nowadays very well researched. According to research, meat is not necessary for health, especially not in the western parts of the world, where the choice of a number of plant-based, vegan and vegetarian products is increasing and becoming more accessible. Moreover, one study suggests that factors associated with meat proteins may increase morbidity and mortality of coronary heart disease (Kelemen 2005).

Furthermore, authors from Oxford University investigated what the environmental consequences would be if there was a universal transition to veganism. It is predicted that the lower the share of food of animal origin in our diet, the greater the health benefits and the benefits of climate change. Moreover, the transition to a plant-based diet, in line with dietary guidelines, is estimated to reduce global mortality by 6–10% and food-related greenhouse gas emissions by 29–70% compared to the 2050 reference scenario. In addition, research found that the monetized value of health improvements would be comparable to or greater than the value of environmental benefits, and the authors estimated the overall economic benefits of improving nutrition to be \$1-31 trillion, equivalent to 0.4-13% of global gross domestic product (GDP) in 2050 (Springmann et al. 2016; Martinić 2020: 54)we couple for the first time, to our knowledge, a region-specific global health model based on dietary and weight-related risk factors with emissions accounting and economic valuation modules to quantify the linked health and environmental consequences of

dietary changes. We find that the impacts of dietary changes toward less meat and more plant-based diets vary greatly among regions. The largest absolute environmental and health benefits result from diet shifts in developing countries whereas Western high-income and middle-income countries gain most in per capita terms. Transitioning toward more plant-based diets that are in line with standard dietary guidelines could reduce global mortality by 6–10% and food-related greenhouse gas emissions by 29–70% compared with a reference scenario in 2050. We find that the monetized value of the improvements in health would be comparable with, or exceed, the value of the environmental benefits although the exact valuation method used considerably affects the estimated amounts. Overall, we estimate the economic benefits of improving diets to be 1–31 trillion US dollars, which is equivalent to 0.4–13% of global gross domestic product (GDP).

Also, a recent study in the journal *Science*, which included data on nearly 40,000 farms in 119 countries, confirms the positive effect of a plant-based or vegan diet on the environment. The results reveal that meat and dairy production is responsible for 60 percent of agricultural greenhouse gas emissions, while the products themselves provide only 18 percent of calories and 37 percent of protein levels worldwide. The researchers examined a total of 40 agricultural products covering 90 percent of all food eaten and analysed how each of them affected the environment by analysing climate change emissions, water pollution and air pollution (Poore, Nemecek 2018).

In addition, the amount of water required for the production of protein by industrial animal production including that directly consumed by animals and approximately 1000 tons of water needed to grow 1 ton of cereals for feeding the animals (Walker et al. 2005) diabetes mellitus and some cancers. Affluent citizens in middle- and low-income countries are adopting similar high-meat diets and experiencing increased rates of these same chronic diseases. The industrial agricultural system, now the predominant form of agriculture in the USA and increasingly world-wide, has consequences for public health owing to its extensive use of fertilisers and pesticides, unsustainable use of resources and environmental pollution. In industrial animal production there are public health concerns surrounding feed formulations that include animal tissues, arsenic and antibiotics as well as occupational health risks and risks for nearby communities. It is of paramount importance for public health professionals to become aware of and involved in how our food is produced.”container-title:”Public Health Nutrition”DOI:”10.1079/PHN2005727”ISSN:”1368-9800, 1475-2727”issue:”4”journalAbbreviation:”Public Health Nutr.”language:”en”page:”348-356”source:”DOI.org (Crossref. To paraphrase Singer - as long as we support the meat industry and industrial breeders, we support cruelty that is only recognized when profitability falls (Singer 1998: 114).

I have shown some problems linked to Nussbaum’s proposal that are present due to her wrong consideration of empirical facts. However, this dispute is not part of my central argument. My intention is primarily to show that

her approach is, in general, insufficiently sensitive to the status of non-human animals in a discussion about justice, because they have, in principle, a lower-level status. Namely, imagine that she is correct in indicating our (humans) need for animal meat for food (although I have shown reasons to think that she is not). By justifying, from the standpoint of justice, our legitimacy in using it, she clearly privileges our moral status. This is because, it is permissible, for us, to treat some non-human animals as mere means. In this way, she, clearly, favours our higher status from the point of view of justice. If we start from Nussbaum's idea of equal dignity of all species, accepting a diet that includes meat leads to two contradictions. The first is manifested by one species of non-human animals being perceived as pets while others being considered food. Non-human animals bred and killed for food are unfortunately often treated as machine parts rather than creatures that deserve to flourish and be dignified (Momand 2016: 235). The first contradiction within the idea of equal dignity of all species is, thus, represented by our uneven treatment of various species. The second contradiction is represented by our self-attribution of the status of privileged beings who are allowed to treat members of other species like mere means, as well as to make such distinctions among other species, to establish which species can be treated like mere means, and in which cases.

It is contradictory to claim that we must stop blood sports like bullfighting, bait and dog fighting, and allow other cruel practices like raising animals for food thus directly reducing them as an exclusive means to human ends. Thus, this is particularly problematic because Nussbaum's original claim is that non-human animals become subjects of justice and, as such, represent an end in themselves, and yet seem to remain instruments for human needs (Pepper 2017: 132).

In this section, I have shown that Nussbaum does not provide us with a coherent picture of the status of non-human animals in a theory of justice. Part of the defect is represented by the assumption of wrong empirical premises. But part of the discussion, that represents my central concern, reflects Nussbaum's foundation of justice. As I have already shown, this foundation is political liberal, and is not based on the direct appeal to morally relevant matters of fact. It is based on judgments that can be shared independently of the variations in metaphysical, and other divisive beliefs. This, for reasons shown above, implies that positioning non-human animals in the theory of justice is not entirely based on their characteristics, but improperly reflects the human perspective. In this section, I have shown the consequence represented by contradictory evaluative judgments.

Maybe such contradictory consequences, and mistreatment of non-human animals, could be avoided by a proper employment of sympathetic imagination. However, I do not think that Nussbaum gives us that the appeal to such resource leads to satisfactory results. In the continuation of the paper, I will direct the critique towards Nussbaum's notion of sympathetic imagination.

2. Sympathetic Imagination

Nussbaum argues that only in our own imagination can we experience someone else's inner life. Given this, she believes we should apply our imagination, as Rawls did with the idea of the original position.³ She calls it sympathetic imagination and compares it to a complex holistic method to expand and refine our moral judgments in the realm of non-humans (Nussbaum 2006a: 354).

Namely, Nussbaum claims that by imagining in this way, we are informed about the asymmetries of power that we would have missed if we had not explored the structure of life of other subjects and relationships in more detail. Imagining animal life makes them real in the primary sense. That is, in this way, we view them as potential subjects of justice. By using sympathetic imagination, Nussbaum argues, we expand and refine our moral judgments, and then, by using theoretical insights into dignity, we correct, refine, and expand both judgments and imaginations (Nussbaum 2006a: 355). I believe that this approach of sympathetic imagination brings about an important problem.

The problem of sympathetic imagination concerns that imagining can be paternalistic and potentially used for the benefit of humans, and to the detriment of non-human animals. Nussbaum acknowledges this when she claims that the sympathetic imagination is easily corrupted by our desire to protect our own comfort by using other animals as a means of satisfaction.

Although, she is confident in our ability to move beyond our individual biases and create a list of capabilities for a dignified life (Momand 2016: 223), as we have seen in the paper, this confidence is not well supported by evidence, because humans are often contradictory in their treatment of non-human animals, as well as in attributing to themselves a privileged status. This is because their attempts to employ sympathetic imagination are corrupted by human specific *cognitive* capabilities as value conferring (Fulfer 2013: 26–27).

Of course, we should also consider human-centred assumptions. But by emphasizing the role of the thinking capability we value *in humans* as our principal resource for establishing conditions for understanding justice, Nussbaum's theory neglects her original claim about fairness and what we consider a crucial aspect of justice: relationships. In order to accomplish its role satisfactorily, sympathetic imagination would have to satisfactorily put and answer to questions such as "How do our actions affect the well-being of others?" "Does this entity have access to the capabilities it requires to fully thrive in accordance with the species' norm?" Instead, in Nussbaum's approach, it primarily favours capabilities that only humans can achieve (Fulfer 2013: 27).

³ The original position is a thought experiment in which justice is achieved by assuming that rational workers are behind *the veil of ignorance*. That is, they do not know what their gender, race, nationality are, or what their social and financial status will be (See Rawls (2003), *A Theory of Justice*).

Conclusion

The relevant conclusions of the paper are, first, that Nussbaum's arguments are successful in showing that the social contract, and, specifically, the Kantian tradition, do not resolve satisfactorily the question of inclusion of animals in a theory of justice, and, second, that her positive proposal is not entirely satisfactory for this end, either. I have shown the difficulties in Nussbaum's proposal, by highlighting the problematic interpretation of the concepts of dignity and sympathetic imagination in her capabilities approach. Nussbaum's proposal aspires to find an appropriate consideration of non-human animals in a theory of justice, but it does not yet appear to be a solution, because, despite claims that her current theory see non-human animals as an end in itself, non-human animals remain a means to human needs and ends in many cases. Nussbaum is successful in criticising the social contract tradition. However, additional refinements are needed for perfecting her paradigm in accordance with the goals that she has herself attributed to a proper theory of justice.⁴

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Iva Martinić

Dostojanstvo ne-ljudskih životinja i saosećajno zamišljanje: Marta Nussbaum i analiza postupanja prema ne-ljudskim životinjama

Sažetak

U ovom radu analiziram stav Marthe Nussbaum o tome kako bismo se trebali odnositi prema ne-ljudskim životinjama, što ona povezuje sa svojim pristupom sposobnosti. Ovaj pristup nudi koncepciju pravde, ili, kako to Nussbaum navodi, zbirku temeljnih prava koja specifikuju neke od nužnih elemenata za pravedno društvo. Osim pravde za ljudska bića, ovaj pristup uključuje i prava životinja. Osnovu za raspravu čine dva elementa koji opravdavaju tvrdnju da svaka životinja zaslužuje živjeti životom koji je karakterističan za pripadnika svoje vrste. Prvi element je dostojanstvo, a drugi je saosećajno zamišljanje. Namjera Nussbauminovog pristupa je predstavljati poboljšanje tradicije društvenog ugovora (posebno u Rolsovoj verziji), nudeći sveobuhvatniju teoriju pravde. Prema njenom mišljenju, pristup sposobnosti,

suprotno teorijama društvenog ugovora, ima principijelne resurse za uključivanje, između ostalog, ne-ljudskih životinja u domenu pravde. Međutim, ne mislim da ona u potpunosti postiže ovaj cilj. Doprinos mog rada sastoji se u prikazu problema koje opažam u Nusbau-minoj teoriji. Ti se problemi odnose na nedovoljnu definisanost temeljnih pojmova i, pre svega, na činjenicu da ne-ljudske životinje, u kontekstu Nusbaumine teorije, u različitim situacijama i dalje ostaju samo sredstvo služenja ljudskim potrebama. Posledica je da ne-ljudske životinje ipak nisu uključene u domen pravde, što je Nusbaumina temeljna ambicija.

Ključne reči: dostojanstvo, pravednost, pristup sposobnosti, ne-ljudske životinje, Marta Nusbau, Christine Korsgard, saosećajno zamišljanje