

Human dignity in the capability approach

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The capability approach is a broad normative approach which has been developed from the 1980s onwards, most prominently by economist Amartya Sen and philosopher Martha Nussbaum. In the philosophical context, the main use of the approach is to assess the justice of social arrangements: societies are just to the extent that they guarantee each citizen an entitlement to his or her basic capabilities. In more recent years, Nussbaum has emphasized the fact that the capability approach is a human rights approach, and has begun to ground her version of the approach in a specific concept of human dignity. In this chapter, I will first briefly summarize the main concepts used in the capability approach, and then present Nussbaum's concept of dignity as a grounding of that approach. Finally, I will criticize this way of using the concept of dignity and raise some questions.

The capability approach

The capability approach is used by social scientists, lawyers and philosophers, in a variety of contexts, for descriptive, evaluative and prescriptive purposes. What all these uses share is only a rather minimal conceptual apparatus: namely, a stress on 'capabilities to functionings' as the favoured focus for research.

Functionings are defined by Amartya Sen as 'parts of the state of a person – in particular the various things that he or she manages to do or be in leading a life' (Sen 1993: 31). Functionings are 'doings' and 'beings' then, like eating, riding a bicycle, walking, working, sleeping etc. Later, Sen also described functionings as 'the various things a person may value doing or being' (Sen 1999: 75) or as the 'things he or she has reason to value.' (Sen 2009: 231). This value-laden definition of the notion of functionings builds the normative criterion for deciding which functionings are valuable into the concept itself: Sen's later definition makes individuals themselves the judges over which functionings are valuable. In Nussbaum's version of the capability approach, whether a functioning is valuable is not decided by the person herself, but by an ethical procedure of evaluation, in which dignity comes to play a role (see the next section). Arguably, then, Sen's and Nussbaum's different definitions of functionings represent

different interests in using the approach (as a welfare economic theory versus a political-ethical theory).

Capabilities are derived from functionings. In Sen's use, 'The capability of a person reflects the alternative combinations of functionings the person can achieve, and from which he or she can choose one collection' (Sen 1993: 31). In contrast to this usage of 'capability' in the singular, Nussbaum uses it in the plural. For every functioning, there is a capability to function in that way. A capability is an ability or opportunity to choose a specific functioning. If one has a 'capability to ride a bicycle', one can choose whether or not to go for a ride. The concept of choice is central: it is up to the person herself to decide whether or not to realize a certain capability in her life (Nussbaum 2000: 88). Capabilities, then, are freedoms to achieve something and functionings are these achievements.

Nussbaum uses this conceptual apparatus in philosophical theorizing about justice to say that a society is just to the extent that every citizen has constitutionally guaranteed entitlements to a list of basic capabilities. This does not mean that in every situation it is only important that people are given capabilities. Sometimes it may be necessary to be more paternalist and promote people's functionings directly, bypassing their own choices (Nussbaum 2000: 89–96; 2006: 171–2; Claassen 2013). However, these cases remain exceptions to the rule. The main focus on capabilities makes the capability approach a liberal approach, which respects the choices of persons to function as they want.

The main attraction of the capability approach is that it presents an alternative to approaches which identify a society as just when persons have rights to certain resources, or when utility is maximized. The capability approach posits itself between resourcism and utilitarianism. Resources (goods and services) are important only because people can do something with them, i.e. function in a certain way. And since some persons may need more resources to get to the same functionings level as others, it is misleading to focus on bundles of resources (Sen 1990; Pogge 2002; Anderson 2010). On the other hand, one may think that what really matters for justice is not how people are able to function with a given bundle of resources, but what pleasure or utility they derive from their functioning. However, if two persons with equal capability levels experience different levels of utility, they should remain themselves responsible for that difference. A just society is not responsible for people's happiness, only for the opportunities to make themselves happy.

The crucial question now is how to select a list of basic capabilities. Sen has always refused to select such a list, preferring to keep the approach open for several uses and referring to processes of public and democratic deliberation to make selections of basic capabilities (Sen 2009). However, Nussbaum has argued against Sen that a theory of justice needs to take a stance on this issue (Nussbaum 2003). There are good reasons to agree with Nussbaum, at least if one's ambition is to have a theory of justice which fulfils an action-guiding and critical function. It is more respectful of democratic deliberation to offer

a concrete list as a proposal, which is up for deliberation and adoption in a political community, than to refuse giving any input to the democratic process (Claassen 2011).

If we agree with the need to reflect philosophically on a list of basic capabilities, then the next question is what the normative criterion for such a selection might be. In earlier work Nussbaum relied on an intuitive idea of what makes a life a fully human life. This is an appeal to human nature, where that notion is itself treated as an evaluative one: that which makes a human life a good one (Nussbaum 1990; Nussbaum 1995). Arguably, such a notion is too vague to do the work of selection: humans have many morally bad, cruel abilities (Claassen and Düwell 2013). The introduction of the notion of dignity in Nussbaum's later work may be seen as a way to strengthen her approach and make the criterion that is used to select basic capabilities more strongly normative.

Nussbaum's concept of dignity

Nussbaum makes three uses of the concept of dignity: as a general notion to ground her capability list, as a concept that grounds animal entitlements and as an argument for focusing on functionings in some cases.

First, the central idea of Nussbaum's capability theory now is that 'all human beings ought to acknowledge and respect the entitlement of others to live lives commensurate with human dignity' (Nussbaum 2006: 53). She acknowledges that this is an 'intuitive notion that is by no means utterly clear' and rejects the idea that one can use it 'as if it were an intuitively self-evident and solid foundation for a theory that would then be built upon it' (Nussbaum 2011: 29). Instead, she maintains that dignity gets its importance by being related to a set of other notions. Three stand out. Dignity is related to *respect* – beings with dignity demand respect from others. Dignity is also related to *agency* – one focuses on what people are able to do, not on their passive satisfactions. Dignity is related, finally, to *equality*: it is that in respect of which we are all equal (Nussbaum 2011: 30–1). How does this help us to make a list of basic capabilities? Nussbaum argues that, with these connected notions in mind,

[W]hat must happen is that the debate must take place, and each must make arguments attempting to show that a given liberty is implicated in the idea of dignity. This cannot be done by vague intuitive appeals to the idea of dignity all by itself: it must be done by discussing the relationship for the putative entitlement to the other existing entitlements, in a long and detailed process – showing, for example, the relationship of bodily integrity inside the home to women's full equality as citizens and workers, to their emotional and bodily health, and so forth. (Nussbaum 2011: 32)

Second, Nussbaum uses the notion of dignity to extend capability entitlements to those humans with (severe) disabilities and to non-human animals. Up to this point, 'dignity' has referred to human dignity. This concept raises Kantian

associations that Nussbaum explicitly rejects. She maintains, invoking Aristotle, ‘that there is something wonderful and wonder-inspiring in all the complex forms of life’ (Nussbaum 2006: 347). Animals, then, have their own type of dignity. As for humans, it is related to the type of functionings that they are capable of and the flourishing that they can derive from these functionings. Dignity, functioning and flourishing exist in animals as much as in humans. But since dignity is not only related to functioning and flourishing, but also to respect and rights/entitlements, this means that animals now also deserve respect and get rights to a set of capabilities. Obviously, this leads to many controversial questions about animal ethics, that I cannot go into here (Cripps 2010; Ilea 2008; Hailwood 2012).¹

These two uses of the concept of dignity are the main ones. However, for the sake of completeness, we must also mention that Nussbaum uses the notion of dignity in a third way, in the more restricted context of her discussion of when to promote functionings instead of capabilities.² We should prohibit choices people make to humiliate or debase themselves (Nussbaum 2000: 91; 2006: 172). Unfortunately, Nussbaum does not give much elaboration of this use of the concept, neither does she mention examples where we should prohibit people’s choices out of a concern for her dignity (it also seems problematic: dignity is first used to lie in individuals’ capacity to choose their own functionings, and later dignity justifies prohibitions on choice; one could wonder whether this is a consistent use of the term). In the following, then, I leave this third use out of consideration and concentrate on dignity as the ground for human and animal entitlements.

With this general overview in place, I will now focus on the only article in which Nussbaum has given a more elaborate account of her concept of dignity (Nussbaum 2008), relating to the first two uses discussed above: to ground a list of human basic capabilities and extend this to animals.

Nussbaum draws an opposition between a Stoic–Kantian notion on the one hand, and an Aristotelian–Marxian notion on the other hand. The Stoic notion rests on a respect for the rational powers of human beings. The fact of possessing reason makes all human beings equal (universalism), and this is the ground for our moral respect for all humans. Rationality and morality are thus closely connected: the fact of possessing reason justifies treatment as an end-in-itself, not as a mere instrument to the purposes of others (Nussbaum 2008). Nussbaum accepts the idea of dignity as deserving respect for creatures as ends. She has

¹ For an elaborate discussion of these questions, see Chapter 60 by Heeger and Chapter 61 by Schaber in this volume.

² Nussbaum also uses the term ‘dignity’ in her description of one specific capability, namely, affiliation: ‘having the social bases of self-respect and nonhumiliation; being able to be treated as a dignified being whose worth is equal to that of others’ (Nussbaum 2006: 77). Here, the same, more narrow sense, seems to be indicated: as a prohibition of certain types of treatment, not as a concept underlying all capabilities.

two main problems with the Stoic account. The first I have already mentioned: that the focus on rational capacities as the ground for being ascribed dignity excludes animals, with their non-rational capacities.

The second problem deserves more elaboration. The Stoics believed that human dignity cannot be violated. Thus, ‘it turns out that dignity, radically secure within, invulnerable to the world’s accidents, doesn’t really need anything that politics can give’ (*ibid.*: 355). This leads to a quietistic attitude to the outside world. Other people cannot violate my dignity by withholding important goods from me, and even enslaving me is not a violation of my dignity. The radical consequence is that any theoretical statement of the sort ‘respect for dignity requires x’ (where x refers to a certain treatment) is now inconsistent. It is not open to the Stoic account to claim that inhumane or indecent treatment violate one’s dignity, since on the same account one’s dignity cannot be violated. The reason for this stance, Nussbaum believes, is that the Stoics believed that ‘in order to give human dignity its due reverence they had to show it to be radically independent of the accidents of fortune’ (*ibid.*).

Nussbaum’s Aristotelian–Marxian alternative rejects this independence from the external world. Human dignity does not only rest on an inviolable independence from the world. We are also vulnerable and needy beings, and require help from others in many respects: ‘human beings have a worth that is indeed inalienable, because of their capacities for various forms of activity and striving. These capacities are, however, dependent on the world for their full development and for their conversion into actual functioning’ (*ibid.*: 357). If we try to take the various components apart, dignity fulfils three roles. First, dignity is ascribed to humans and animals because of their *potentiality* to develop certain capabilities. This attribute cannot be lost, the potential is always there. Second, the ascription of dignity gives us the reason why humans should be treated with *respect*. In reality, the potential can fail to be developed (people’s vulnerability to the natural and social world). Dignity is the ground for judging that, when other people thwart the realization of our potential, they violate a moral command. Third, respect for dignity takes the form of protection of human *rights* to the development of these capabilities (at least, rights to the ‘social basis’ of such development). Capability-based human dignity requires law and politics to implement a series of rights.

Dignity as a motivation for respecting capabilities?

If one believes that the capability approach is more attractive than its direct competitors (resourcism, utilitarianism) in giving an account of a just society, then one will expect that it is able to give a more convincing account of dignity as well. Ascriptions of dignity always need a grounding in one or more features of the dignity-bearing creature; there must be something about that creature that makes it dignified. It is plausible to think of these features as capabilities: as potentials to function in a specific way. All theories which ascribe dignity on the

basis of rationality in this sense are also capability theories, since rationality is one of human beings' capabilities. This may sound surprising, but it is a logical consequence of the concept of 'capability'. Nussbaum's theory is different only because it happens to defend a broader set of capabilities, going beyond our rational capacities.

Despite these attractions, there are also problems with Nussbaum's use of the concept of dignity in the context of her capability theory. First, one could wonder what theoretical work the concept is actually doing. Nussbaum's capability list was drawn up in a series of articles in the 1980s and 1990s which made no use of the concept of dignity. Later, she revised the capability list slightly, but these revisions had little to do with the introduction of dignity. So either Nussbaum thinks with the benefit of hindsight that dignity as an invisible hand had been implicitly guiding her selection process all along (this seems unlikely), or that the work the concept is doing lies not in the selection of basic capabilities, but rather in motivating why these capabilities deserve respect at all. This last option seems more plausible. Dignity is meant to give normative force to a list which itself remains selected on the basis of the Aristotelian question 'What is it to flourish for a human being?' In terms of the three parts of dignity mentioned at the end of the previous section, the main function of dignity for Nussbaum is that it gives us a reason to respect the capabilities of humans and animals.

This does raise a follow-up question however. For how does dignity motivate an attitude of respect? As we saw, Nussbaum refers to the Aristotelian notion that there is something 'wonderful and wonder-inspiring' in complex forms of human and animal nature. Elsewhere she elaborates on this in the following passage:

The idea of dignity has broad cross-cultural resonance and intuitive power. We can think of it as the idea that lies at the heart of tragic artworks, in whatever culture. Think of a tragic character, assailed by fortune. We react to the spectacle so assailed in a way very different from the way we react to a storm blowing grains of sand in the wind. For we see a human being as having worth as an end, a kind of awe-inspiring something that makes it horrible to see this same person beaten down by the currents of chance – and wonderful, at the same time, to witness the way in which chance has not completely eclipsed the humanity of the person. As Aristotle puts it, 'the noble shines through'. Such responses provide us with strong incentives for protecting that in persons that fills us with awe. (Nussbaum 2000: 72–3)

Despite the rhetorical power of this passage, I think we need to remain critical of the idea that 'wonderful' and 'awe-inspiring' things justify our attitude to respect those things. We should never forget that respect is meant in the specific sense in which it in turn leads to the protection of a series of rights. Now I can judge many things wonderful without thinking that these things deserve respect. I judge my iPad to be a wonderful, even awe-inspiring piece of technology.

Nevertheless, I do not think that my iPad has individual rights that deserve protection. Similarly, I may find a landscape awe-inspiring without thinking that it deserves this kind of rights-protecting respect. Awe and wonder seem to be different attitudes than respect, and there is no easy way to get from one to the other. But if this is so, and if dignity is related to awe and wonder, then it is a deficient basis to ground an attitude of respect.

It is important to mention that before Nussbaum took the turn to the wonder-inspiring concept of dignity, she grounded her capability list in a method she called ‘internalist essentialism’. The general idea there was to enquire for oneself which functionings are defining of one’s human nature by asking which functionings one is willing to give up. Functionings like affiliation and practical reason, Nussbaum argued there, cannot seriously be given up, because the cost of doing so is too high (Nussbaum 1995: 110; see also the discussion in Claassen and Düwell 2013). She called this the use of ‘self-validating arguments’: the procedure of asking such questions validates the answers one gives to these questions. The respect-motivating force of the capabilities, according to this method, then, does not have its ground in what we think inspires awe and wonder, but in the consideration of what is essential to be able to lead our own lives. If Nussbaum would have upheld this method, then dignity would have been – more credibly, in my opinion – something ascribed to (1) ourselves, because we have capabilities that are vulnerable to violation or underdevelopment, and (2) other human beings, because they also have the same capabilities (given that they belong to the same species as me). The capabilities essential to lead our own life are also those essential to lead a ‘human life’ in general. The deep wound that we would feel if our capabilities were violated is what motivates us to respect the capabilities of similarly placed others.

This brings us most naturally to the question of the extension of dignity to animals. On Nussbaum’s theory any creature that is able to function in a certain way would deserve to have its own type of dignity recognized. The problem with this is that it would seem to set no limit at all to the extension of dignity. Plants also function in certain ways, and maybe ecosystems do so as well – plants can flourish or perish, ecosystems can be stable or degrade. To set a limit, Nussbaum first considers adopting the utilitarian criterion of sentience, but then turns to her own capability approach, and holds that any creature with one of her capabilities qualifies. This she calls a ‘disjunctive approach’;

[I]f a creature has *either* the capacity for pleasure and pain or the capacity for movement from place to place *or* the capacity for emotion and affiliation *or* the capacity for reasoning, and so forth (we might add play, tool use, and others), then the creature has moral standing. (Nussbaum 2006: 362)³

As she notes just after this passage, possession of one of these capabilities normally coexists with sentience: ‘Aristotle reminds us that this is no accident: for

³ Similarly Nussbaum 2008: 363.

sentience is central to movement, affiliation, emotion, and thought' (Nussbaum 2006: 362). For practical purposes, the capability approach and utilitarianism converge on this point.

I will grant that the disjunctive approach would give Nussbaum a workable criterion to distinguish creatures with moral standing from other natural phenomena. The problem is that this answer is unavailable on Nussbaum's own theory. For she restricts the disjunctive approach to the ten capabilities she has defined as central to *human* life. Given the animal basis of human life, unsurprisingly this also works well enough to include animals in the moral realm. Both animals and humans eat, walk around, use senses, etc. However, plants and ecosystems are also functionally organized natural phenomena, i.e. they have *other* types of functionings (which, incidentally, are not accompanied by sentience), and it seems arbitrary to exclude these from the disjunction. So far, then, Nussbaum has given no argument why these should be excluded. Her argument is circular: first she defines a list of capabilities shared by humans and animals, and then she concludes that human and animals (but not plants and ecosystems) fit the bill.

This problem is related to the previous one, and it can also be solved by my suggestion to use Nussbaum's earlier self-validating method as the basis of dignity-ascriptions. For it is not arbitrary to ascribe dignity to humans and animals if one starts with a method which reflects on which capabilities are essential to lead one's own (and, by extension, a human) life. Such a method leads, unsurprisingly, to human dignity. It also leads to animal dignity because humans also have an animal nature. Humans must recognize the value of capabilities in themselves (like play, or nourishment) that animals also have. If we base respect for the capability for play in others on the judgment that we ourselves would not want to do without play in our lives, then there seems no good reason to restrict the extension of this respect to *human* others only; animal others then also come into the picture. This reasoning then grounds Nussbaum's extension to animals while not leading to dignity and respect for plants, ecosystems and material objects.

There is one potential objection to this line of reasoning. This is that the human capability for play (and all the other capabilities that we share with animals) only deserve respect because they are instantiated in a being which *also* has rational capacities. This Kantian objection, then, is that what ultimately grounds respect remains rationality; and the 'animal capabilities' in humans are merely worthy of protection because they help make possible the attainment of a rational life. I think this objection is mistaken. Nussbaum is right to claim that 'animal capabilities' in humans are valuable for their own sake, not merely as a necessary precondition for our rational capabilities. This comes out most clearly when thinking about humans who are incapable of rationality (like severely mentally disabled persons). However, given the fact that Kantians will in such cases ground respect in complicated extensions of rationality means that I cannot here give a full refutation of this objection. At least Nussbaum's position

here is worth considering. It is mirrored, moreover, by similar extensions of dignity to animals in the Kantian tradition (Korsgaard 2004).

In conclusion, I have argued that Nussbaum's earlier self-validating method (or a similar method) is better able to ground respect for a set of rights to human capabilities, and their extension to animals, than an appeal to human dignity, at least when the latter is based upon intuitive judgments of whatever in nature inspires us with awe and wonder. This does not preclude the possibility that the concept of dignity could be used to describe the status of those beings that the self-validating method selects as worthy of respect. Whether the ascription of the status of dignity would then be doing any real normative work, is a question that I will have to leave for another day.

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