

REVIEW OF *JUSTICE FOR ANIMALS*

I'm always going to remember this as the book that tried to tell me sharks don't feel pain (!!!). That's the sort of claim you should be *really sure* about before you let it guide your behavior, and I'm skeptical that the evidence is sufficiently solid; for some notes of caution, see Wikipedia¹ and Max_Carpendale's EA forum post.²

Anyway, what I admire about this book is the breadth of issues it grapples with. Nussbaum doesn't restrict herself to a couple hot-button topics (contrast with *Animal Liberation Now's* (review) focus on animal experimentation and factory farming), nor is she content to speak in generalities: she's got opinions on which specific types of animals can be kept ethically in zoos and which can't, on the conditions under which animals can be put to work (e.g. drug-sniffing dogs), on how to responsibly and cautiously take steps to reduce the suffering of wild animals, etc. She systematically reevaluates humanity's numerous relationships to animals from a principled standpoint.

The first few chapters consider different **frameworks** for thinking about our ethical obligations to animals. Nussbaum criticizes what she labels "the 'So Like Us' approach", which "seeks recognition of legal personhood, and some autonomy rights, for a specific set of animal species, on the grounds of their humanlike capacities."³ An example of this approach is trying to persuade people that primates should have rights by showing videos of them "using sign language, giving displays of empathy when shown a film of humans displaying emotions, and so forth".⁴ This approach is related to a self-serving ideology in which humans are viewed as the ideal. When the group with the most power (humans) sets themselves up as the standard by which the worth of all other groups will be measured, the fairness of the standard seems highly questionable. Nussbaum interestingly notes that this ideology is connected with abuse of humans:

It leads to ugly projects in which humans imagine transcending their animal bodies by casting aspersions on the smells and fluids of the body. These projects are often accompanied by attempts to subordinate some other group of human beings, on the grounds

¹"Pain in Fish," in *Wikipedia*, August 13, 2023, https://en.wikipedia.org/w/index.php?title=Pain_in_fish&oldid=1170062033#Controversy.

²Max_Carpendale, "Sharks Probably Do Feel Pain: A Reply to Michael Tye and Others," accessed August 15, 2023, <https://forum.effectivealtruism.org/posts/ibxetbhQzvpKER7R7/sharks-probably-do-feel-pain-a-reply-to-michael-tye-and>.

³Martha C. Nussbaum, *Justice for Animals: Our Collective Responsibility* (New York: Simon & Schuster, 2023), 27–28.

⁴*Ibid.*, 30.

that they are the true animals. Bad smell, contaminating physicality, and hypersexuality are imputed to some relatively powerless subgroup, as an excuse for violent types of subordination. One may trace these ideas in US racism, in the Indian caste hierarchy, in misogyny everywhere, in homophobia, in prejudice against aging people.⁵

I agree with her rejection of the “so like us approach”, though she also thinks the utilitarian approach (which I prefer) is inadequate; I split my comments on her objections to utilitarianism into a separate post. She’s more fond of Korsgaard-style Kantianism (I reviewed one of Korsgaard’s books here), but has issues with that too. She prefers a framework pioneered by Amartya Sen called the “Capabilities Approach”:

This approach argues that a society is even minimally just only if it secures to each individual citizen a minimum threshold amount of a list of Central Capabilities, which are defined as *substantial freedoms*, or opportunities for choice and action in areas of life that people in general have reason to value. Capabilities are core entitlements, closely comparable to a list of fundamental rights. But the Capabilities Approach emphasizes that the goal is not simply high-sounding words on paper. It is to make people really able to select that activity if they want to. So it emphasizes *material empowerment* more than do many rights-based approaches.⁶

She wants to extend this framework so that it guarantees appropriate entitlements for all sentient creatures, not just humans.

As a fundamental theory, I don’t find this convincing. One problem is hidden in the phrase “areas of life that people in general *have reason to value*.”⁷ How can we determine what people (and animals) *have reason to value*, as opposed to what they merely *in fact* value, without referring to some more fundamental theory like utilitarianism or Kantianism? I think it’s important to do so; if we build our list of Central Capabilities by reflecting only on what people/animals *in fact* value, the list will end up including some rights to mistreat or exploit other people. (For example, consider how many men think they have the right to demand obedience of their wives, and view having a submissive wife as a key part of a good life.)

Relatedly, the framework lacks a principled way of handling idiosyncratic/niche preferences. If just one person values something, but it’s extremely important to them, should it count as a Central Capability? Or if only a tiny but persistent subculture values it? Where’s

⁵Ibid., 32.

⁶Ibid., 80.

⁷Ibid., emphasis added.

the line? I think the book discussed this at some point but I didn't come away with a clear picture.

On a practical level, though, building a list of Central Capabilities does sound like a useful approach to legislation. Nussbaum advocates for applying the CA in a Rawlsian manner:

...Rawls urges...to propose political principles that are, first, *narrow in scope*, not covering all areas of human concern (not talking, for example, about the possibility of life after death), and, second, *thin*, expressed in a neutral ethical language rather than in the metaphysical language of one group rather than another. (Thus, for example, the ethical language of *human dignity* would be preferred to the sectarian notion of *the soul*.) If we manage things with restraint, the political principles can form what Rawls called a "module" that all citizens who hold different reasonable comprehensive doctrines ... can attach to their own doctrines, whatever they are. Eventually, it is hoped, the political principles will become the object of an "overlapping consensus" among the partisans of all those doctrines. This may take a long time, but the proponent of the CA ought to be able to sketch a path by which peoples of differing views might ultimately come to agree on these core principles.⁸

(Relatedly, see my review of Rawls's *Political Liberalism*.)

Later chapters consider various specific issues through the lens of the Capabilities Approach. I appreciated that there's a chapter on "**Tragic Conflicts and How To Move Beyond Them**". Sometimes, I feel, when people see a genuine conflict of interest (such as between a person who needs meat to survive, and the animal which must be killed to provide that meat), they take it as permission to stop thinking critically about the situation at all. Nussbaum mentions a couple ways this happens:

The first is what we might call the *weeping-and-wailing* approach: people wring their hands and say how terrible things in our current world are, without even showing curiosity about what might make things better. The second, closely related, approach is what we might call *self-hating defeatism*: it is because of human overreaching that we got to the bad place where we currently are, and there is nothing to do about it except to give up a lot of our ambitions and to live a reduced and chastened lifestyle.⁹

(I'd add a third: blithely assuming that we might as well do whatever we feel like. Think of the person who, confronted with criticism of their behavior, is content to respond "life's not fair" and keep doing what they were doing.)

⁸Ibid., 93–94.

⁹Ibid., 174–75.

We can do better, as Nussbaum points out:

Here we arrive at the philosopher G. W. F. Hegel's approach to tragedy, which I follow. Tragic clashes between two spheres of value, he argued, stimulate the imagination to think ahead and change the world: for it would be better if one could find a way to prevent the tragic choice from arising in the first place. The bad choice is before us, now; but the next time let's try to figure out how to prevent it.¹⁰

The chapter on **companion animals** includes several interesting proposals, such as:

- Establishing “in each city and state an Office of Domestic Animal Welfare ... in more or less the way that a department of child welfare operates...”¹¹
- Treating failure to train a dog as a case of neglect¹²
- Requiring people to buy medical insurance for pets they adopt¹³
- Providing public funds for dog food to ensure pets of poor families are not malnourished¹⁴

Nussbaum also has a thoughtful take on our responsibilities to **wild animals**. The idea that we have the responsibility or even the right to intervene in nature is often, I think, perceived as hubristic, so I like how she turns the tables and shows the hubris involved in trying to recuse ourselves:

Beginning with a skeptical examination of the Romantic credentials of a common Western idea of “the wild” and of “Nature”, I argue that this idea is made by humans for human purposes and does not serve or even very much consider the interests of other animals. Moreover, today at any rate, there is no such thing as “the wild,” no space, that is, that is not controlled by humans: the pretense that “the wild” exists is a way of avoiding responsibility.¹⁵

I'll close with a quote from her chapter on friendship with animals:

Genuine empathy must be based on knowledge...¹⁶

¹⁰Ibid., 175.

¹¹Ibid., 206.

¹²Ibid., 208.

¹³Ibid., 210.

¹⁴Ibid.

¹⁵Ibid., 224.

¹⁶Ibid., 272.