

## **The lion and the lamb<sup>1</sup>**

Wider implications of Martha Nussbaum's animal ethics

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### **Introduction**

Martha Nussbaum's recent attempts to translate her list of human capabilities into one for animals contain many quite controversial assumptions and prescriptions. If one takes her arguments to their logical extremes, as I intend to do here, the controversial and some might say absurd aspects may easily overshadow the 'sensible' parts of the argument. Admittedly, Nussbaum's theory is demanding, at least as demanding as other types of animal ethics - but having demanding implications (or, depending on one's point of view, controversial or absurd consequences) cannot by itself count as an argument against a prescriptive theory. Such qualifications may simply reflect temporal and local prejudice. Demanding a degree of - say - education for women on the basis of their capacity for rationality promised in its days to have utterly absurd implications and consequences, and yet once the premise was accepted, the only course of action left was to redefine absurdity.

Taking a theory to its extremes by applying a *ceteris paribus* condition, i.e., by assuming that other things are equal, is a valid and helpful philosophical technique, in this case because it helps to highlight that what Nussbaum has to offer has, like ripples in a pool, ramifications far beyond the sectarian struggles among animal rights<sup>2</sup> campaigners. First, the premises that do the real work in effecting 'absurd' implications turn out to be premises that competitors - consequentialists and deontologists alike - may find acceptable and can only reject at a high price. Secondly, those competitors do not have to be outspoken defenders of animals; *ceteris paribus*, no matter how low animals are on the social agenda of a moral theory or theorist, if they are on it at all, they matter in

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<sup>2</sup> Or animal welfare, or, if Nussbaum's position gains further ground, animal capabilities. Although philosophically often diametrically opposed, the socially and politically more active representatives of these three traditions try to cooperate and for all practical purposes represent themselves as one movement. My choice for the term 'animal rights' is purely arbitrary and reflects no personal preference or even involvement whatsoever.



precisely the absurd way they seem to matter to Nussbaum. Thirdly, the perhaps unlikely and certainly unwilling coalition of consequentialism, deontology and virtue ethics can only be broken by an ethics that rejects the priority of the individual's state of affairs (however assessed). In the case of animal ethics, a commitment to which turns out (as we shall see) to imply the total politicization of nature, that alternative would have to be ecocentric. Yet ecocentric ethics has in the past been determined to suffer from potentially fatal logical inconsistencies. Surprisingly, the adoption of some of Nussbaum's ideas may help repair the damage, thus laying the foundations for a viable alternative to the politicization and possibly annihilation of nature. Fourth and finally, taking Nussbaum to her extremes may help to finally answer an objection raised half a century ago by Hannah Arendt against modern conceptions of politics as anti-political in their focus on policy and economic affairs. Politicizing nature may be a way to satisfy Arendt without sacrificing the social and political gains made by 'adopting' economics as a political sphere.

All of these benefits can be gained by practicing what has come to be called 'ideal theory' (Robeyns 2008) - by assuming away all contingent obstacles to the implementation of a moral theory: *ceteris paribus*. Of course, in the real world other things are never equal: animals and animal minds are far more diverse and incomprehensible than Nussbaum - and I - assume, therefore their capabilities and functioning are far more diverse than presumed here; and more importantly, animal interests must be weighted against the human interests involved in war and peace, health, economic welfare, education, safety and security and so on. Those are all serious reasons not to argue too hastily for the immediate overthrow of human society as it is - but again, none of this constitutes an objection to the validity of an argument *in itself*.

In this article, I understand Nussbaum's animal ethics as part of the environmentalist critique of modern life. Although empirical social and political scientists tend to think of the animal rights movement and the environmental movement as historically and ideologically distinct, there are considerable overlaps between the two at both the level of membership and - the focus of this text - that of philosophical foundations. Thus, for instance, the state of animals and that of nature is often compared on both counts to a standard for an apparently more 'natural' and therefore 'in itself valuable' state of affairs. Both movements derive strength from, and are internally divided by, the same ethical approaches: consequentialism, virtue ethics and deontology. Animals are, it has been argued, also interested in goods like sustainability and biodiversity, whereas nature is served by healthy animals and appropriate animal diversity. In defending environment and ecology against human abuse, the interests of animals are added as supporting arguments to those of future humans and to the informed and considered long-term interests of existing humans. This has even resulted in the development of alternative theories of moral relevancy or 'considerability' to replace anthropocentrism - for instance pathocentrism (making all creatures capable of feeling morally



relevant subjects), zoocentrism (all animals) and biocentrism (all life; for more categories see e.g. Wissenburg 1998).

Yet it is important to note that each of these positions can be interpreted as a mere extension or broadening of anthropocentrism, while there remains a radical distinction between each and any of these in essence individualist positions on the one hand, and on the other ecocentrism, where it is the ecosystem or nature that is primarily, ‘intrinsically’ and as a whole morally considerable, and where constituent entities like animals or humans necessarily play a secondary role. One may therefore expect a more inclusive view of moral relevancy to produce a world that intuitively feels ‘greener’, and one cannot preclude that such a world accidentally coincides with what an ecocentric would judge more desirable - but its greenness would still originate in values and convictions no ecocentric would accept.

A careful consideration of recent developments in the debate on animal rights, specifically of Martha Nussbaum’s contribution to the field, suggests otherwise, however. Where animal welfarists were for a long time deadlocked in an impossible battle with animal rightists, Nussbaum introduced a surprising alternative, a new foundation for morality towards animals. Her capability approach towards (human) justice, she argued, can be translated into ‘animal language’: it can offer an impartial understanding of animal interests in terms of what they can do and can be, instead of the existing twosome (welfarism and deontology) that are partial to respectively the sacrifice of some for the benefit of others and to limited compassion for second-rate entities. ‘I think that the focus of policy should be on the idea that each creature is entitled to the prerequisites of a flourishing life for that sort of creature’ (Nussbaum and Faralli 2007: 156). Yet exactly because the capability approach towards animals demands an active role for humans in the promotion of the quality of animal life rather than passive prevention of abuse, it also commends interference in the conditions under which animals exist - regardless of whether they are pets, pests or anything else. Thus, rather than making ethical individualism<sup>3</sup> increasingly compatible with ecologism through the evolution of ever more inclusive conceptions of moral considerability, inclusion may actually *widen* the gap between the two. In other words, from an ecologist’s point of view, caring for animals may well be bad for nature.

The purposes of this article have already been hinted at: it is, first, to investigate what Nussbaum’s capability approach towards animals entails and what its implications are for nature; and secondly, to determine whether Nussbaum’s overt and hidden conclusions depend for their validity on Nussbaumian premises, or – as I shall argue – whether they may be implied by several or even all types of ethical individualism. In the end, and inspired by Nussbaum, I shall introduce a two-

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<sup>3</sup> Here: any ethics in which the fate of individuals, however defined, takes precedence, however defined, over that of the collective, however defined, of which the individuals are part - again, of course, however defined.



dimensional, ontological and ethical, view on attitudes towards the environment to replace the more one-dimensional attitude characterizing ecocentrism - thereby showing how political ecology can rid itself of the internal contradictions that now prohibit it from being an effective opponent to views like Nussbaum's, without losing its characteristic flavour. The two-dimensional view also helps us understand how, though probably not accept that, independent of whether one accepts Nussbaum's specific assumptions, any form and degree of ethical individualism implies *at least in principle* a rejection of laissez-faire ecology and environmentalism in favour of the politicization, the total subjection and redesigning, of nature.

### **Nussbaum on animals**

The origins and history of the capability approach are worthy of more than a mere paragraph, but giving it its due would lead us on a side-track. Suffice it to say that it originated in Amartya Sen's critique of John Rawls' interpretation of primary social goods (for a more extensive and balanced introduction to the capability approach, see Kuklys 2005). While Sen appreciated Rawls' reasons for rejecting the utilitarian assumption that all goods can be measured by one standard (utility) and that they are therefore, by implication interchangeable, Rawls' alternative list of irreducibly different functions of goods, the so-called primary social goods like income and wealth, rights and freedom, power and self-esteem, measured the wrong property of goods. In fact, Rawls made the same mistake as utilitarianism: he forgot that what matters is what goods *mean* to individuals. Rather than through their *hypothetical* functions, goods become goods, meaningful instruments to meaningful goals, by what a real existing individual can *actually* do with them. The right to access to government documents means less to the blind man than to the seeing, unless a right is added that means nothing to the seeing: the right to a Braille transcription or spoken version. For an ordinary individual, \$1000 is a lot of money and a lot of liberty, but it is worth far less for anyone bound to a wheelchair and oxygen tank. Sen's involvement, as an expert on famine and injustice in developing nations, in United Nations organizations like UNESCO and FAO at least partly explains how (though not why) the concept of capabilities has come to play such an important role in policy-oriented research at the international and more recently national levels.

Popularizing Sen's views, Martha Nussbaum also further developed them into a (regularly updated and improved) list of almost empirically operational functionings and capabilities. In her most recent texts, the list consists of (1) life, (2) bodily health, (3) bodily integrity, (4) senses, imagination and thought, (5) emotions, (6) practical reason, (7) affiliation with others and the social bases of self-respect, (8) a meaningful relationship with other species and with nature, (9) play, and (10) political and material control over one's environment (Nussbaum 2004: 314; 2006: 76).



In a text called ‘Beyond “Compassion and Humanity”’<sup>4</sup> Martha Nussbaum translates her capabilities approach for humans into one for animals. This, she believes, will ‘provide a more adequate basis for animal entitlements’ (Nussbaum 2004: 305) than Kantian contractarianism and utilitarianism. Contractarianism may support increased compassion for animals in so far as we discover that they are alike to us, but compassion is not enough to prohibit killing or intuitively repugnant treatment of animals when human interests outweigh theirs. Utilitarianism offers welfare or wellbeing but no rights – no animal is safe from any kind of abuse if that would promote universal happiness.

Central to the animal capability approach is the Aristotelian notion of flourishing (Nussbaum 2004: 307), but allusions to flourishing should not imply nor be based on ‘romanticizing nature, or suggesting that things are in order as they are’ (Nussbaum 2004: 310). Nature, Nussbaum observes, while paraphrasing John Stuart Mill, ‘is actually violent, heedless of moral norms, prodigal, full of conflict, harsh to humans and animals both’ (Nussbaum 2004: 311). It does not imply ought; hence ‘we need a careful evaluation of both “nature” and possible changes’ (ibid.).

In translating the list of human entitlements and capabilities to one for animals, some remarkable claims are made. The capability of *Life* allows, Nussbaum argues, the mercy killing of animals and their painless killing for food, if and only if necessary. In all other cases, killing an animal is wrong, more precisely: unjust – since Nussbaum considers animals valid subjects of justice. Even the choice between killing the tiger that attacks you or being killed by that tiger should at least be considered a moral dilemma. Since autonomy and thereby responsibility are involved, the ‘obvious’ choice cannot be explained away with an appeal to conditioned self-defence.

Taking one step further in the protection of animals, the capabilities for *Bodily Health*, *Bodily Integrity* and *Senses, Imagination and Thought* imply that animals should not be violated or (non-beneficially) harmed, which Nussbaum believes in turn implies ‘laws banning harsh, cruel and abusive treatment and ensuring animals’ access to sources of pleasure’ (Nussbaum 2004: 315). Yet these are not only entitlements for animals implying *responsive* duties for humans; they require proactive efforts as well, or perhaps even instead. This is nicely illustrated by Nussbaum’s translation of the *Other Species* capability, i.e., the capability or entitlement to be able to live with concern for and in relation to animals, plants, and the world of nature:

This capability, seen from the human and animal side, calls for the gradual formation of an interdependent world in which all species will enjoy cooperative and mutually supportive

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<sup>4</sup> Nussbaum (2004). This text (the concluding chapter of *Animal Rights* (Sunstein and Nussbaum 2004) is a revised version of her 2003 Tanner Lecture as well as an early version of a chapter in Nussbaum (2006). The latter adds very little to the argument I present here.



relations with one another. Nature is not that way and has never been. So it calls, in a very general way, for the gradual supplanting of the natural by the just (Nussbaum 2004: 317).

A few pages before, Nussbaum had already offered a glimpse at the implications of the proactive duty to make justice replace 'nature' (with nature deliberately between quotation marks). Where animals in zoos are prevented from exercising their predatory nature (which would 'avoid the pain of frustration'), two options are available. One is to 'give a tiger a tender gazelle to crunch on' - an option she rejects. The alternative is this: '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' (Nussbaum 2004: 311).

To offer animals their fair share of functionings and capabilities, the natural environment must sometimes be adapted – euphemistically formulated; a less opaque picture will be sketched in the next few sections. Nussbaum's new approach to what we might call the politics of nature, or more specifically, the politics of human-animal relations, will initially stay close to Nussbaum's own work. Thus, for now we shall accept both the validity of the capabilities approach as such, and the correctness of empirical claims made by Nussbaum to the effect that animal sensations like 'pain' and 'pleasure' and animal capacities of memory and intelligence are morally equal to their human counterparts.

### **Death, harm and responsibility**

Justice, it is often alleged, requires reciprocity. One can have moral obligations towards the irreversibly comatose, towards ancestors, future generations or animals, but to use the term justice for those kinds of obligations would be to overstretch the concept: the groups mentioned are not agents, they do not exist anymore or do not exist yet, or are for some reason incapable of self-awareness, responsibility and the ability to act from internal motives. Martha Nussbaum, however, does not avoid the use of the term justice as a characterization of the nature of moral responsibilities towards animals - the intricacies of the scholastic debate on the proper use of a term are wasted on her (cf. Nussbaum and Faralli 2007:155).

In her characterization of human obligations towards animals, Nussbaum fuses two relatively uncontroversial ideas to create a new and still apparently innocent moral standard. The first idea is that moral obligations require one agent only, not two, and one recipient who may or may not be capable of agency, but who is in some sense vulnerable, who has interests and sentience. We should distinguish the 'by whom' question from the 'for whom' question: 'One might have a theory that held



that many living beings, human and even nonhuman, are primary subjects of justice, even though they are not capable of participating in the procedure through which political principles are chosen' (Nussbaum 2006: 17). It is therefore apparently irrelevant that animals - as a rule - are incapable of agency: they should be considered subjects of justice as much as any human, real, extinct or future.

The second idea Nussbaum accepts is that nature, as we already saw, is not part of the realm of justice but should be incorporated *because* of our obligations to and responsibility for animals - it is a means to fulfilling them. The further implication of combining these two ideas is that human interests or needs or desires will not necessarily always take precedence over those of animals - rather, subjecthood or vulnerability (Nussbaum is not too specific on the qualities that make a subject apparently intuitively morally relevant) takes precedence over agency. What matters primarily is that a subject can in some ways be benefited or harmed in its flourishing by voluntary, conscious, deliberate behaviour; how (or how much, or how deeply) it can be affected is relevant only in second place. Thus, by broadening the criteria and realm of justice to include animals as recipients, Nussbaum takes the following principle on board:

- I. Regardless of species, the interests of those who receive justice, who suffer or benefit from it, *in so far as* they are recipients, take precedence over the interests of those who, *in so far as* they can be responsible agents, distribute it.

Nussbaum rejects the classical Cartesian and Kantian radical distinction between (all) humans and (all) animals in favour of a more fuzzy border determined by what capabilities mean to them - fuzzy in the sense that some animals are more human than others, i.e., share with humans more characteristics that make them morally relevant and able to enjoy capabilities, but also fuzzy in the sense that Nussbaum does not provide a complete list of criteria to distinguish 'each type of animal' (Nussbaum 2004: 315) from others. However, she apparently has the surprising results of research projects like the Great Ape Project in mind when she allows that at least some '...animals will have a conscious interest, as such, in variety and space' (Nussbaum 2004: 316), that they can experience and give love and care, and know compassion. An animal may even to an extent have the capacity to 'frame goals and projects and to plan its life' (ibid.). If animals and humans are not radically but only gradually different, and if animals can have some or all of the properties that make humans agents, then it is imaginable that some animals are to an extent not just recipients of justice, but even moral agents - which among many other things implies duties towards their fellow animals, duties similar to those humans have and to which they may be held:

- II. In so far as animals have a capacity for moral action, they have a duty not to unnecessarily harm or kill other animals.



Obviously, the general human responsibility to actively promote the wellbeing of animals reflected in Nussbaum's list of animal capabilities, implies the specific responsibility that explains why the Bronx tiger should not be given tender gazelles to chase after:

- III. In so far as animals (including humans) do not have a capacity for moral action, humans have a duty to see to it that animals-as-subjects are not unnecessarily harmed or killed by other animals, and in so far as animals act contrary to their moral duties, humans have a duty to stop them.

As Nussbaum says (2004: 312), there is a difference between animals living in captivity ('under humans' direct control') on the one hand, and animals living in the 'wild' on the other, but it is a difference in degrees of responsibility only, never an excuse for inaction.

### **Ought implies 'make it so'**

The last thesis may be a bridge too far for many a reader of Nussbaum's work, even those sympathetic to animal rights. The first two principles may be seen as, in the worst sense of the word, academic. On the one hand they are as logically valid as they would be if they were discussed in the context of Kant's angels or Nozick's aliens from outer space, but on the other they seem only hypothetically relevant: whether there are any animals with the capacities required for agency is a partly empirical and highly controversial issue. A positive and universal duty to actively interfere in the natural course of biological events is, however, something completely different. How absurd is it to demand that we should actually stop all lions living in the wild from hunting and eating their prey?

More formally put, the skeptic's rhetorical question contains at least three objections:

- (1) Is there any (morally reprehensible) harm where non-agents hunt and eat other non-agents?
- (2) Where agents act, does their irresponsibility constitute grounds,  
first, for the freedom of others to act in their stead, and  
second, for their duty to do so?
- (3) Are we, in general, obligated or not to stop harm from occurring?

Martha Nussbaum's answer to the first question would be simple but question-begging: harm and moral reprehensibility are at least in part defined by the presence of a victim, and there is a victim wherever the potential to enjoy capabilities is undeservedly taken away. For this answer to be



convincing we must presume the validity of the capabilities approach in general and that of its translation into animal capabilities in particular - which, at least for the moment, I shall assume to be justified.

The third question is a generalized version of the second one; it asks if there are any grounds at all, including irresponsibility, to be (passively) allowed or even (actively) obligated to interfere on behalf of prey. Since irresponsibility is (in this context: merely) a cause of harm to animals, and since the latter is what really matters to Nussbaum, the possible immorality of irresponsibility is irrelevant. In other words, what remains to be proven is that humans are free or even obligated to prevent harm to animals. Since it is hardly imaginable that allowing harm to happen is a morally good thing, i.e., since it is unlikely that it can be good to command evil to happen, we may assume that at least a freedom to prevent harm exists. This reduces the problem to the duty to interfere: Are we not more than our brother's keepers, i.e., even our most infinitely remote cousins' keepers?

Now some people think that this means that we must endorse and support bad animal capabilities such as the capability to kill small animals in painful ways. I don't see how this can be right. Whether a human being tears a little dog apart or whether that same little dog is torn apart by a tiger, it's just as bad for the dog, and the capabilities approach begins from the entitlements of each creature. I think the little dog is entitled to protection from the tiger, as well as from the human (...) to the extent that we are there on the scene, I think we should defend weaker animals. And one thing that we should never do is to suppose that animals killing other animals is morally neutral (Nussbaum and Faralli 2007: 158).

Obviously, Nussbaum's reply is affirmative - we are our brother's keepers and our animals' guardians. But what is the basis for this claim?

First of all, Nussbaum could argue that it is inconsistent to call something 'ethically bad' and at the same time allow it to happen when it can be prevented - a thing cannot be a and not-a (good and bad) at the same time, nor a and 'neither a nor non-a'. But 'x is evil' (or bad or immoral) is not the same as 'I must prevent x'; to draw that conclusion at least the following premise must be added: 'I must prevent all evil, at least of the category to which x belongs'. Only a premise like that can turn inactivity into the sin of omission. If Nussbaum wants to maintain that we have an active duty to prevent harm to animals, then this is exactly what she would have to believe - perhaps again arguing that calling anything evil and not acting against it are inconsistent positions.



One final skeptical objection would be to point out that Nussbaum's position is impractical: keeping the tiger from its morning exercise and breakfast may do more harm than good - it will either starve (and given that the tiger is already on the verge of extinction, offering it a gazelle might be the lesser evil) or we would have to find it alternative food and occupations, and we would have to find a way to now keep gazelles from procreating at an exponential rate - and with one thing leading to another, we might end up upsetting countless animal lives. An objection like this raises interesting questions about the lesser evil and causing greater evil, but the interesting thing to note is that this really is a *practical* objection - not one on principle. It is, in other words, no objection to Nussbaum's views, but rather an improvement.

The skeptic's final resort would be the classic conversation stopper 'ought implies can', which in fact means 'if it is impossible to do x, there is no sense in obligating anyone to do x'. While reading these lines, we cannot at the same time stop a tiger, thousands of miles from here, from doing evil. This is of course a fair point, but as her Bronx Zoo example illustrates, Nussbaum would also point out that 'ought implies can' is all too easily used to avoid responsibility and circumvent action:

- IV. Ought implies one of three things: (IVa) ought implies can immediately; (IVb) ought implies a duty to create circumstances in which (IVa) is the case; (IVc) only where (IVa) or (IVb) are physically impossible, ought implies should but regrettably cannot. The mere impossibility of immediately or even ever performing a moral duty does not void that duty, it only obstructs its performance.

Nussbaum would encourage a less defeatist attitude towards moral activity:

- V. What is absurd is to demand that actions (either of type IVa or type IVb) aimed at doing the *truly impossible* be performed (making them actions of type IVc).

And on that perspective, Nussbaum's interventionist intentions towards animals' way of life cannot immediately be dismissed as absurd.

### **An obligation to redesign nature**

Nussbaum's discussion of the Bronx Zoo tiger and all her further comments on the morality of improving the capabilities of animals, the options for both wild and domestic animals to flourish in an environment suiting that interest, as well as her insistence on human responsibility for animal



wellbeing, turn ought into should. Where animals ‘underachieve’ in terms of capabilities and functionings, humans are not just free to interfere on their behalf, they have a positive duty to do so by (see thesis IV above) either directly interfering to prevent all unnecessary killing and suffering of animals, or by creating background conditions under which killing and suffering are reduced or better still, eradicated. While not feeding the Bronx tiger at all would be an instance of the first - obviously resulting in a mere replacement of suffering by other suffering -, replacing its gazelle by ‘humanely’ prepared meat plus a ball illustrates the second. Either way, Nussbaum obviously believes that:

- VI. Humans have a positive duty to recreate nature in such a way that no animal shall ever again unnecessarily kill or harm another animal.

The image this calls to mind is that of a world where, as the saying goes, the lion shall lie down with the lamb - an expression that has its origin in the Bible: ‘The wolf also shall dwell with the lamb, and the leopard shall lie down with the kid; and the calf and the young lion and the fatling together; and a little child shall lead them’ (Isaiah 11: 6) and ‘The wolf and the lamb shall feed together, and the lion shall eat straw like the bullock: and dust shall be the serpent's meat. They shall not hurt nor destroy in all my holy mountain, saith the LORD’ (Isaiah 65: 25).

Nussbaum is fully aware of the implications of such a duty - both the practical and the theoretical implications. Yet neither the Bronx Zoo example nor the highly abstract references to highly abstract duties to actively promote animal capabilities make its full impact really visible or imaginable.

It is not only pets and captive animals whose environment needs to be adapted, and it is not only their environment that needs adaptation. First, their *nature* must be adapted in two senses: both their environment *and* their essence needs to be attuned to their flourishing as individuals and their making a positive contribution to the flourishing of other individual animals. Second, since nature is not just but should be, the same goes for wild animals: it is *every* animal’s nature in both senses, at least in so far as it has an interest in anything remotely resembling capabilities, that needs to be transformed. It would be unsophisticated to say that Nussbaum represents nature as evil, as the opposite and enemy of morality, nor does she interpret it naively as mere resources, but she does see it as an object rather than a subject of moral action:

- VII. Nature should not be left in its natural state; the state of nature must be replaced by a state of justice.

That is, assuming a ‘natural state’ even exists: Nussbaum rejects the idea that nature is a harmonious system (let alone wise) as misguided romanticism. When she says that ‘we need a careful evaluation



of both “nature” and possible changes’ (Nussbaum 2004: 311), she clearly implies that the concept ‘nature’ itself is a construction, and that there is no sound reason a priori why that concept should be left in its current ‘natural’ state as (erroneously believed to be) given, let alone as deserving the kind of respect or awe that momentarily inhibits, or worse, permanently prohibits thinking of it as an object for creativity and politics. Therefore also ‘...the capabilities approach is very careful to start not from a neutral account of “nature,” but from an ethical evaluation of the powers that human beings have’ (Nussbaum and Faralli 2007: 157). Again, it is important to be subtle and precise here: Nussbaum does not deny that nature or naturalness *cannot* have meaning other than as instruments for human and animal flourishing, i.e., no independent or intrinsic value - what she would deny is that such value is not itself a human artifact, and therefore a valid object for rigorous analysis, scrupulous debate, careful defense and limitless distrust.

### **Consequences (Damn the ~)**

Many readers of Nussbaum’s work tend to see it as a ‘normal’ social liberal redistributive theory of justice focusing on the material (legal and economic) wellbeing of vulnerable groups, their wellbeing measured by the innovative but also slightly fuzzy standard of ‘capabilities’. In light of the recent attempt to ‘frame’ a series of feminist, multicultural and gay critiques of mainstream social justice theorists like Rawls, Sen and Dworkin as a debate on recognition versus redistribution, one could characterize Nussbaum as a mediator, trying to show that recognition is part of the same social justice paradigm of which material redistribution and attribution of rights are equally part.

Yet if we see her work in the light of her perspective on animals, one may need an even broader frame: her ambitions do not seem to go just a tad but rather far beyond social incrementalism and economic tinkering<sup>5</sup>:

In general, the approach insists that protection of all the capabilities involves affirmative state action. (...) Where animals are concerned, my approach insists that human influence is ubiquitous in all animal environments today, so it is no good to say that we should just keep our hands off the lives of animals in “the wild” and all will be well. Of course keeping our hands off would be a big improvement: Not

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<sup>5</sup> Which is not to say that Nussbaum would reject piecemeal social engineering; broadness of perspective and care in the choice of methods are not mutually exclusive. As she makes eminently clear, ‘...we probably should not take on the task of police for nature, a task that we would surely play badly’ (Nussbaum and Faralli 2007: 158).



hunting elephants for their tusks, for example. But elephants also need space to move around and graze in, and humans have been taking away that space, so active human planning and intervention is needed if the elephant is not going to become extinct (Nussbaum and Faralli 2007: 157).

In fact, Nussbaum seems to offer a new conception of politics itself, one that attempts to reconcile more than any currently popular opposing views within mainstream political theory. At a deeper level than social justice theory alone, her work can be read as an attempt to reconcile contemporary mainstream political theory itself, where political economy is conceived of as a respectable object of or even the main concern for politics, with its fiercest peripatetic critic Hannah Arendt (1958), for whom economics, the sphere of mindless reproduction, is the denial of the political, the creative shaping and reshaping of society. In Nussbaum's world, politics as the shaping and reshaping of society includes, even begins with, the evaluation and reshaping of the natural environment, in the interest not only of humans but of all animals. This does put her on a collision course with orthodox ecologism, though.

So far, all I have done was summarize and contextualize Nussbaum's position on animals; nothing was inferred, no new consequences drawn, no guidelines or action plans formulated. When we start to speculate, however, what the capabilities-for-animals perspective implies and demands in practical, real world terms, the intellectually revolutionary reach of Nussbaum's project as well as the irreconcilable nature of her conflict with conservative green thinkers becomes clear - plus, finally, the from a short- or mid-term perspective at least hopelessly utopian nature of that project.

There is a duty to improve nature (see thesis VII), and a criterion for improvement (thesis VI): nature is improved when it becomes more just for all animals. Thus, improving nature demands an end to animals killing one another needlessly, to animals killing one another in needlessly cruel ways, and, regardless of the cause, to animals dying in needlessly cruel ways or even suffering needlessly. 'Suffering' is to be interpreted as broadly as the community of justice itself: any subjectively experienced discomfort or unease - and Nussbaum is of course aware of the contentious nature of any trans-species (i.e., human) interpretation of animal sensations. Suffering will include not only physical but also the equivalent of psychological pain - such as the distress the Bronx Zoo tiger would have felt if no ball had been provided to replace gazelles.

Since ought implies 'make it so', i.e., since existing practical impediments to the performance of an ethical duty imply a duty to create circumstances under which that first duty can be executed (cf. thesis IV), the practical consequences of the duty to improve nature (thesis VII) will be immense both for



flora and fauna, and for the administration of nature. Improving nature by (say) stopping a lion from killing her prey, (say) stopping dolphins from playing with their food while it is still alive, or (say) stopping a gorilla male from raping a gorilla female simply will not do. For one, a structural rather than incidental solution is needed: this particular lion and all lions and all predators and bullies have to be kept from killing and maiming and tormenting, permanently and universally. But that is only the beginning of a classic slippery slope.

Such a permanent solution will, secondly, have to involve more than simply separating predators from prey, since the predators would now themselves be the prey of humans. The predators will need to be given the equivalent of the Bronx Zoo playing ball and alternative sources of meat. Although in the short run no real alternative to animal meat is available and ‘humanely killed’ animals will have to be offered, in the long run - since ought implies ‘make it so’ and slaughter can be made redundant - conditions can be created under which either laboratory grown (‘in vitro’) meat becomes available or, if the predator requires living animals to kill, where predatory needs or inclinations can be eradicated by genetic modification of the predator species.<sup>6</sup> By the same token, alternatives for recreational cruelty can be developed or, if the concept of recreational cruelty is rejected or alternatives do not work, GM may again be the preferred solution. And if all else fails, there seems to be no (or less) harm to individual animals in preventing another generation of predators to roam the earth by simply eradicating their procreative potential.<sup>7</sup>

Thirdly, let us not forget about former prey animals, who can now start to procreate at starvation rates, suffering various new forms of cruelty and needless death. Culling them is obviously not an option, at least not in the long run; rather, the same instruments used to improve predators will also have to be applied to improve prey: the provision of alternatives, genetic modification or, ultimately, passive and humane eradication of the species. None of these precise alternatives may be currently viable or practical, but if it were merely a question of principle they would correspond perfectly to Nussbaum’s intentions: ‘What I would recommend in that situation is animal contraception, so the deer do not overeat their habitat. Notice that this is not leaving nature alone: We have to intervene to bring about a solution that is decent. Smarter interventions, not fewer, are what I would recommend’ (Nussbaum and Farall 2007:158).

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<sup>6</sup> Note that Nussbaum is not the only influential philosopher considering ‘improving’ animals genetically or chemically in the pursuit of justice; see e.g. Peter Vallentyne (2005) for a libertarian-cum-welfarist argument using the same idea.

<sup>7</sup> The genetic modification of a species may well be compatible with an Aristotelian perspective on the good life as aimed at flourishing-in-context. Genetic modification improves or deletes the qualities that keep an animal from fully experiencing the benefits of its capabilities. Even extermination of a species can be compatible with flourishing: it is the deletion of a species incapable of (the animal equivalent of) a ‘meaningful’ life, as a necessary condition for the flourishing of the rest.



It seems then that the explosive combination of theses IV and VII (or VI) would force Nussbaum to accept a further thesis - nothing in her texts precludes it, everything implies it:

- VIII. (a) predatory animals should be kept from cruelty and killing, either in the short run by capture, seclusion and distraction, or in the long term by genetic modification or, where that fails, extermination; (b) non-predators should be protected against overpopulation and famine first by the provision of food, but in the long run by sterilization, genetic modification or passive extermination.<sup>8</sup>

Now of course much of what Nussbaum's view implies will be considered on the one hand insane and on the other unfeasible - but under 'ought implies make it so', those are not the strongest objections imaginable. What is not feasible today cannot now be demanded; but we can demand that conditions are created under which the currently unfeasible right act can be performed. What Nussbaum calls for is, after all, not an immediate but 'a gradual supplanting of the natural by the just' (Nussbaum 2004: 317). However, the word gradual is less innocent than it might appear to be. In everyday communication, 'gradual' may mean 'orderly, step by step' but it carries connotations like 'without undue haste', 'all in its own good time' and 'without causing serious discomfort'. There is every reason why Nussbaum would support an orderly, step by step replacement of nature by justice: efficiency is the best guarantee for effectiveness. But there is no reason why such a process should be delayed beyond the requirements of efficiency - instead, any delay implies further unnecessary suffering in nature and prolonged injustice by acts of omission. There is, then, no reason for the qualification 'gradual' in 'the gradual supplanting of the natural by the just', other than to communicate the rational need for efficiency. There are no excuses:

- IX. The duties listed under VI-VIII should be implemented at our earliest convenience.

Oddly enough, there still is room for predation precisely because of the absence of excuses for postponing the replacement of nature by justice. When cruelty and killing amongst animals must be stopped, while aesthetically pleasing, bloodless and victimless solutions like in vitro meat or species-wide contraceptives are not yet available, it falls upon the only human capable of determining when pain or death are 'needless' to distribute them:

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<sup>8</sup> The one weak point in this thesis may be that there is no guarantee that, in the end, it is not humanity that should (also) be wiped out because of an inability to live a meaningful life, or even that no species may have that capacity.



- X. As a consequence of thesis VIIIa, humanity can and may become the only predator, killing animals for their own good.<sup>9</sup>

All things considered, the consequences of embracing a capabilities-for-animals perspective and taking that perspective seriously, i.e., implementing it and creating the conditions under which it can be implemented, are immense. Disregarding the redundant ‘gradual’ clause, Nussbaum’s belief that the natural should be supplanted by the just really implies that nature is seriously overrated; a structural overhaul is long overdue. Yet while she rejects - in her own words - nature worship (Nussbaum 2004: 310), she does not offer an alternative reification of nature, i.e., a blueprint of an ideal or (merely) just ecosystem. Blueprinting is, after all, at odds with liberalism broadly construed, including Nussbaum’s egalitarian liberalism in which resources support the expression of capabilities in the pursuit of individual salvation (cf. Hampton 2007:158ff.). Just like the rest of society, natural processes are to be structured and restructured so as to meet the needs of capability-carriers, rather than to shape those needs:

- XI. The state of nature cannot be replaced by any other steady state of affairs; the romantic pursuit of harmony in nature or a ‘natural equilibrium’ is an undesirable goal.

### **Beyond Nussbaum: ethical individualism**

Of course, Nussbaum’s perspective on justice is not universally embraced; she has attracted her fair share of critics. Some have argued that the theory of capabilities is underdeveloped (Robeyns 2008), e.g. because no ranking of capabilities is provided, because capabilities are lacking or are barely defined, or because, since they seem to be partly accounted for by reference to their actual popularity, they violate the is/ought distinction and import a conservative, non-reflective bias. For others, capabilities, be they Sen’s or Nussbaum’s, do not really add anything new to the list of measures of justice, and in particular to Rawls’ primary social goods. And still others will argue that a perspective on which existence can only count as fulfilling or worth while if the full range of capabilities is available, is a denial of the human dignity of, rather than a help to, the vast majority of humans living less fortunate lives.

While such critique may in general be relevant and useful, and while it may even support a rejection rather than reform(ul)ation of the capabilities approach in favour of more classic approaches within

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<sup>9</sup> ‘I am sure that for the deer the hunter’s gun is better than the wolves’ jaws, more sudden and less excruciating’ (Nussbaum and Farall 2007:158). Other things being equal, under the right circumstances this might even, paradoxically, make vegetarianism a sin rather than a virtue. Cf. also thesis V.



deontology or consequentialism, none of it seems to touch the heart of her argument for animals and against nature, which, for the moment and for the sake of argument, we shall assume to be too radical, too invasive, utopian and undesirable - and therefore in dire need of refutation.

First of all, improving the capabilities approach - clarifying its elements and measures, adding a ranking and so forth - cannot imply a rejection of the crucial theses IV and VII; these are valid or invalid regardless of context. In fact, any ethical approach, be it a form of deontology, consequentialism or virtue ethics, will have to accept these theses as long as they adhere to a form of ethical individualism. Hence the critic's second path, that of rejecting the capabilities approach and embracing something else, has little effect on the validity of IV, VII or their consequences. What also won't help is to argue that animals are less or differently relevant; that will make their role in defining the most desirable shape of nature less or different, but it will not make it go away.

XII. No deontologist or consequentialist admitting the capability of animals for suffering can reasonably disagree with any of the above theses.

There is a way out, though, for the skeptical ethical individualist, but it leads to an, in a quite similar sense, still fairly unattractive alternative. We could, in the context of the capabilities approach or in any other, reject all moral status or import of animals - which obviously also entails a rejection of theses I-III. It is not an easy thing to do - both consequentialists and deontologists nowadays accept that at least some animals have needs, feelings or interests, that they can be harmed and that acts (or acts of omission) causing animals harm are ethically reprehensible. Animal ethics may not be on the research agendas of many moral philosophers, nor rank highly for most,<sup>10</sup> and much attention goes out to assessing the relative weight and priority of species (cf. a similar side-track: our discussion of the term 'gradual' above) - but the prima facie case for the relevancy of animal fates has been made in recent decades; the ghost is out of the bottle. Yet excluding animals from ethics only takes away part of the problem. There is still a human constituency to whom theses IV and VII apply, hence a duty to adapt, design and use nature for the benefit of the morally relevant constituency. Nature must still become an instrument of justice, and if that cannot be done today, preconditions must be created so that it can be done tomorrow.

If this is a road one does not want to take, for whatever reasons, either thesis IV or VII must be rejected, each for their respective reasons. Yet it is hard to see how thesis IV can be rejected. Deontologists might want to rephrase it because 'ought implies can' is a formula biased towards

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<sup>10</sup> This should not be read as censure. As should by now be evident, philosophizing under *ceteris paribus* conditions is a necessary form of creative cognitive dissonance; without this kind of premeditated amnesia, little focus would ever be possible - not in ethics or philosophy in general and not in any of the sciences (cf. Vallentyne 2005).



consequentialism, but no amount of rephrasing will take the sting out of the argument; indeed, thesis IV seems to repair a PR failure in consequentialism in line with deontological sensitivities. After all, if theory and practice do not match, the deontologist will first blame practice. Consequentialists, probably more than deontologists, will want thesis IV to be specified further rather than rejected since thesis IV makes ‘ought implies can’ more practical and practicable. Specifying thesis IV however means indicating which needs are to be satisfied and which duties to be performed before others, that is (given an ‘in principle’ acceptance of Nussbaumian propositions) deliberation on the schedule for their implementation.<sup>11</sup> Thesis IV entails a *prima facie* rejection of conservatism in favour of intervention for justice, intervention both in society and, as long as thesis VII remains unchallenged, in nature.

And this brings us to the critique of thesis VII and the relationship between Nussbaum and ethical individualism on the one hand, and ecologism on the other.

## Perspectives

One may deem Nussbaum’s project, both the explicit and the implicit part, hopelessly utopian and even absurd - what will be next? Flesh-eating plants replacing graveyards? Long-term perspectives and current absurdity are not valid objections, though; they may simply hide an unwillingness to reconsider present (unreflective) prejudice. The same objections can be raised against globalism as a theory of justice, against Dworkin’s radically egalitarian scheme for repossession and redistribution of goods, and the same objections have been raised in the past against feminism and the abolition of slavery. Relevant for the validity of a realizable action-oriented ethics is not what can be realized when in which particular context, or alternatively how long its message can be defied,<sup>12</sup> relevant is only whether the premises that make it a morally commendable or commanded theory (1) cannot in all reason be rejected or better still (2) are positively convincing.

Now the consequences of Nussbaum’s thesis VII and her politics of nature are those of any theory that allows the needs of morally relevant subjects, however needs and subjects be defined, to make use of nature as resources. In that sense, Nussbaum does not distinguish herself from any liberal theory of justice - they all allow the creation of a global Manhattan (Wissenburg 1998), and obligate the replacement of nature by artifice - e.g. plastic trees (Wissenburg 2008) if the latter better serve the subjects’ needs.

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<sup>11</sup> A corollary of thesis XII, relevant in this context: no Marxist will want to miss the opportunity to point out that animal welfare activists are misguided agents of imperialism, prolonging rather than ending the suffering of the working classes.

<sup>12</sup> A term derived from Jean Hampton’s work on culpability (Hampton 2007: 74).



To reject those consequences as undesirable, a classic concept from deontology would have to be introduced: intrinsic value, in this case, the intrinsic value of nature. In other words, thesis VII can only be rejected if one embraces ecocentrism,<sup>13</sup> which calls for respect for nature as a whole - but here's the rub: ecocentrism and ecologism are in trouble themselves over issues of internal consistency, and they do not therefore offer attractive alternatives. The ecocentric insistence<sup>14</sup> on nature's intrinsic value is usually associated with a view of nature as stable, and in change always aiming for re-establishing a balance or even harmony; one of the few things distinguishing ecologism from creationist fundamentalism is its acceptance of evolution, both gradual and in reaction to natural cataclysms.

Even disregarding its reliance on the controversial concept of intrinsic value, ecologism's internal contradictions are probably enough to paralyze it: it accepts change and evolution, but only when directed towards stability and harmony, conditions that by definition cannot engender further change; it rejects interpretations of nature as unnatural and artificial but postulates the concept of natural balance; it rejects human-made change as disrespect for nature in its current state, but it accepts change originating from within regardless of the value of the current state of affairs. Surprisingly, it may be the *acceptance* rather than refutation of thesis VII that can save ecologism from collapsing under the weight of its own contradictions.

Nussbaum's perspective on animals and capabilities has, as we saw, surprising consequences. In a way, it brings anthropocentrism back with a vengeance: under the guise of zoocentrism or possibly<sup>15</sup> biocentrism, the user approach towards nature, its interpretation as environment and resources, has expanded its domain. Perhaps then it is not only the ethics of anthropocentrism as lack of respect for nature that is the problem, from an ecological perspective; perhaps there is something else as well: the ontological representation of the relation between human/animal and environment/nature as one of subject using versus object used.<sup>16</sup>

Tentatively speaking and probably overinterpreting Nussbaum, she formulates a (for orthodox ecologists) more tolerable alternative to such an anthropogenic ontology of natural relations. She makes a good case for her theory as an 'understanding', an 'impartial', interpretative and subject-

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<sup>13</sup> As Andy Dobson (2007: 37) pointed out, some ecocentrics want to put the onus of proof on those arguing for interference with nature. In practical terms, this is calling the half-full bottle half-empty: any reason to interfere with anything (natural or other) will automatically do, unless we have reason to weigh it against the unconditional value of the undisturbed object, i.e., unless we have something like its intrinsic value to believe in.

<sup>14</sup> Implicit or explicit - see the previous footnote.

<sup>15</sup> In this article I have ignored the possibility that Nussbaum's argument should be extended to capabilities and justice for plants (carnivorous or other).

<sup>16</sup> Use includes abuse, i.e., the subcategory of improper use. This may be a controversial assumption; it may seem like making evil a special case of the good.



sensitive conception of animal interests. There is always an objectively unequal relation between parts of nature: it is always eat or be eaten, cooperate or die. That we *represent* this relation, for want of a better word, with human terms like ‘user relation’, and that they may mean something completely else, something that cannot be expressed in human terms, to animals - all that is immaterial. What matters is that it may mean anything from the animal’s subjective perspective of intentions and desires (in so far as it has such a perspective) but that it will always remain a relationship defined by survival versus annihilation.

Nussbaum’s more impartial (or broader or subject-sensitive) approach to the animal’s interpretation of nature reveals that the extremes of the relationship between animal/human and environment/nature are not ‘blind submission to nature’ versus ‘total destruction of nature’ - those are only the extremes on the X-axis of ethics: intrinsic versus user value. There is also the Y-axis of ontology, with the extremes of ‘total autogenesis of nature’ and ‘total design of nature’. Classic ecologism’s internal contradictions sprout from the attempt to reduce these two contradictory conceptions of nature to one, leading to the prejudice that it is necessary not to *interfere* with nature in order to *respect* nature. We can live ‘in accordance with nature’ and at the same time design it.

To make a long story short: Nussbaum’s stance on animals forces us to consider radical implications, some of which she discussed openly, while others remained implicit and perhaps still partly undiscovered. Animal rights supporters might hesitate to accept them for practical reasons; Nussbaum’s rather open discussion of the final consequences may do the political and practical cause of animals more harm than good. Orthodox ecologists would certainly not normally embrace Nussbaum’s ‘architectural’ approach to nature - and yet the distinction she allows us to make between the motives for the pro-active shaping of nature, and the actual process of shaping nature, will allow ecologists to bridge the gap with mainstream environmentalism by abandoning their laissez-faire attitude in favour of design and responsibility. Finally, any political theorist for whom animal rights, interests or welfare are in practical terms and compared to the suffering of humans as relevant as the showbiz pages in tabloids may still find in Nussbaum the beginnings of a new, inviting and exciting understanding politics: the shaping of all our environment, both natural and artificial.

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