

BOOK REVIEW

Frontiers of Justice. Disability, Nationality, Species Membership

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Reworking moral-political philosophy in light of disability studies – or the other way around?

Due to criticism from within disability studies, other research fields are gradually taking disability into account. By virtue of this criticism, disability studies remain a critical discipline, that is, a profoundly *moral* field of research. There remains, however, a need for further exchange between disability studies and research frontiers such as political theory and moral philosophy: disability issues still seem peripheral to the latter areas, while disability studies has not really allowed itself to be fertilized by those research fields.

The American philosopher Martha Nussbaum tries to accommodate to this need in her latest book, *Frontiers of Justice*. Nussbaum, well known for her work with gender and development studies, as well as for her studies in classical ethics (especially Aristotle), does not locate her argument within disability studies. Rather, arguing the fundamental status of disabled people, inhabitants of poor countries, and animals, she tries to rework contractual theories of justice. The question is: Can this reworking, engaging moral concepts underpinning disability studies, reflect fruitfully back on disability research?

Though deeply critical, Nussbaum does not have a “subversive” starting point. In order to exclude as few norms and convictions as possible, she locates her argument within liberal political theory. She explores “frontiers” of this framework, primarily as it is spelled out in the work of John Rawls. Accordingly, the book is dedicated “In memory of John Rawls”, attempting to “extend the core ideas of his theory to deal with these new issues”.

Rawls’ theory is a reinterpretation of the contractarian tradition. This tradition, with Hobbes, Locke, Rousseau and Kant as prominent figures, views justice as the outcome of an agreement. This made it possible to conceptualize justice, without relying on metaphysical or moral convictions. Instead of this drive, one imagined a bargaining situation driven by mutual advantage (*mutatis mutandis*). For this mutual interest to occur, these

thinkers presupposed a “rough equality” among the parties. Accordingly, members who were already in severe inequality, such as women, children and the elderly, were rendered unfit to reach justice.

In Rawls’ interpretation, he tries to solve this problem by way of an abstract concept: “The original position”. In this situation, behind a “veil of ignorance”, the parties have neither knowledge of their own positions or properties, nor of others. Accordingly, they are also ignorant of their own interests. Under these circumstances, one can agree on fair norms to mutual advantage, without reproducing social inequalities. As no parties can become instruments in such (re)production, Rawls is able to combine the notion of social contract with the Kantian idea of humans as “ends in themselves”. This situation must not be understood as an historical reality. The point is rather that the original position is an intrinsic property of political norms.

Rawls’ procedural concept of justice roots the morality of politics in a reciprocal interaction to mutual advantage. Relying not only on the classic contractarians, but also on Hume, Rawls underlines that only certain parties can share this reciprocity: (i) They must be “free, equal and independent”; (ii) they must be productive, in order to be able to put economic resources into the distribution governed by the social contract; and, finally, (iii), they must be able to propose, argue and discuss principles of justice and society design.

Throughout the history of contractarianism, this has led to several omissions. Classical contractarians omitted even women, Nussbaum demonstrates how the contractarian leads to the omission of the groups discussed in her book: disabled people, inhabitants of other societies, and animals. The key here is what Nussbaum calls “the conflation of two questions that are in principle distinct: “by whom are society’s basic principles designed?” and “for whom are society’s basic principles designed?””

However, Nussbaum does not argue that this conflation necessarily leads to neglect of those who are omitted from the designing group. As Rawls himself has shown, disabled people, children, etc., can be omitted from the original position, while their needs are still met on a later, legislative level. On an applied perspective, it is this procedural image that forms the normative core of welfare states.

However, as disability studies have highlighted in different ways: this is not really sufficient vis-à-vis disability issues. She writes:

Though they may make practical arrangements for the needs of human and animal beings who were not included in the original contracting group, they are not at liberty to redesign the principles of justice themselves in the light of their awareness of these issues.

This dovetails well with a primary concern in contemporary disability studies: Even if these arrangements are morally acceptable, they still reproduce the inequality they seek to replace. In short: they remain compensatory, rather than based on genuine and equal worth.

To combat this problem, Nussbaum advocates a “capabilities approach”. In this framework, all members of society are what she calls “primary subjects

of justice”. This concept, which she originally developed together with Amartya K. Sen in the 1980s, singles out basic possibilities, which all members of society are entitled to exercise. Among these are: living to old age, expressing oneself, controlling vital parts of one’s daily life, etc. If these are to be basic, the postponement advocated by Rawls is unacceptable. Rather, the negotiations in the original position must be supplied with a regulative idea: an obligation to guarantee all members basic dignity, the opportunity to exercise their basic capabilities

This supplement would break the conflation apart. However, this means that justice is no longer based solely on mutual advantage. A regulative idea concerning parties outside the bargaining situation cannot be established by way of mutual advantage. This approach is then departing from the contractionist tradition, as it must employ some kind of virtue ethics.

Nussbaum’s argument could, if accepted and included in research agendas, enhance the normative basis of critical disability studies. Instead of focusing solely on the suppression of people with impairments, disability studies could express and promote a more generalized ethics and politics of dignity – also promoting the dignity of other groups, such as inhabitants of poor countries, children, the elderly, etc. According to Lennard Davis, this expansion is already taking place, leading disability studies to the frontier of cultural and social theory.

However, including the capabilities approach would challenge disability studies in several ways. Firstly, changing the *normative* level of disability studies, dismissing the concept of a pre-social situation prior to injustice (the veil of ignorance), could hardly leave the *analytical* level untouched. The notion of a pre-unjust situation is also an interpretative key in disability studies, be it a pre-modern equality (as in Mike Oliver’s work) or a more hypothetical concept. The importance is indicated by the extensive employment of transitive terms such as “disablement”, “social construction of disability”, etc. If disability studies were to depart from a purely contractionist morality, one would also have to leave hard-core constructionism (hard-core social model) behind.

Secondly, the capabilities approach challenge the criticism of disability studies. A criticism relying on the capabilities approach can not aim solely at equality and independence. As argued by Sally French, liberating arrangements, including those promoting independent living, need not seek equality and independence. Rather, justice for disabled people would be rooted in our equal right to make use of our capabilities; in our equal dignity.

Notwithstanding the power of Nussbaum’s argument, at least two objections can be made from a disability studies point of view. Firstly, implying Aristotelian virtue-ethics, Nussbaum states explicitly that the capabilities approach “require extensive benevolence”, could be problematic. This approach would then, if made the morally philosophical background for disability studies, imply the same asymmetrical power relations that disability research has deconstructed in f.ex. charity.

Secondly, it remains unclear if Nussbaum’s solution really is a social possibility. She emphasizes herself that the acquiring of the virtues, vital to

her solution, is dependent upon specific social, material and historical circumstances. Perhaps, the critical question remains insufficiently answered or contextualized: What are these, and how and if are they reachable?

Still, her answer to this question is of extreme relevance to disability studies. In her view, building on Rousseau and John Stuart Mill, achieving the virtues relies on a change in world-views. Building explicitly on disability research, as well as disability activism promoting such changes, she underlines the importance of cultural formations, especially language, sentimentality and visual culture.

In this context, Nussbaum's book provides a crucial lesson; a social solution must reach beyond the dismantling of an oppressive and discriminatory culture. Our cultural practices, from basic socialization to everyday conversation and artworks, must be *educational*. A social context promoting and securing dignity for all members of society must not only be free of discrimination, but moral in a *stronger* sense. Following Nussbaum's way of analysis, one could argue that, by way of its critical approach, disability studies implies morality already – but its potential can only fully be fruitful if acknowledged and allowed to influence analysis in a more profound manner.

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