

# Building, disassembling, and reconstructing humans' entitlement to a dignified life:

An (engineering-like) inquiry into Nussbaum's  
Capabilities Approach.

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Thesis presented for the degree of Research Master (ReMA) in Philosophy and Economics,  
Erasmus University Rotterdam.

*Date of submission:* January 19<sup>th</sup>, 2024

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## Acknowledgements

First of all, I would like to thank Constanze Binder, my supervisor. What a ride this has been! It has definitely tested my determination and commitment. I want to thank her for her tireless work, and her continuous implication in this project.

I also want to express my gratitude to Nicholas Vrousalis, my advisor. He is, to a great extent, one of the reasons why I am submitting this thesis. His self-less dedication and help proved essential to support me during this long and sometimes lonely project. Moreover, I thank him for the valuable lessons he taught me. He is (and will continue to be) an inspiring example.

In addition, I am very grateful to Christopher Clarke. I cannot imagine a better way to start the Masters than with his class. Furthermore, I am fortunate enough to have experienced his true kindness and care towards the EIPE community. His work ethic is probably one of the most extraordinary teachings that I get from this experience.

I do not want to forget Jack Vromen and Conrad Heillman. Conrad's course spurred my interests towards (what I thought were) uninteresting realms. Of course, I could not have been more wrong. Conrad unveiled exciting fields and discussions that I had previously ignored. Moreover, I would like to thank him for his enthusiastic teaching despite the complex circumstances.

In sum, I express my deepest thank you to the professors I had during the Masters. They are examples of professionalism, commitment, and service.

I am gratefully indebted to the sincere, honest, and loyal friendship of Giacomo Sacchetti, Moritz Hörl, Ella Needler, Matteo Giordano, Atakan Dizarlar, and Fernando Varela. We have done it! We have overcome these thrilling and difficult challenge together. Each of them knows the defeats and victories we have experienced. Each of them knows the amazing trip we have shared. I would not have been able to do it without them all. In other words, I have enjoyed and made the most out of this fascinating adventure thanks to all of them. (Just in case I am being a bit too Romantic, and our friendship is not as strong as I say it is, I have written their full names. Now, if some of them becomes famous, she cannot deny we were friends). Lastly, I apologise for the many things I have done wrong. (Especially for the unanswered messages from Giacomo and Ella!). Thank you for showing me a path of loving respect, affection, and healthy exigency.

I would also like to thank my entire ReMa class. Particularly, Gergana Boncheva. They have been great companions.

Por último, agradezco el apoyo diario de mi familia. Los *buenos días* de mi madre, los *¿estás bien?* de mi padre, las conversaciones con mi hermano, y las llamadas de mis abuelas. Son una roca sólida desde la que aventurarse al mundo. Esta tesis es mérito suyo. Gracias.

Gracias también a mi familia de Rotterdam. A Tuti, Olga y Mileidis. Las tres son ejemplos de esfuerzo, sacrificio, y fe. Las tres son ejemplos de vida. Ellas son uno de los motivos por los que puedo llamar a Rotterdam mi casa. En especial, quiero dar las gracias a Tuti por ser tan familiar, cariñosa y cercana. Gracias a ella puedo decir que tengo una abuela holandesa.

Gracias al Amor de los amores.

*Per a Joan.*

# Table of Contents

<b>Introduction</b> .....	<b>5</b>
<b>Chapter 1 – “He’s found fish”: Rawls and the Capabilities Approach</b> .....	<b>8</b>
1.1. John the-strange-tourist Rawls.....	8
1.2. Amartya the-peace-maker Sen.....	10
1.3. Martha the-rights-advocate Nussbaum.....	12
<b>Chapter 2 – “You are on a lucky boat.”: Humans in the Capabilities Approach</b> .....	<b>14</b>
2.1. Introduction.....	14
2.2. Subject: Which individuals are entitled to the central capabilities?.....	14
2.2.1. <i>Nussbaum’s second criterion</i> .....	15
2.2.2. <i>Nussbaum’s first criterion</i> .....	19
2.2.3. <i>Meeting the two criteria: Becoming an individual entitled to a dignified life</i> .....	19
2.3. Predicate: The entitlement to a life worthy of human dignity.....	21
2.4. Species norm.....	23
2.4.1. <i>The human species norm</i> .....	24
2.5. Species community.....	25
2.6. Species community membership.....	27
2.7. Conclusion.....	30
<b>Chapter 3 – “Bad news for you, fish”: Against Nussbaum’s criteria</b> .....	<b>32</b>
3.1. Introduction.....	32
3.2. The problem of Adam and Eve: the entitlement of the first ever human beings.....	33
3.3. The dignity of children born to parents without dignity.....	34
3.3.1. <i>Vegetative state and anencephaly</i> .....	35
3.3.2. <i>Humans without human dignity</i> .....	36
3.3.3. <i>The children of parents without dignity</i> .....	37
3.4. A possible solution: amending the second criterion.....	38
3.4.1. <i>Problem of a revised second criterion: Adam and Eve</i> .....	39
3.5. My criticisms in the literature.....	40
3.6. Conclusion.....	40
<b>Chapter 4 – “You give me much good counsel. [...] I’m tired of it.”: A solution to the Adam and Eve problem</b> .....	<b>42</b>
4.1. Introduction.....	42
4.2. The root of the problem: P1 and P5.....	43
4.3. A solution: new P1a and P5a.....	44
4.4. Avoiding Adam and Eve.....	46
4.5. Challenges to my proposal.....	48
4.6. Conclusion.....	49
<b>Conclusion – “What a fish it was”</b> .....	<b>52</b>
<b>Bibliography</b> .....	<b>56</b>

# Introduction

Martha Nussbaum built a theory of justice called the Capabilities Approach (e.g., 2007, 2008, 2011a, 2011b). At first glance, some may think it is simple. Yet, this theory succeeds in capturing the reader's attention. It is both intellectually, and humanly absorbing. Among many difficult topics, it addresses issues of justice for people with severe cognitive disabilities. That was the trigger for the present thesis.

In this thesis, I analyse one specific claim of Nussbaum's Capabilities Approach. Namely, certain individuals should have the opportunity to live a life "worthy of the dignity of the human being" (2007, p. 180). In other words, Nussbaum contends that some individuals are entitled to "a life with human dignity" (2007, p. 166). Hence, she argues, it is a matter of justice that they have the conditions to access a dignified life.<sup>1</sup>

My motivation in this thesis is neither agreeing nor disagreeing with Nussbaum. I am sure most people would concur with her. Rather, I find it more exciting to investigate the foundations of Nussbaum's position. Meaning, in this thesis I explore the intellectual itinerary that Nussbaum undertakes to reach her claim. I inquire into the concepts, assumptions, and compromises she relies on to substantiate her statement.

Broadly, I divide Nussbaum's claim into two parts: (a) subject, and (b) predicate. The subject consists of the first part of the claim. Namely: *certain individuals*. The predicate comprises the second part: *should have the opportunity to live a life worthy of the dignity of the human being*.

On the one hand, (a) individuals must meet certain conditions to be entitled to a life with human dignity. Nussbaum establishes two criteria:

- (i) First criterion: having human parents.
- (ii) Second criterion: having the (minimal) capacity for activity.

The individuals that satisfy them have the basis to demand access to a life with dignity. Conversely, those who do not meet the conditions, are not entitled to such life.

On the other hand, (b) the predicate: [certain individuals] *should have the opportunity to live a life worthy of the dignity of the human being*. The predicate can be fractioned into four main ideas: [certain individuals are] (i) *entitled* to (ii) a life *worthy* of (iii) the *dignity* of (iv) the *human being*.

My claim is that Nussbaum's two criteria lead to unwanted, counterintuitive results. That is, Nussbaum would intuitively defend that an eighty-four-year-old man would qualify as an entitled individual. In other words, she would intuitively argue that this man deserves the opportunity to live a dignified life. Nonetheless, I contend that, under certain circumstances, Nussbaum's criteria would result in the opposite. Namely, Nussbaum would have to conclude that an eighty-four-year-old man should not have a life with human dignity. This, I argue, is counterintuitive.

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<sup>1</sup> Note that during the thesis I employ various expressions equivalent to a "life worthy of human dignity" (Nussbaum, 2011a, p. 25). Some of these expressions are *a dignified life* and *a life with dignity*. Similarly, when I say that someone is a *dignified individual*, I mean that she is entitled to a life with human dignity.

To support my position, I present two criticisms. First, I address the case of the first-ever human beings. Roughly, humans have not existed forever. Hence, there must have been a moment in history when the first member of the human species appeared. This individual is as human as any other member of the species. Yet, she does not have human parents. Thus, Nussbaum's criteria would have to conclude that she is not entitled to a life with human dignity. I contend this is counterintuitive.

Second, I discuss how some cases of cognitive impairments place Nussbaum's criteria under strain. Briefly, Nussbaum argues that individuals in a persistent vegetative state are not entitled to a life with human dignity (2007). Nonetheless, I show how these people, without leaving their condition, can produce human offspring. Meaning, individuals in a persistent vegetative state do not have human dignity (Nussbaum, 2007). Yet, they can have children with human dignity. I argue this is unreasonable and counterintuitive.

Finally, I explore a way to address my first criticism. Broadly, the problem with Nussbaum's theory lies in requiring individuals to (i) have human parents. Thus, I suggest substituting that condition. Instead of Nussbaum's original first criterion, I propose employing individuals' genetic information. In other words, individuals belong to a species because they have some particular genetic information. These genes are unique to the species. Hence, all members of the species have this species-specific genetic information. I defend that Nussbaum should request *having the human-specific genetic information* instead of *having human parents*. With this change, Nussbaum would be able to defend that the first-ever human beings are entitled to a dignified life.

To assist my analysis, I employ two tools. They will help illustrate how Nussbaum supports her claim. First, I suggest imagining Nussbaum in conversation with a *Critic*. This *Critic* will ask Nussbaum about the foundations of her claim. More precisely, the *Critic* will question her about the reasons why an individual is entitled to a life worthy of human dignity. Second, I reconstruct Nussbaum's argument in a premise-conclusion structure. This will clarify the concepts that Nussbaum employs and the steps she takes to reach her position.

The thesis is structured as follows.

In Chapter 1, I contextualise Nussbaum's Capabilities Approach. Meaning, I offer a brief explanation of how this approach appears. Moreover, I delineate the differences between Rawls', Sen's, and Nussbaum's theories.

In Chapter 2, I analyse Nussbaum's aforementioned claim. Namely, certain individuals should have the opportunity to live a life worthy of the dignity of the human being. More precisely, I divide the claim into two parts: (a) subject, and (b) predicate. On the one hand, I explain the criteria individuals must meet to become entitled to such life. On the other hand, I investigate the idea of a life with human dignity, and what it entails. Lastly, as a result of my analysis, I present Nussbaum's argument in a premise-conclusion structure.

In Chapter 3, I criticise how Nussbaum decides the entitlement of individuals. Broadly, I claim that Nussbaum's two criteria, under certain circumstances, lead to counterintuitive conclusions. My two criticisms concern the entitlement of people in two extreme cases. First, the entitlement of the first-ever human beings. Second, the entitlement of parents (of dignified children) in a persistent vegetative state.

In Chapter 4, I explore a solution for my first criticism. Roughly, I contend that an individual's entitlement should not depend on her parents' membership in the human species.

Instead, I defend that Nussbaum should focus on the individual's genetic information. Then, I show that this modification would allow Nussbaum's Capabilities Approach to avoid my first criticism.

# Chapter 1 – “He’s found fish”<sup>2</sup>: Rawls and the Capabilities Approach

## 1.1. John the-strange-tourist Rawls

*For eighty-four days Santiago, an old Cuban man, has not fished anything. Yet, on the morning of the eighty-fifth day his good fortune returns. He finally hooks a fish called a marlin. The marlin is of enormous strength and takes Santiago adrift. Eventually, Santiago loses sight of his town of Cabo Blanco. He fights against the fish for four full days, without barely eating or drinking. After four days, cramped and exhausted, Santiago manages to find the way back to his town. On the shore, waiting for his return, there is Manolín, a faithful and much younger friend of his. He enthusiastically hugs Santiago after his long departure.*

*Unfortunately, Hemingway decides to finish the story here. Santiago and Manolín are the two main characters of his novel *The Old Man and The Sea* (1952). This thesis will tell the story of what happens next.*

*Moments after Santiago and Manolín reunite, an American tourist suddenly interrupts the scene. His name is John. John approaches both Santiago and Manolín and asks them to play a game. The game goes by the name Original Position. John invites Santiago and Manolín to forget all their personal traits. Quite startled, they accede to overlook their name, age, gender, wealth, and so on. John the-strange-tourist gives Santiago and Manolín a series of goods. Then, he tells them to distribute the goods among themselves with the restricted knowledge they now have. Santiago and Manolín eventually agree on a distribution. They also conclude that they believe the distribution is just.*

John the-strange-tourist is more widely known as John (the-political-theorist) Rawls. With his theory of justice, Rawls (1971) attempts to find the right principles to distribute a bundle of fundamental goods. Rawls identifies goods that are “essential” for human beings, as well as “useful for pursuing a wide range of specific conceptions of the good life” (Wenar, 2021). He calls them the *primary goods* (Rawls, 2001).<sup>3</sup>

To distribute the primary goods, Rawls envisions a hypothetical initial choosing situation called the Original Position. In this state, agents are given some goods they have to allocate among themselves. More precisely, participants have to decide the principles of justice that will distribute the primary goods.

To ensure that agents can discuss from a “position of equality” (Rawls, 1971, p. 11), Rawls implements the “veil of ignorance” (1971, p. 12). That is, agents are placed behind a veil that filters the information they know. The element that decides which information is ignored and which is known is impartiality of judgement (Freeman, 2019). Meaning, Rawls wants agents to decide without being influenced by their personal circumstances, social position, and so on. That is, information must not bias an impartial (thus, just) allocation of goods (Freeman, 2019). The ignored information is the following:

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<sup>2</sup> Hemingway (1952/1999, p. 26)

<sup>3</sup> For illustration, the primary goods are (Wenar, 2021): “(i) the basic rights and liberties, (ii) freedom of movement, and free choice among a wide range of occupations, (iii) the powers of offices and positions of responsibility, (iv) income and wealth, (v) the social bases of self-respect.”



“[t]he race, ethnicity, gender, age, income, wealth, natural endowments, comprehensive doctrine, etc. of any of the citizens in society, or to which generation in the history of the society these citizens belong; [t]he political system of the society, its class structure, economic system, or level of economic development.” (Wenar, 2021)

That is, asking Santiago and Manolín to forget their personal traits is no caprice. For instance, if Santiago knew his social status, he could choose a distribution that benefited established fishermen. Similarly, if Manolín knew his age, he could decide to give more primary goods to the youth. With the veil of ignorance, Rawls ensures that agents do not choose a distribution based on what benefits their actual circumstances. Instead, the veil makes agents ignore this information so that they can impartially distribute the list of goods.

On the contrary, agents know:

“[t]hat citizens in the society have different comprehensive doctrines and plans of life; that all citizens have interests in more primary goods; [t]hat the society is under conditions of moderate scarcity: there is enough to go around, but not enough for everyone to get what they want; [g]eneral facts and common sense about human social life; general conclusions of science (including economics and psychology) that are uncontroversial.” (Wenar, 2021)

Meaning, agents in the Original Position must know three things. Namely, (i) that individuals have a conception of the good and a sense of justice, (ii) that individuals prefer more primary goods than fewer primary goods, and (iii) that resources are moderately scarce.

The information about (iii) the moderate scarcity of resources is a requirement for justice. Meaning, justice is needed when agents have to cooperate to distribute the available goods. Think of two situations in which cooperation does not happen. Namely, extreme scarcity, and abundance of resources (Freeman, 2019). In the former, cooperation is not possible because there are not enough resources to distribute. That is, agents are unable to exchange goods. In the latter, cooperation is not necessary. Meaning, agents do not need to cooperate to get the resources they need. In sum, justice regulates how individuals cooperate. Additionally, for cooperation to be possible and necessary, resources must be moderately limited.

The second information agents know is that they (ii) want more than less primary goods. In other words, agents “assume that they normally prefer more primary social goods rather than less” (Rawls, 1971, p. 142).

Finally, (i) agents in the Original Position realise that there is good and bad. Similarly, they know there are just and unjust things. In other words, they can develop a conception of the good and a sense of justice (Wenar, 2021). Rawls refers to these elements as “the two moral powers” (2001, p. 18). However, agents ignore what particular things they personally acknowledge as good and just (Freeman, 2019). Meaning, they do not know which are their own conceptions of goodness and justice. Rather, agents only know that they hold these distinctions. Consequently, when discussing the principles of justice, they need to acknowledge they might have any doctrine of the good and of justice. That is, they may value as good and just many diverging allocations.

In turn, the two moral powers require some cognitive ability. Meaning, the capacities to know what is good and just rely on cognitive functioning. For instance, “the powers of reason, inference, and judgment [...] are essential companion powers to the two moral powers” (Rawls, 2001, p. 24). Therefore, people with cognitive disabilities arguably have a harder time discerning these concepts compared to individuals without major intellectual impairments. Hence, agents need to reach some minimal cognitive capacity (e.g., have the powers of reason, and so on) that allows them to develop the two moral powers.

Note, however, that the Original Position does not elaborate a ranking of people’s capacities. Meaning, the Original Position does not rank agents with a better understanding of the ideas of goodness and justice at a higher position. Likewise, it does not rank those who comprehend these notions to a lesser extent at a lower place. Instead, individuals need to gather enough cognitive capacity to hold the moral powers. This is what Rawls calls “the normal range” (2001, p. 171). If individuals reach the normal range, they can participate in the choosing situation from a position of equality. That is, they are equal agents. In consequence, “[t]he differences in citizen’s [i.e., agent’s] moral powers do not, as such, lead to corresponding differences in the allocation of primary goods” (Rawls, 2001, p. 171).

Conversely, someone who lacks the cognitive abilities to hold the two moral powers is unable to develop any conception of justice and goodness. As a result, she cannot join the Original Position.

In sum, the two moral powers work as the “basis of equality” (Rawls, 1971, p. 504). The moral powers are “the features of human beings in virtue of which they are to be treated in accordance with the principles of justice” (1971, p. 504). If individuals can develop them, then they can participate in the initial choosing situation. That is, they are granted the equality that the veil of ignorance secures. On the contrary, if they cannot develop the moral powers, individuals are unable to become equal agents.

*Returning to Cabo Blanco, Santiago and Manolín decide to allocate the same amount of goods to each other. Then, John the-strange-tourists asks Santiago and Manolín to remember the information they previously had to forget. Manolín is quite satisfied with the goods he has received. For instance, he has obtained some income. He is already thinking of buying a bicycle to move around the island. Conversely, Santiago realises that the struggle against the marlin has left him cramped and exhausted. Furthermore, a man of his age will have great difficulties riding a bike. Thus, in his state, Santiago will need to spend more money to be able to commute like Manolín. To be able to visit his family in Havana, Santiago is forced to invest his wealth in more expensive mobility options. In consequence, he turns to John with anger. “It is not fair that Manolín and I receive the same income. To do the same things he does, I need to spend additional money. Therefore, I should receive more!”*

## 1.2. Amartya the-peace-maker Sen

*From the promenade, an Indian tourist sees how two Cuban men, one old, one young, heatedly argue with an American man. He approaches the three men trying to ease the situation. The old man is close to throwing a fishing rod at the American. Amartya – that is the name of the Indian tourist – manages to speak with all of them. Apparently, Manolín and*

*Santiago have decided to evenly distribute a bundle of goods. However, Santiago complains he can do much less than Manolín with the distributed goods. Amartya explains to John that the Cubans are not worried by what they have, but by what they can do with what they have.*

Amartya Sen pioneers an alternative approach to people's wellbeing (Robeyns & Byskov, 2023). This proposal is known as the Capability Approach.<sup>4</sup> It focuses on what individuals can actually do and be with the resources they have. In other words, Sen's Capability Approach concentrates on people's real opportunities of doings and beings. These opportunities are called the capabilities. The Capability Approach argues that capabilities (i.e., what people can actually do and be), and not resources per se, provide people with wellbeing (Robeyns & Byskov, 2023). That is, even with the same resources, different individuals will experience different levels of wellbeing. This is because personal circumstances (e.g., abilities, skills, illnesses, impairments) influence how much wellbeing individuals can access with the resources they have (Sen, 1992). For example, a person may receive a bicycle. Yet, if this person has cerebral palsy, the bike does not provide her with the actual opportunity to move. Thus, she cannot get any wellbeing from having a bike.

The Capability Approach criticises Rawls for not accounting for individuals' differences in accessing wellbeing (Robeyns & Byskov, 2023). Meaning, even if Rawls' theory is procedurally just, individuals still experience different levels of wellbeing with the same resources. Hence, the emphasis should not be on how goods are distributed. Rather, it should be on what things people can do and be with the distribution.

For instance, Santiago and Manolín both fulfil the conditions to become agents in Rawls' theory. Thus, they can access the Original Position and participate in the discussion about the principles of justice. However, once the veil of ignorance is removed, the wellbeing they can access is conditioned by their actual ability to do things with those goods. Meaning, having received the same income, the personal circumstances of Santiago hinder him from accessing the same level of wellbeing as Manolín. For example, if Santiago wants to move freely around the island, he will need to pay some doctor to ease his cramps. Manolín does not incur in this cost to access the opportunity of commuting. In addition, if Santiago wants to contact his family in Havana, he cannot just ride there. Instead, he will need to give some money to his nephew, so that he drives him to the city. In sum, Manolín's personal conditions do not hamper him to move or communicate. He can directly do these things and get wellbeing from them. Conversely, Santiago has some personal circumstances that hamper his access to certain doings and beings. Without spending additional money, Santiago will not be able to exercise capabilities like communicating, or commuting. These capabilities are relevant because they provide Santiago with wellbeing. Therefore, for Santiago to access the same level of wellbeing as Manolín, he will need to spend additional resources (e.g., paying a doctor, or a nephew).

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<sup>4</sup> Robeyns & Byskov (2023) argue there is some disagreement regarding the right terminology to refer to the approach. Meaning, some authors use the term Capability Approach, while others prefer Capabilities Approach. In this thesis, I will use Capability Approach to refer to Sen's proposal. Conversely, I will employ the term Capabilities Approach to allude to Nussbaum's version.

To summarise, Sen's Capability Approach concentrates on what people can actually do and be with the resources they have. These real opportunities of doings and beings are called the capabilities. Furthermore, accessing the capabilities does not only depend on the goods individuals receive, as the case of Santiago and Manolín shows. Rather, real opportunities to do and be are also dependent on the individual's condition.

### 1.3. Martha the-rights-advocate Nussbaum

*To relieve the furious Santiago, and the concerned Manolín, Amartya asks them a question. "Is there anything you can do that you value more than communicating with your families and commuting?" The Cuban men assert they value building social relationships with their community more than the two previous doings. Thus, Amartya invites them to the nearby bar La Terraza. This is the only bar of Cabo Blanco. Moreover, it is where fishermen boast about their catches. After some drinks and a happy conversation with their fellow neighbours, they are all in high spirits again.*

*Santiago and Manolín are narrating their fishing adventures to Amartya when a woman enters the bar. She goes to the counter and orders a drink. While she is awaiting her drink, she overhears the three men's cheerful conversation. Interested in the story, the woman sits at a nearby table. After some minutes of indiscreet eavesdropping, the woman approaches the group. "Hi, my name is Martha." Santiago and Manolín are disconcerted to see so many foreigners in Cabo Blanco. "I think you should always be provided with the opportunity to move around and visit your relatives", says Martha. Confused, Santiago leaves the glass on the table and looks at Amartya and Manolín for support. "¿Por qué?"*

Martha Nussbaum philosophically develops Sen's Capability Approach as a theory of justice (Nussbaum, 2007; Robeyns & Byskov, 2023).<sup>5</sup> However, she and Sen disagree about the specific capabilities people should be provided with. To distinguish Nussbaum's theory from Sen's formulation of the approach, I will allude to Nussbaum's version as the Capabilities Approach, as opposed to Sen's Capability Approach.

On the one hand, Sen does not suggest any list of essential capabilities individuals must enjoy (Nussbaum, 2007; Robeyns & Byskov, 2023). Rather, Sen defends that the important capabilities are those that individuals from a community have reason to value (Robeyns & Byskov, 2023; Sen, 2005). For instance, the citizens of Cabo Blanco place a higher value on fostering their interpersonal connections than on commuting around the island.

On the other hand, Nussbaum defends people should always be able to access certain doings and beings (2007, 2008). In other words, some specific capabilities are necessary. Unlike Sen, Nussbaum's list of capabilities is not based on what particular communities have reason to value. Instead, she identifies some capabilities as central to all human lives (2007).

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<sup>5</sup> Note that Nussbaum (2007) explicitly argues that she does not build a *complete* theory of justice. Instead, "[t]he capabilities approach is an outcome-oriented approach that supplies a *partial account of basic social justice*" (Nussbaum, 2007, p. 274, my emphasis). Meaning, Nussbaum's Capabilities Approach aims at ensuring enough access to the capabilities. For Nussbaum, "a world in which people have all the capabilities [...] is a minimally just and decent world" (2007, p. 274). However, she does not take a stand on what should happen once minimum access to the capabilities is provided (2007).

Therefore, humans should always have access to them, regardless of their particular communities (2007).

For instance, Nussbaum (2007) mentions the case of Amish people. Broadly, Amish communities do not participate in political processes due to moral reasons. Yet, Nussbaum argues they should anyway have access to that opportunity. Meaning, Amish individuals should have the capability of political participation even if they would probably choose not to use it. The reason why is that Nussbaum (2007) conceives human beings as political and social animals. In other words, Nussbaum (2007) contends that all human beings, including Amish people, live in a distinct way that entails political and social dimensions. Furthermore, for this way of living to be possible, humans need certain conditions. According to Nussbaum, these conditions are the capabilities (2007). Therefore, Amish people need the capabilities by virtue of being political and social animals. Whether they use them (and choose to live as political and social animals) or not is their own choice. Yet, this does not remove the necessariness of having access to the capabilities.<sup>6</sup>

In sum, both Sen and Nussbaum share the normative worry regarding the focus on wellbeing. That is, they agree that wellbeing is achieved through doings and beings. Thus, their emphasis on the capabilities. Additionally, Nussbaum develops a theory of justice based on the idea of the capabilities. In her account, certain capabilities are necessary for human lives to be “life worthy of human dignity” (Nussbaum, 2011a, p. 25).

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<sup>6</sup> Nussbaum believes humans need sufficient access to her list of capabilities to enjoy a decent life (2007). Note, however, that Nussbaum defends the list is open-ended, and subject to debate (2011a). Meaning, her list of capabilities can be discussed and revised (Nussbaum, 2000; Robeyns & Byskov, 2023). Please, refer to Chapter 2 for more elaboration on these topics.

## Chapter 2 – “You are on a lucky boat.”<sup>7</sup>: Humans in the Capabilities Approach

### 2.1. Introduction

*Let's return to the conversation at La Terraza. Martha asks Santiago what would happen if he did not have the opportunity to vote for the mayor of Cabo Blanco, or to belong to his community, or to have a good time with Manolín. Santiago's facial expression grows dim. He knows that without these elements, his life would be very different. That is, it would lose many valuable things it has. Hence, he asks a question. “How can I know which of the opportunities of doings and beings are essential for my life?” Martha is ready to answer. “The opportunities of doings and beings are essential for your life if they are necessary to be able to live a life worthy of human dignity.”*

In the Capabilities Approach (CA), Nussbaum claims that certain individuals should have the opportunity to live a life “worthy of the dignity of the human being” (2007, p. 180). In this Chapter I reconstruct, in a premise-conclusion structure, how Nussbaum defends this claim. To do that, I divide Nussbaum's statement into two main parts: (a) subject and (b) predicate. The subject consists of the first part of the claim. Namely: *certain individuals*. The predicate comprises the second part: *the opportunity to live a life worthy of the dignity of the human being*.

First, I examine the subject of the assertion. Meaning, I inquire into what beings are entitled to such life. This is addressed in Section 2.2..

Second, I analyse the predicate of Nussbaum's claim. Namely, what it means to have the opportunity to live a life “worthy of the dignity of the human being” (Nussbaum, 2007, p. 180). In Section 2.3., I divide the predicate into four parts: [certain individuals are] (i) *entitled* to (ii) a life *worthy* of (iii) the *dignity* of (iv) the *human being*. Then, in Section 2.4., I address the element that differentiates humans from non-humans. Namely, the human-characteristic way of living. Subsequently, in Sections 2.5. and 2.6., I focus on how humans acquire such element. Finally, I conclude in Section 2.7..

To undertake this exercise, I suggest imagining Nussbaum in conversation with a *Critic*. This *Critic* will ask Nussbaum about the foundations of her claim. Moreover, the *Critic* will question Nussbaum about the reasons why an individual like Santiago is (or is not) entitled to a life worthy of human dignity.

### 2.2. Subject: Which individuals are entitled to the central capabilities?

Nussbaum defends that certain individuals are entitled to a “life worthy of the dignity of the human being” (2007, p. 180). In this Section, I analyse the subject of such statement. Meaning, I inquire into which individuals can claim the entitlement to that life. Moreover, I examine why these individuals are entitled to such dignified life.

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<sup>7</sup> Hemingway (1952/1999, p. 6)

Let's imagine Nussbaum wants to defend that Santiago is one of those individuals that are entitled to a life worthy of human dignity. Again, Santiago is an eighty-four-year-old Cuban fisherman. Santiago is a character from Hemingway's novel, but he could very well be a real person. Hence, he intuitively fits Nussbaum's idea of someone who should have access to such dignified life. Suppose as well that Nussbaum defends this claim before a *Critic*. The *Critic* will inquire into how Nussbaum supports her position. That is:

*Nussbaum*: (I claim that) Santiago is entitled to a life worthy of human dignity. (i)

*Critic*: Why is Santiago entitled to such life? (ii)

According to Nussbaum (2011a), the basis for this entitlement is clear:

“[T]he ten central capabilities are fundamental entitlements inherent in the very idea of [...] a life worthy of human dignity [...]. Where humans are concerned, *the basis of these entitlements lies [...] in the bare fact of being a living human being: being born from human parents, and having a minimal level of agency or capacity for activity.*” (p. 25, my emphasis)

In other words, individuals must meet two requirements to be entitled to a life worthy of human dignity. Namely:

- (i) First criterion: having human parents.
- (ii) Second criterion: having the (minimal) capacity for activity.

In a premise form:

P1: An individual is entitled to a life worthy of human dignity if she has human parents, and she has the minimal capacity for activity.

Therefore, the reply to the *Critic* is clear:

*Nussbaum*: Santiago is entitled to a life worthy of human dignity. (i)

*Critic*: Why is Santiago entitled to such life? (ii)

*Nussbaum*: Because Santiago is born to human parents, and he has the minimal capacity for activity. (iii)

In this Section, I analyse the two criteria separately. First, I dive into Nussbaum's second criterion. That is, I discuss how Nussbaum defines the concept of having a minimal capacity for activity. Second, I examine Nussbaum's first criterion.

### 2.2.1. Nussbaum's second criterion

Nussbaum defends that the basis of the entitlement to a life with human dignity consists of two conditions. Namely, (i) having human parents, and (ii) having the minimal capacity for activity. In this Section, I explain what exactly having a minimal level of agency or capacity for activity means.

Nussbaum contends that “being born from human parents, and having a minimal level of agency or capacity for activity [...] is enough to give a human being a dignity that is equal to that of every other human being” (2011a, p. 25). Elsewhere, Nussbaum elaborates on this claim. She argues that “full and equal human dignity is possessed by any child of human parents who has any of an open-ended disjunction of basic capabilities for major human life-activities” (2008, p. 252).

These two statements are not in contradiction. Rather, they complement each other. Obviously, “being born from human parents” (2011a, p. 25) is the same as being a “child of human parents” (2008, p. 252).

Additionally, Nussbaum imposes a second condition to be entitled to a life worthy of human dignity. Namely, “having a minimal level of agency or capacity for activity” (2011a, p. 25). I think it is safe to assume that this requirement can also be defined as having “any of an open-ended disjunction of basic capabilities for major human life-activities” (2008, p. 252).

In sum, Nussbaum employs two complementary definitions of the individual that is entitled to a dignified life. Firstly, an individual with human dignity is someone “born from human parents” who has “a minimal level of agency or capacity for activity” (2011a, p. 25). Secondly, an individual with human dignity is “any child of human parents who has any of an open-ended disjunction of basic capabilities for major human life-activities” (2008, p. 252). Crucially, *having a minimal capacity for activity* means *having an open-ended disjunction of basic capabilities for major human life-activities*.

Let’s analyse what Nussbaum means by *having an open-ended disjunction of basic capabilities*. To make this task easier, I divide Nussbaum’s statement in the following parts: (i) open-ended, (ii) disjunction, (iii) basic capabilities, and (iv) major human life-activities. I start with part (iv). Then, I analyse (iii), (ii), and (i).

Firstly, Nussbaum employs the idea of (iv) *major human life-activities*. She uses this concept as a synonym for the central capabilities. For instance, “a life that does not contain opportunities for the development and exercise of the major human capacities is not a life worthy of human dignity” (Nussbaum, 2008, p. 250). Similarly, “the availability [...] of ten core “capabilities,” or opportunities to function [...] are necessary conditions of a life worthy of human dignity” (2008, p. 245). That is, the central capabilities are the ten major human life-activities a life needs to be worthy of human dignity.

What are the central capabilities? As Chapter 1 advanced, the capabilities are real opportunities for doings and beings. For instance, Santiago has a real opportunity to move around the island of Cuba if his nephew drives him. Conversely, if Santiago is given a bicycle, he will not be able to access such doing. Hence, Santiago only accesses the capability of mobility under certain circumstances.

However, not all capabilities are *central*. That is, Nussbaum contends that access to some doings and beings is “good” (2007, p. 166). Then, among the good doings and beings, there are some “which are most central” (2007, p. 166). Meaning, some capabilities are “most clearly involved in defining the minimum conditions for a life with human dignity” (2007, p. 166). Thus, they constitute the “necessary conditions of a life worthy of human dignity” (Nussbaum, 2008, p. 245). These are the so-called “central capabilities” (Nussbaum, 2007, p. 94).



The list of central capabilities has remained broadly unchanged (2007, 2008, 2011a). Briefly, the necessary elements for a life to be worthy of human dignity are: (1) life, (2) bodily health, (3) bodily integrity, (4) senses, imagination, and thought, (5) emotions, (6) practical reason, (7) affiliation, (8) other species, (9) play, and (10) control over one's environment (Nussbaum, 2007).<sup>8</sup> These are the minimal and necessary conditions for lives to have human dignity.

In short, when Nussbaum speaks of *major human life-activities*, she is alluding to the ten central capabilities from her list.

Secondly, Nussbaum introduces the notion of (iii) *basic capabilities*. Nussbaum defines the *basic capabilities* as “undeveloped powers of the person” (2008, p. 252). Moreover, the basic capabilities are “the basic conditions for living a life worthy of human dignity” (2008, p. 252). Meaning, a life worthy of human dignity is a life with (enough) opportunity to exercise the central capabilities. Then, Nussbaum defends that there are basic conditions to be able to exercise the central capabilities. In other words, individuals need to have certain undeveloped powers to be able to have the opportunity to access the central capabilities. These basic conditions are the basic capabilities.

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<sup>8</sup> These are the central capabilities and their definitions (Nussbaum, 2007, pp. 76–78):

- i. *Life*. Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living.
- ii. *Bodily Health*. Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.
- iii. *Bodily Integrity*. Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
- iv. *Senses, Imagination, and Thought*. Being able to use the senses, to imagine, think, and reason – and to do these things in a “truly human” way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing works and events of one's own choice, religious, literary, musical, and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences and to avoid nonbeneficial pain.
- v. *Emotions*. Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.)
- vi. *Practical Reason*. Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance.)
- vii. *Affiliation*. A) Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.) B) 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. This entails provisions of nondiscrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.
- viii. *Other Species*. Being able to live with concern for and in relation to animals, plants, and the world of nature.
- ix. *Play*. Being able to laugh, to play, to enjoy recreational activities.
- x. *Control over One's Environment*. A) *Political*. Being able to participate effectively in political choices that govern one's life; having the right of political participation, protections of free speech and association. B) *Material*. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.”

The idea of basic capabilities can be confusing. It is important to know the difference from the notion of central capabilities. On the one hand, the capabilities are real opportunities for doings and beings. Then, the central capabilities are the capabilities a life needs to be worthy of human dignity. On the other hand, the basic capabilities are “undeveloped powers of the person” (Nussbaum, 2008, p. 252). Thus, the basic capabilities do not denote real opportunities for doings and beings. Rather, they allude to the capacities individuals intrinsically have. These capacities, however, have not been developed or trained. Thus, individuals cannot exercise them (yet).

Let’s think of Santiago. Santiago has never left Cuba. As a consequence, he only knows Spanish and little English. Yet, he speaks no word of Hindi. Similarly, the marlin he fished some days ago does not speak Hindi either. That is, none of them can actually speak Hindi. However, saying that Santiago cannot speak Hindi is different from the fact that the marlin cannot speak Hindi. It is so because Santiago has the undeveloped power to speak languages. Thus, he can learn Hindi. Conversely, the marlin will never be able to learn (nor to speak) Hindi. In short, Santiago has the basic capability of speaking a language.

Additionally, note that Nussbaum speaks of specific basic capabilities. Namely, she refers to “basic capabilities of major human life-activities” (2008, p. 252). Meaning, Nussbaum is alluding to the undeveloped powers needed to access the ten central capabilities. Some of these undeveloped powers are “the capacity for movement from place to place [...], the capacity for emotion and affiliation [...], the capacity for reasoning” (Nussbaum, 2007, p. 362).

In sum, the relevant idea here is that some basic conditions are necessary for accessing the central capabilities. According to Nussbaum, these basic conditions are undeveloped powers that individuals intrinsically have. Consequently, even if Santiago and the marlin were given full access to the central capabilities, only Santiago would gather the necessary basic capabilities to be able to enjoy a life worthy of human dignity.

Thirdly, Nussbaum understands the idea of a (ii) *disjunction* as having *either* one basic capability *or* another (2007, 2008). That is, an individual has a disjunction of basic capabilities if she has, for instance, “*either* [...] the capacity for emotion and affiliation *or* the capacity for reasoning” (Nussbaum, 2007, p. 362). In short, a disjunction means having, at least, one of the intrinsic capacities that are necessary to experience a life worthy of human dignity.

Finally, the term (i) *open-ended* emphasises the possibility of incorporating new basic capabilities. In other words, Nussbaum considers a limited number of basic capabilities. Yet, she acknowledges that her list is not complete (2008). Thus, she is open to including new elements.

To summarise, let’s put all the elements back together. Nussbaum’s second criterion to be entitled to a life worthy of human dignity is: (ii) having the minimal capacity for activity. She defines this requirement as having an (i) *open-ended* (ii) *disjunction of* (iii) *basic capabilities for* (iv) *major human life-activities*. In other words, having the minimal capacity for activity means: having (ii) at least one of (iii) the undeveloped powers needed to access some of (iv) the central capabilities, from a list that is (i) open to new additions.

This is captured by Premise 2:

P2: Having the minimal capacity for activity entails having an open-ended disjunction of the basic capabilities (i.e., intrinsic undeveloped powers) for major human life-activities.

### 2.2.2. Nussbaum's first criterion

The first criterion is quite reasonable. It states that an individual must have human parents to be entitled to a life worthy of human dignity.

In addition, Nussbaum's first criterion avoids unwanted results. Broadly, if Nussbaum did not require it, any animal with similar capacities to humans could claim a life with human dignity. Let's analyse the following example. Imagine that a chimpanzee were born with high cognitive capacities. As a result, she would be able to perform all the actions required to access the ten central capabilities. Meaning, the chimpanzee would gather enough minimal capacity to be able to live a life with human dignity. That is, she would fulfil Nussbaum's second criterion.

Without the first criterion, this chimpanzee could be entitled to a life with human dignity. More precisely, any individual born to non-human parents could claim a life with the ten central capabilities if she gathered an open-ended disjunction of basic capabilities for major human life-activities. This sounds quite unreasonable.

In sum, having human parents is the first requirement to be entitled to a life worthy of human dignity. This criterion ensures that all individuals with that entitlement have human ancestry.

### 2.2.3. Meeting the two criteria: Becoming an individual entitled to a dignified life

Nussbaum defines two conditions to become an individual entitled to a life worthy of human dignity.

The first criterion is "being born from human parents" (Nussbaum, 2011a, p. 25). As Section 2.2.2. explains, this condition has an important role. Roughly, it restricts the entitlement to those individuals with human ancestry.

The second criterion consists of "having a minimal level of agency or capacity for activity" (Nussbaum, 2011a, p. 25). Nussbaum defines this condition as having an "[i] open-ended [(ii)] disjunction of [(iii)] basic capabilities for [(iv)] major human life-activities" (2008, p. 252). Section 2.2.1. concludes that this can be understood as: having (ii) at least one of (iii) the undeveloped powers needed to access some of (iv) the central capabilities, from a list that is (i) open to new additions. Therefore, any individual that has at least one intrinsic capacity to exercise any of the central capabilities satisfies this condition.

The first and the second criteria complement each other. If the first criterion were removed, any animal with sufficient capacity to meet the second condition could be entitled to a life with the capabilities. As I argue in Section 2.2.2., this would be an unreasonable result.

Likewise, it is reasonable to demand that children of human parents are minimally able to live in a human way. There are two main reasons for that. First, inclusiveness. Nussbaum's notion of a disjunction of basic capabilities expands the possibilities to meet this criterion.

Moreover, it reflects Nussbaum's attempt to develop a more inclusive theory.<sup>9</sup> That is, Nussbaum defends that children of human parents must gather a disjunction of basic capabilities (2007, 2008, 2011a). Meaning, they must have *either* one *or* another necessary basic capability to be able to live a life with the central capabilities. Thus, any child of human parents that has one of these undeveloped powers satisfies the second criterion. As a result, almost any human beings' child is able to meet this requirement. For instance, even children of human parents with "severe mental disabilities" have, at least, one of the necessary basic capabilities (Nussbaum, 2008, p. 252). That is, even those with severe disabilities have "*either* the capacity for pleasure and pain *or* the capacity for movement from place to place", for instance (Nussbaum, 2007, p. 362). In short, Nussbaum's second criterion allows her to include many different human beings: "some of whom are capable of love and care but not of reading and writing, some of whom are capable of reading and writing but severely challenged in the area of social interaction" (Nussbaum, 2008, pp. 252, 253).

Second, the second criterion ensures Nussbaum alludes to *living* human beings. Meaning, for Nussbaum "there is a close relation between this threshold [of having a disjunction of basic capabilities] and the medical definition of death" (Nussbaum, 2007, p. 181). That is, if "the entirety of a group of major human capabilities is irrevocably and entirely cut off," it constitutes "the death of anything like a characteristic human form of life" (2007, p. 181). Hence, if an individual does not have this *open-ended disjunction of basic capabilities of major human life-activities*, she is not capable of living a human life. Conversely, having an *open-ended disjunction of basic capabilities of major human life-activities* means that the individual is a "living [...] being" with the ability to access a human life (Nussbaum, 2011a, p. 25).

To summarise, the basis for the entitlement to a dignified life consists of meeting two conditions. Namely, (i) having human parents, and (ii) having the minimal capacity for activity. The individual that gathers these two conditions is entitled to a life with the central capabilities. Nussbaum's first criterion guarantees that every individual that is entitled to a life with human dignity has human ancestry. In addition, the second criterion ensures the CA addresses beings that can actually live this life. In a premise-conclusion form:

P1: An individual is entitled to a life worthy of human dignity if she has human parents, and she has the minimal capacity for activity.

P2: Having the minimal capacity for activity entails having an open-ended disjunction of the basic capabilities (i.e., intrinsic undeveloped powers) for major human life-activities.

C1: An individual is entitled to a life worthy of human dignity if she has human parents, and she has an open-ended disjunction of the basic capabilities for major human life-activities.

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<sup>9</sup> Nussbaum (2007) tries to portray her CA as the inclusive alternative to Rawls' theory of justice. More precisely, Nussbaum criticises Rawls for focusing too much on one specific human capacity. Namely, rationality (Nussbaum, 2007). Instead, she accepts rationality as a fundamental element in human lives (2007). In fact, it is one of the central capabilities (i.e., capability of (vi) practical reason). Yet, she criticises "bas[ing] the ascription of human dignity on [one] single basic capability" (2008, p. 252). In other words, having human dignity does not lie "in any other specific human property" (2011a, p. 25). Rather, having human dignity lies on having a *disjunction of central capabilities* (2007, 2008).

Thus, Nussbaum's reply to the *Critic* becomes clearer. That is:

*Nussbaum*: Santiago is entitled to a life worthy of human dignity. (i)

*Critic*: Why is Santiago entitled to such life? (ii)

*Nussbaum*: Because Santiago is born to human parents, and he has the minimal capacity for activity. Meaning, Santiago has an open-ended disjunction of basic capabilities for major human life-activities. (iii)

### 2.3. Predicate: The entitlement to a life worthy of human dignity.

Nussbaum argues that certain individuals should have the opportunity to live a life worthy of human dignity. The previous Section 2.2. analyses (a) the subject of Nussbaum's claim. More precisely, it examines the conditions that individuals need to meet to be entitled to such life. Conversely, the following Section 2.3. inquires into (b) the predicate of Nussbaum's claim. Meaning, it scrutinises what it means to be entitled to a life worthy of human dignity.

Let's return to the conversation with the *Critic*. The *Critic* asked about the reasons why Santiago qualifies as an individual that is entitled to a dignified life. Section 2.2. shows that Nussbaum alludes to two criteria. Nevertheless, there remains a further question. That is:

*Nussbaum*: Santiago is entitled to a life worthy of human dignity. (i)

*Critic*: Why is Santiago entitled to such life? (ii)

*Nussbaum*: Because Santiago is born to human parents, and he has the minimal capacity for activity. Meaning, Santiago has an open-ended disjunction of basic capabilities for major human life-activities. (iii)

*Critic*: Why is Santiago required to have the minimal capacity for major human life-activities? (iv)

To discover the answer, it is needed to engage with the predicate of Nussbaum's claim. Namely, certain individuals *should have the opportunity to live a life "worthy of the dignity of the human being"* (Nussbaum, 2007, p. 180). The predicate can be divided in four parts. First, humans are (i) entitled to a particular life. That is, they *should be able to live* this specific life. Second, the life they should be able to live is not just any life. Rather, (ii) it is a life *worthy of* something. Meaning, there are some elements that turn this life into something valuable. Third, the life humans are entitled to be able to live should be worthy of (iii) *the dignity* of the human being. Fourth, this particular value belongs to (iv) *the human being*, and not to other non-human beings.

First, Nussbaum contends human beings are (i) entitled to a life worthy of their dignity. This entitlement, however, is not infinite. Instead, Nussbaum (2007) argues it is limited. This is because the CA does not aim to provide a life with the maximum human dignity possible. In other words, it does not aim at ensuring the maximum level of dignity individuals can obtain. Rather, the CA concentrates on the "*minimum* conditions for a life with human dignity"

(Nussbaum, 2007, p. 166, my emphasis). Meaning, Nussbaum's objective with the CA is to ensure a minimally dignified life for all human beings (2007).

In consequence, there is a level that determines whether conditions are sufficient or insufficient to provide a life with human dignity. This is what Nussbaum calls the "threshold level" (2007, p. 167). Below the threshold, conditions are not enough for a life to have human dignity (2007). Conversely, above the threshold conditions are sufficient. Meaning, human beings can access (minimally) dignified lives. Hence, "a good life for a human being is available" (2007, p. 181). In sum, a life must have a threshold-level access to certain conditions to be worthy of human dignity.

Second, the conditions that can make a life (ii) worthy of human dignity are the capabilities (Nussbaum, 2007). Section 2.2.1. addresses this point. Briefly, the capabilities are real opportunities of doings and beings. Among the capabilities, some are "most clearly involved in defining the minimum conditions for a life with human dignity" (2007, p. 166). In other words, some specific capabilities are "necessary conditions of a life worthy of human dignity" (2008, p. 245). Nussbaum refers to these as the "central capabilities" (2007, p. 94). In short, the central capabilities are the necessary, minimum conditions for a life to be worthy of human dignity.

To summarise, some individuals are entitled to a life worthy of human dignity. To achieve this life, Nussbaum defends that it is necessary that people have access to specific capabilities deemed central. That is, "all citizens have entitlements based on justice to all the [central] capabilities" (Nussbaum, 2007, p. 167). Yet, this entitlement is limited. In other words, human beings are entitled "to all the [central] capabilities, up to an appropriate threshold level" (2007, p. 167). In consequence, a life is worthy of human dignity if it enjoys a sufficient level of access to the central capabilities.

Third, the role of (iii) human dignity is "key" in determining the central capabilities (Nussbaum, 2008, p. 245). The reason why the central capabilities are central is because they "seem to inhere in the idea of human dignity" (Nussbaum, 2007, p. 182). Meaning, they are "ways of fleshing out" the idea of human dignity (2007, p. 174). Yet, how does Nussbaum define human dignity?

According to Nussbaum, dignity is a "type of worth in the human being that is truly inalienable, that exists and remains even when the world has done its worst" (Nussbaum, 2008, p. 249).<sup>10</sup> Nussbaum adopts this point from the Stoics (2008). Briefly, the Stoics assert that human beings have an immutable and persistent worth that does not depend on worldly circumstances (2008). That is, regardless of their social position, or the actual circumstances they live in, humans retain their worth. Furthermore, the Stoics defend that dignity is an "equal and infinite worth" (2008, p. 248) all human beings have: "[m]ale or female, slave or free, king or peasant" (2008, p. 246). In sum, Nussbaum claims, with the Stoics, that "every human being" has a dignity that is her "inalienable property" (2008, p. 247).<sup>11</sup>

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<sup>10</sup> Nussbaum admits the notion of dignity is "not fully clear" (2008, p. 245). See Claassen (2014), Claassen & Düwell (2013), and Formosa and Mackenzie (2014) for discussions about this issue.

<sup>11</sup> Formosa and Mackenzie (2014) allude to this concept as *status dignity*. Broadly, they argue that referring to human dignity as an inalienable, equal, and infinite worth is analogous to speaking of a status. In other words, the status of being a human grants a specific worth to people. Namely, the inalienable, equal, and infinite worth of human dignity. Thus, people have a status dignity, or the dignity of the status of being a human.

Yet, Nussbaum criticises the unworldliness of the Stoics (Nussbaum, 2008). Meaning, the Stoics believe that “dignity [is] radically secure” (2008, p. 247). That is, dignity is “invulnerable to the world’s accidents” (2008, p. 247). Therefore, “[it] doesn’t really need anything that politics can give” (2008, p. 247). Instead, Nussbaum claims that dignity is “dependent on the world for [its] full development” (2008, p. 249). Meaning, dignity depends on living conditions to develop properly. In Nussbaum’s words, human dignity needs “forms of support from the world” (2008, p. 249).

In short, Nussbaum contends that human beings have an immutable and equal worth (i.e., human dignity) that depends on world conditions to develop adequately.

Four, (iv) which beings have human dignity, according to Nussbaum? To answer this question, Nussbaum needs to show in what respect humans are different from non-human animals. Meaning, why humans and not non-human animals have this kind of dignity. For instance, it is not difficult to claim that Santiago has human dignity and the marlin he fished has not. However, what is the exact characteristic that distinguishes them? In Nussbaum’s (2007) view, the trait that all humans share, and is unique to them, is their characteristic way of living. This is what Nussbaum calls “the species norm” (2007, p. 179).

## 2.4. Species norm

Nussbaum defines the species norm as the characteristic way of living of a species (2007). This notion elaborates from Aristotelian essentialism (Claassen & Düwell, 2013; Formosa & Mackenzie, 2014; Hope, 2013). Broadly, Aristotelian essentialism claims every species has a proper manner of functioning in life (Hope, 2013). Furthermore, this *way of living* is particular and unique to the species.

Consequently, species are distinguished from other species by the way of living that is characteristic to them. For instance, humans characteristically live in a particular way. This is the human species norm. Similarly, marlins typically live in a marlin way. This is the marlin species norm. The characteristic way of living of humans is different from the one of marlins. Thus, Santiago and the marlin can be distinguished based on the life that is characteristic to them.

Finally, Nussbaum contends that the characteristic way of living of each species is ethically valuable for the species. Meaning, the species characteristic life is “a good life” for such species (Nussbaum, 2007, p. 181). For instance, the characteristic human way of living is “a good life for a human being” (2007, p. 181). In other words, it is ethically valuable for humans. Conversely, the characteristic human way of living is not ethically valuable for marlins. That is, marlins have a different characteristic way of living. Thus, the species-specific norm that is ethically valuable for them is the characteristic marlin life. In sum, the *goodness* of a particular life is limited to the species norm the individual follows. Therefore:

P3: A species characteristic way of living is ethically valuable for an individual if it is her species-specific norm.

To summarise, species have a characteristic way of living that is specific to them. This is what Nussbaum calls the species norm. Moreover, it allows her to distinguish human from

non-human animals. For instance, Santiago's characteristic way of living is the human species norm. Conversely, a marlin's characteristic life is the marlin species norm.<sup>12</sup>

Therefore, Nussbaum can answer to the *Critic* as follows:

*Critic*: Why is Santiago required to have the minimal capacity for major human life-activities? (iv)

*Nussbaum*: Because Santiago's characteristic way of living is the human species norm. (v)

#### 2.4.1. The human species norm

What exactly is the characteristic human way of living? Nussbaum defines humans from "a political conception of the human being" (2007, p. 180). In other words, humans are "a political being" (Formosa & Mackenzie, 2014, p. 499). To build this definition, Nussbaum borrows elements from Aristotle and Marx (Nussbaum, 2007, 2008). First, she adopts the Aristotelian conception of humans as "political animals" (2007, p. 160). Second, she embraces the Marxian view of humans as "creature[s] 'in need of a plurality of life-activities'" (2007, p. 160). That is, humans are "needy temporal animal beings" whose life develops in a political way (2007, p. 160). In other words, human beings are "political and social animal[s]" (2007, p. 158).

As a result, there is a way of living that is characteristic to the human species. Meaning, as humans are political, they "cannot imagine living well without shared ends and a shared life [with other human beings]" (Nussbaum, 2007, p. 158). Additionally, because humans are social animals, they have a "public" and "strong commitment to the good of others" (2007, p. 158). In sum, "human life has a characteristic shape and form" which consists of living as political and social animals (2007, p. 186). Thus:

P6: The human species norm (i.e., the characteristic way of living of the human species) is living as political and social animals.

Moreover, together with Premise 3:

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<sup>12</sup> It is important to note that individuals are not obliged to live in their species characteristic way. Let's take the example of human beings. On the one hand, they have the freedom to choose to live in a characteristic human way. Yet, on the other hand, they also have the freedom not to do so. This is why Nussbaum focuses on capabilities. That is, she emphasises providing people with the opportunity to be able to live in the characteristic human way. Nonetheless, whether they actually live in this way is a choice individuals must make by themselves.

Formosa and Mackenzie (2014) highlight the tension that arises from Nussbaum's position. On the one hand, Nussbaum follows Aristotelian essentialism. Aristotelian essentialism identifies a species-specific way of living. Moreover, it argues it is morally good for members of the species to live in such a way. Thus, some other ways of living are deemed immoral. For instance, Nussbaum is clear about the immorality of the capacity for cruelty (2007, 2008). This is because cruelty is not an ethically valuable capacity to live a characteristic human life. On the other hand, Nussbaum wants the individual to be able to actually choose the life she wants to live. Thus, the CA focuses on capabilities (i.e., real opportunities for doings and beings) instead of functionings (i.e., actual doings and beings).



P3: A species characteristic way of living is ethically valuable for an individual if it is her species-specific norm.

P6: The human species norm (i.e., the characteristic way of living of the human species) is living as political and social animals.

C4: Living as political and social animals is ethically valuable for those individuals with a human species norm.

In sum, Nussbaum argues the capabilities are selected on the idea of “a life that is worthy of the dignity of the human being” (2007, p. 180). Humans are political and social animals. Thus, the capabilities are selected on the idea of a life that is worthy of the dignity of political and social animals. Consequently, the selected capabilities are the necessary conditions for human beings to live their characteristic life. Namely, a life as political and social animals.

## 2.5. Species community

How to know what is the characteristic way of living of a being? Take Santiago as an example. It is easy to say that Santiago’s characteristic life is the human species norm if it is known that Santiago is a human being. Yet, what if someone did not know that Santiago is a human? Certainly, someone could argue that Santiago’s species norm is a different one. Thus, Santiago would not be entitled to the central capabilities. Rather, he would be entitled to different necessary living conditions.

To avoid the previous result, Nussbaum needs to find ways to argue that Santiago has a human species norm. How would Nussbaum support her claim when confronted with the *Critic*’s inquiries?

*Critic*: Why is Santiago required to have the minimal capacity for major human life-activities? (iv)

*Nussbaum*: Because Santiago’s characteristic way of living is the human species norm. (v)

*Critic*: Why is Santiago’s characteristic way of living the human species norm? (vi)

With the notion of species alone, Nussbaum’s answer to the *Critic*’s question would follow a circular reasoning. Meaning, her premises would be justified by her conclusions.<sup>13</sup> That is, Nussbaum would contend that Santiago has a human species norm because he is a human being. At the same time, however, Santiago is a human being because he has a human species norm. Nussbaum’s reasoning would be the following:

*Critic*: Why is Santiago required to have the minimal capacity for major human life-activities? (iv)

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<sup>13</sup> I take the definition of circularity from Fosl and Baggini (2020). They define circularity as a “situation where not only is the conclusion justified by the premises (as it is in any sound or cogent argument) but the premise(s) are also justified by the conclusion. [...] Where there are no independent reasons for accepting the premises of a circle justified by the conclusion, no such argument can be successful.” (2020, pp. 104–105)

*Nussbaum*: Because Santiago's characteristic way of living is the human species norm. (v)

*Critic*: Why is Santiago's characteristic way of living the human species norm? (vi)

*Nussbaum*: Because Santiago belongs to the human species. (a)

*Critic*: Why does Santiago belong to the human species? (b)

*Nussbaum*: Because his characteristic way of living is the human species norm. (c)

*Critic*: Why is Santiago's characteristic way of living is the human species norm? (d)

*Nussbaum*: Because Santiago belongs to the human species. (e)

That is, Nussbaum would defend that Santiago has a specific species norm (i.e., sentence (v)). In turn, the species norm is determined by Santiago's membership in the human species (i.e., (a)). In other words, Santiago's species norm depends on his membership in the species.

Nonetheless, the element that distinguishes members of the human species from members of the marlin species is their species norm. Meaning, Santiago is a human being because the human characteristic life is ethically valuable for him (i.e., (c)). Hence, the species is defined by the species norm of its members. However, this answer leaves the argument in a position similar to (v). Namely, Santiago's characteristic way of living is human because he is a human himself (i.e., (e)). In sum, Nussbaum's argument would be circular.

To avoid circularity, Nussbaum needs an account of Santiago's relation to the human species norm. Nevertheless, this account cannot be the notion of species itself. Hence, Nussbaum develops a concept related to the species, yet different, to support why Santiago's species norm is human.

The notion Nussbaum builds is that of a "species community" (Nussbaum, 2007, p. 192). Briefly, the species community is not a community of (members of) a species. Rather, Nussbaum (2007) defines the species community as a group of individuals with the same species norm. That is, belonging to a species community is what defines the species norm of an individual. For instance, Santiago and Manolín have both the same species norm. This is because they belong to the same species community. Namely, the human species community. In other words, Santiago's and Manolín's membership in the species community determines the species norm context in which their lives develop (2007). As they are members of the human species community, their species norm is human. Therefore:

P4: The species-specific norm of an individual is determined by the species community she is a member of.

Thanks to this new premise, Nussbaum is able to answer differently to the question of the *Critic*. Namely:

*Critic*: Why is Santiago required to have the minimal capacity for major human life-activities? (iv)

*Nussbaum*: Because Santiago's characteristic way of living is the human species norm. (v)

*Critic*: Why is Santiago's characteristic way of living the human species norm? (vi)

*Nussbaum*: Because Santiago belongs to the human species community. (vii)

In short, Santiago's species norm is not defined by his species membership (i.e., (a)). Instead, it is established by his species community membership (i.e., (vii)). In a premise-conclusion structure:

P3: A species characteristic way of living is ethically valuable for an individual if it is her species-specific norm.

P4: The species-specific norm of an individual is determined by the species community she is a member of.

C2: An individual has a species-specific norm if she belongs to the specific species community.

C3: A species-specific norm is ethically valuable for the members of the species community.

## 2.6. Species community membership

The *Critic* might have a further question:

*Critic*: Why does Santiago belong to the human species community? (viii)

That is, Nussbaum argues that Santiago's characteristic way of living is human. Then, she justifies this on Santiago's human species community membership. Yet, Nussbaum needs to show why Santiago is a member of the community.

To answer the question, Nussbaum (2007) addresses some real cases of children of human parents. More precisely, Nussbaum discusses the circumstances of Sessa, Arthur, and Jamie (2007). Sessa is born with "congenital cerebral palsy and severe mental retardation" (2007, p. 96). Arthur is a boy with Autism. Jamie is born with Down Syndrome. For simplicity, I will focus on Sessa. Yet, Nussbaum's conclusion about Sessa extends to Arthur, and Jamie.

Nussbaum compares Sessa with chimpanzees (2007). On the one hand, Sessa is a human individual with cognitive impairment. On the other hand, the chimpanzees are, arguably, high cognitive functioning non-human animals. Thus, Sessa's cognitive capacities might resemble those of the chimpanzees. In other words, Sessa and the chimpanzees may be (cognitively) able of performing the same kind of actions.

Nonetheless, even if Sessa and the chimpanzees have similar cognitive capacities, Nussbaum defends that Sessa is unable to "go off" and join the chimpanzees in their characteristic way of living (2007, p. 364). Moreover, Nussbaum argues Sessa does not have the option of "living in a nonlinguistic community of primates" (2007, pp. 363–364). Instead, Sessa's life "is lived as a member of the human community and not some other community"

(Nussbaum, 2007, p. 363). Therefore, “it is there [i.e., in the human community] that she will either flourish [i.e. live a happy life] or not flourish” (2007, p. 363).<sup>14</sup>

In sum, Sesha belongs to one species community. Namely, the human species community.

However, why does Sesha belong to this community? Nussbaum (2007) is not very explicit about the exact reasons that make Sesha a member of the human species community. Fortunately, she leaves some hints along the way. The following example will help highlight the element that distinguishes Sesha from other individuals with a different species community membership.

Let’s suppose that Sesha is born to her actual human parents. However, immediately after birth, Sesha is left in the jungle and adopted by a couple of chimpanzees. Moreover, Sesha lives her whole life in a community of chimpanzees. Meaning, she only interacts with chimpanzees along her life.

Then, after some years, explorer A inspects the jungle. Eventually, the explorer meets Sesha and her chimpanzee family. The explorer analyses their environment. She observes that Sesha’s life is lived among chimpanzees. Additionally, explorer A ignores Sesha was once adopted. Hence, the explorer concludes that Sesha is a member of the chimpanzee species community. Thus, as Sesha belongs to the chimpanzee species community –the explorer may reason–, she has a chimpanzee species norm (i.e., C2).

Some days later, explorer A learns that Sesha is not the biological child of the couple of chimpanzees. Instead, she was found in the jungle and adopted by the chimpanzees. Due to this new piece of information, explorer A doubts about Sesha’s species norm. Before, she thought Sesha was born to chimpanzee parents. Thus, she assumed Sesha belonged to the chimpanzee species community. Yet now the explorer ignores what species community Sesha belongs to. Thus, she cannot conclude what is Sesha’s species norm.

To make up her mind, explorer A starts to look for Sesha’s biological parents. Eventually, she discovers that Sesha was born to human parents. What would Nussbaum say about Sesha’s species norm in this situation?

Earlier in this Section, I discuss that Nussbaum claims that Sesha “has no option to go off” and live as a happy chimpanzee (2007, p. 364).<sup>15</sup> Meaning, Sesha cannot live in the characteristic chimpanzee way. Thus, even if she were adopted by a family of chimpanzees, her options would not change. Meaning, she would still be unable to join the chimpanzees in their characteristic chimpanzee way of living. Therefore, explorer A has only one possible answer. Namely, Sesha can only belong to the human species community.

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<sup>14</sup> The term *flourishing* is a complex concept used by Nussbaum (see, for instance, Nussbaum 2007). As it is not the focus of this thesis, I will not explore its implications. Instead, I will assume it broadly corresponds to *living a happy life*.

<sup>15</sup> A note for precision here. Nussbaum (2007) claims that it is Arthur (a boy with Autism) who “has no option to go off” and belongs to a different, non-human species community (p. 364). Nonetheless, I would defend that Nussbaum’s statement about Arthur is also applicable to Sesha. This is because Nussbaum takes Arthur and Sesha as examples of children of human parents with cognitive impairments. She employs the cases of Arthur and Sesha to argue for the same point. Namely, children of human parents, whether they are born with cognitive disabilities or not, can only belong to the human species community. Thus, I think it is safe to claim that Nussbaum’s position about Arthur’s species norm is the same as her position about Sesha’s species norm.

In short, Sessa would retain her species community membership even if she were abandoned in a community of chimpanzees immediately after birth. Thus, Sessa must have acquired her membership in the human species community before birth. Meaning, Sessa obtained her membership in the human species community from her human parents. In other words, children obtain a species community membership if they are born to parents from that species. The species norm does not depend on the children's context, but on the species of her biological parents. Sessa's parents are human beings. Consequently, she inherits their human species norm.

To summarise, the example of the adopting chimpanzee family shows that Sessa acquires her species community membership before birth. Meaning, Sessa belongs to the human species community because she is born to human parents. This explains that even if Sessa were removed from her actual species community, she would remain a "member of the human [species] community and not some other community" (2007, p. 363).

It is now possible to address the opening question of this section. Namely, why does Santiago belong to the human species community? As the example of Sessa shows, membership in a species community is acquired by birth. Hence, individuals belong to the (human) species community if they are born to parents from the (human) species. In short, parents' species membership determines children's species community membership. Therefore, another premise is needed:

P5: An individual belongs to a species community if she is born to parents from that species.

With P5, the premise-conclusion structure is the following. Note that both conclusions change. That is, C2 and C3 evolve into C2a and C3a. This is because they incorporate the new content from P5. Namely, how individuals become members of a species community. Thus:

P3: A species characteristic way of living is ethically valuable for an individual if it is her species-specific norm.

P4: The species-specific norm of an individual is determined by the species community she is a member of.

P5: An individual belongs to a species community if she is born to parents from that species.

C2a: An individual has a species-specific norm if she *is born to parents from that species*.

C3a: A species-specific norm is ethically valuable for the members of the species community. Meaning, for the individuals *born to parents from that species*.

Finally, this helps Nussbaum in her reply to the *Critic*. That is:

*Critic*: Why is Santiago's characteristic way of living the human species norm? (vi)

*Nussbaum*: Because Santiago belongs to the human species community. (vii)

*Critic*: Why does Santiago belong to the human species community? (viii)

*Nussbaum*: Because he is born to parents from the human species. (ix)

To summarise, Nussbaum defends that certain individuals are entitled to a “life worthy of the dignity of the human being” (2007, p. 180). Section 2.3. divides the predicate of Nussbaum’s claim in four parts: [certain individuals are] (i) *entitled* to (ii) a life *worthy* of (iii) the *dignity* of (iv) the *human being*. Then, Section 2.4. introduces the element that differentiates humans from non-humans. Namely, the human species norm. Lastly, Sections 2.5. and 2.6. analyse how individuals acquire the species norm through species community membership.

The predicate employs three key concepts. Namely, species, species norm, and species community. The species norm is the characteristic way of living of a species. For instance, the human species norm is the characteristic human way of living. Yet, I argue that employing only the concepts of species and species norm would render Nussbaum’s reasoning circular. Fortunately, Nussbaum develops the notion of species community. Briefly, a species community is a group of individuals that have the same species norm. Moreover, the species norm of an individual is established by her membership in a species community. In the case of Santiago, he belongs to the human species community. Thus, the characteristic human life is ethically valuable for him.

## 2.7. Conclusion

Nussbaum’s claims that certain individuals should have the opportunity to live a life “worthy of the dignity of the human being” (2007, p. 180). In this Chapter I analyse such claim. As a result, I discuss important concepts Nussbaum employs in her argument. Furthermore, to achieve a clearer analysis, I do two things. On the one hand, I imagine Nussbaum has to explain her position to a *Critic*. On the other hand, I reconstruct Nussbaum’s argument in a premise-conclusion structure.

First, I address (a) the subject of the claim in Section 2.2.. Meaning, I discuss which individuals are entitled to a dignified life. Briefly, Nussbaum argues that an individual is entitled to a life with human dignity if she satisfies two conditions (2007, 2008, 2011a). Namely:

- (i) First criterion: having human parents.
- (ii) Second criterion: having the (minimal) capacity for activity.

Second, I examine (b) the predicate of Nussbaum’s claim in Section 2.3.. That is, I inquire into the meaning of *being entitled to a life worthy of human dignity*. Then, I explore the concept of species norm in Section 2.4.. Briefly, the species norm is the characteristic way of living of a species (Nussbaum, 2007). Additionally, I address the idea of species community in Section 2.5.. Broadly, a species community is a group of individuals with the same species norm (Nussbaum, 2007). Moreover, in Section 2.6., I conclude that membership to this community depends on the species of the individual’s parents.

Third, I put Nussbaum in conversation with a *Critic*. This Chapter explains how Nussbaum answers the *Critic*’s questions. The complete conversation is as follows:

*Nussbaum*: Santiago is entitled to a life worthy of human dignity. (i)

*Critic:* Why is Santiago entitled to such life? (ii)

*Nussbaum:* Because Santiago is born to human parents, and he has the minimal capacity for activity. Meaning, Santiago has an open-ended disjunction of basic capabilities for major human life-activities. (iii)

*Critic:* Why is Santiago required to have the minimal capacity for major human life-activities? (iv)

*Nussbaum:* Because Santiago's characteristic way of living is the human species norm. (v)

*Critic:* Why is Santiago's characteristic way of living the human species norm? (vi)

*Nussbaum:* Because Santiago belongs to the human species community. (vii)

*Critic:* Why does Santiago belong to the human species community? (viii)

*Nussbaum:* Because he is born to parents from the human species. (ix)

Finally, I reconstruct Nussbaum's argument in a premise-conclusion form. The resulting structure is the following:

P1: An individual is entitled to a life worthy of human dignity if she has human parents, and she has the minimal capacity for activity.

P2: Having the minimal capacity for activity entails having an open-ended disjunction of the basic capabilities (i.e., intrinsic undeveloped powers) for major human life-activities.

C1: An individual is entitled to a life worthy of human dignity if she has human parents, and she has an open-ended disjunction of the basic capabilities for major human life-activities.

P3: A species characteristic way of living is ethically valuable for an individual if it is her species-specific norm.

P4: The species-specific norm of an individual is determined by the species community she is a member of.

P5: An individual belongs to a species community if she is born to parents from that species.

C2a: An individual has a species-specific norm if she is born to parents from that species.

C3a: A species-specific norm is ethically valuable for the members of the species community. Meaning, for the individuals born to parents from that species.

P6: The human species norm (i.e., the characteristic way of living of the human species) is living as political and social animals.

C4: Living as political and social animals is ethically valuable for those individuals with a human species norm.

# Chapter 3 – “Bad news for you, fish”<sup>16</sup>: Against Nussbaum’s criteria

## 3.1. Introduction

Nussbaum establishes two conditions for being entitled to a “life worthy of human dignity” (2011a, p. 25). The individuals that satisfy them have the basis to demand access to the ten central capabilities. Conversely, those that do not meet the conditions, are not entitled to a dignified life. The two criteria are:

- (i) First criterion: having human parents.
- (ii) Second criterion: having the (minimal) capacity for activity.

My claim in this Chapter is that Nussbaum’s two criteria are unable to defend why Santiago is entitled to a life worthy of human dignity. Rather, they lead to unwanted, counterintuitive consequences. Meaning, applying Nussbaum’s two criteria results in Santiago not having the basis of the entitlements to a dignified life.

To support my claim, I present two criticisms. First, I address the case of the first ever human beings. Intuitively, these individuals, as humans, should be able to live a life with human dignity. Nonetheless, I contend that, according to Nussbaum’s criteria, they are not entitled to a life worthy of human dignity. Second, I discuss how some cases of cognitive impairments place Nussbaum’s criteria under strain.

In sum, Nussbaum would intuitively claim that Santiago is entitled to a life with human dignity. Yet, if Santiago is placed under certain circumstances, Nussbaum’s two criteria lead to the opposite result. Namely, Santiago not having the entitlements to such life.

In Section 3.2., I present what I think is my strongest criticism of Nussbaum’s CA. Briefly, I criticise that Nussbaum’s two criteria would conclude that the first ever human beings are not entitled to a dignified life. I will refer to this issue as the Adam and Eve problem. I contend this is counterintuitive.

Then, in Section 3.3., I discuss the case of individuals in a persistent vegetative state (PVS), and their children. On the one hand, Nussbaum determines that individuals in a PVS are not entitled to a dignified life. On the other hand, Nussbaum would conclude that their children are entitled to such life. Hence, I argue Nussbaum would have to accept that parents without dignity can give birth to children with dignity. Again, I defend this is counterintuitive.

In Section 3.4. I consider a possible solution to this second criticism. Unfortunately, I conclude that it does not avoid my first criticism. Meaning, the problem I discuss in Section 3.2. remains.

Subsequently, in Section 3.5., I briefly review the relationship between my criticisms and the current literature.

Finally, I conclude in Section 3.6..

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<sup>16</sup> Hemingway (1952/1999, p. 48)



### 3.2. The problem of Adam and Eve: the entitlement of the first ever human beings

In this Section I discuss the case of the first ever human beings. I will refer to this example as the problem of Adam and Eve. The example of the first ever humans shows a counterintuitive result of Nussbaum's criteria. Namely, they are members of the human species with enough minimal capacity for activity. Yet, applying Nussbaum's criteria, they are not entitled to a life worthy of human dignity. Briefly, Nussbaum's two criteria allude to the species membership of the individual's parents. Hence, if the individual's parents are not human, she will not be entitled to a life with human dignity.

Let's imagine Santiago is the first ever human being. Meaning, he is the same eighty-four-year-old Cuban fisherman. Moreover, he still has enough minimal capacity to live in a characteristic human way. Intuitively, then, Nussbaum would argue that Santiago deserves a life with human dignity. Yet, he happens to be the first human to ever exist. How would Nussbaum justify her position?

First, Nussbaum's first condition to be entitled to a dignified life is (i) having human parents. In the case of Santiago, he is the first human ever. Furthermore, humans have not existed forever. Meaning, there was a moment in the past when there were no human beings. Therefore, the parents of the first ever human beings were not humans themselves. In other words, Santiago did not have human parents.

In consequence, Santiago would not fulfil Nussbaum's first criterion. Thus, Nussbaum would determine that Santiago is not entitled to a life with human dignity. In other words, if Santiago is the first ever human being, Nussbaum's response to the *Critic* is incorrect. That is:

*Nussbaum*: Santiago is entitled to a life worthy of human dignity. (i)

*Critic*: Why is Santiago entitled to such life? (ii)

*Nussbaum*: Because Santiago is born to human parents, and he has the minimal capacity for activity. Meaning, Santiago has an open-ended disjunction of basic capabilities for major human life-activities. (iii)

Thus, the contradiction. On the one hand, Nussbaum would intuitively defend that Santiago is entitled to a life with human dignity. On the other hand, Nussbaum's two criteria would reject Santiago's entitlement under certain circumstances.

Second, Nussbaum's second condition requires (ii) having the minimal capacity for activity. In other words, individuals must have a disjunction of the necessary basic capabilities to live by their respective species norm. The specific species norm of the individual is determined by her membership to the species community.<sup>17</sup> In turn, being a member of the species community depends on the species of the individual's parents.<sup>18</sup>

For instance, if Santiago is to be entitled to a life with human dignity, he must be minimally active in the characteristic human way. That is:

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<sup>17</sup> See Chapter 2, Section 2.5..

<sup>18</sup> See Chapter 2, Section 2.6..

*Critic:* Why is Santiago required to have the minimal capacity for major human life-activities? (iv)

*Nussbaum:* Because Santiago's characteristic way of living is the human species norm. (v)

*Critic:* Why is Santiago's characteristic way of living the human species norm? (vi)

*Nussbaum:* Because Santiago belongs to the human species community. (vii)

However, if Santiago is the first ever human being, his species norm cannot be human. Meaning, Santiago would be required to be minimally active in the human way if he had a human species norm. Nonetheless, Santiago does not have human parents. Thus, the CA would not assign a human species norm to him. In consequence, Santiago cannot be even asked to satisfy Nussbaum's second criterion. In other words, Nussbaum's answer to the *Critic* does not hold:

*Critic:* Why does Santiago belong to the human species community? (viii)

*Nussbaum:* Because he is born to parents from the human species. (ix)

In short, if Santiago is the first ever human being, he will not satisfy Nussbaum's second criterion. Thus, Nussbaum would have to conclude that Santiago is not entitled to a life worthy of human dignity. Again, this is a counterintuitive result: Santiago is a human being with enough minimal capacity who does not deserve a life with human dignity.

To summarise, Nussbaum's two criteria lead to counterintuitive results. On the one hand, Nussbaum would intuitively defend that an eighty-four-year-old Cuban fisherman is entitled to a dignified life. On the other hand, if this man is the first human to ever exist, Nussbaum will have to go against her intuitive position. Meaning, the first ever human being does not have human parents. In consequence, he is unable to satisfy criteria (i) and (ii). Hence, Nussbaum's conditions would infer he is not entitled to a life with human dignity. In short, Nussbaum's criteria lead to a result that is opposed to Nussbaum's intuitive stance.

### 3.3. The dignity of children born to parents without dignity

Some cases of cognitive conditions place Nussbaum's two criteria under strain. These cognitive conditions represent an "(extreme) threshold" (Nussbaum, 2007, p. 181). In particular, Nussbaum consistently identifies two cases (2007, 2008, 2011a, 2011b). Namely, "the person in a persistent vegetative condition and the anencephalic child" (2007, p. 181).

Nussbaum claims that individuals in a persistent vegetative state or with anencephaly do not have a human life (Nussbaum, 2007). Meaning, she contends they do not have the dignity to be entitled to a life with the ten central capabilities (2011a). Conversely, Nussbaum's two criteria would judge that the children of these individuals are entitled to a dignified life. My claim is that this is a counterintuitive position.

In this Section, I first clarify the concepts of persistent vegetative condition and anencephaly. Secondly, I explain Nussbaum's claim about individuals in a persistent vegetative state or with anencephaly. Thirdly, I discuss the case of children of individuals in a persistent vegetative state.

### 3.3.1. Vegetative state and anencephaly

Nussbaum (2007, 2008) does not provide a definition of the notions of persistent vegetative state and anencephaly. Thus, I will briefly present a working definition of both conditions.<sup>19</sup>

First, a persistent vegetative condition or state is a neurological syndrome in which the brain is damaged (Cranford, 2004). It is “a condition of wakeful unawareness, a form of permanent [or persistent] unconsciousness” (2004, p. 1).

Moreover, doctors distinguish between persistent and permanent vegetative conditions (Cranford, 2004; The Multi-Society Task Force on PVS, 1994). Broadly, the difference depends on the prospect of recovery. Usually, the term permanent is limited to patients with “an extremely high degree of certainty that the condition is irreversible” (Cranford, 2004, p. 2). Conversely, the idea of persistence alludes to patients who have been in this situation for a minimum of one month, yet their condition is not deemed irreversible (Cranford, 2004; The Multi-Society Task Force on PVS, 1994). This normally depends on the injuries the brain suffers (Cranford, 2004).

Nussbaum employs both terms interchangeably (e.g., see Nussbaum (2007, p. 181)). Nonetheless, I will refer to all of these cases (i.e., persistent and permanent) as permanent vegetative states. I do this because of two reasons. Firstly, the notions of persistency or permanency refer to the recovery, not to the condition itself. Hence, individuals in a persistent and permanent state share the same condition. Meaning, they are in a vegetative state. Second, permanent vegetative states emphasise Nussbaum’s point of the individual’s inability to lead a characteristic human life “in any meaningful way” (Nussbaum, 2007, p. 181). That is, it is hard to conceive that a person in a persistent vegetative state gathers enough capacity for activity. Hence, it is even harder to imagine an individual in a permanent vegetative condition doing so. In sum, I will henceforth refer to individuals in a permanent (and thus, persistent) vegetative state (PVS).

Second, anencephaly is a neurological disorder (NINDS, 2023). Babies that are born with this condition lack several, and crucial parts of the brain (CDC, 2023). More specifically, they lack the forebrain and the cerebrum. The cerebrum is the area of the brain in charge of thinking and coordinating (CDC, 2023). In consequence, children with anencephaly have no possibility to develop consciousness (NINDS, 2023).

Additionally, the survival rate among children with anencephaly is extremely small. That is, 75% of children die at birth (Boston Children’s Hospital, n.d.). Furthermore, among those who survive, most of them will very likely die within the following days (Dickman et al., 2016).<sup>20</sup> In sum, the prospect for children born with anencephaly is dim. They will develop no consciousness and will most likely die within days or weeks after birth.

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<sup>19</sup> I beg the reader to bear in mind that I am no medical expert. Hence, some specialist might find these definitions too general or imprecise. I apologise for this in advance. These definitions are provided with an illustrative intention.

<sup>20</sup> There is disagreement on when lethality is reached in 100% of cases. On the one hand, some studies defend that all children with anencephaly die within weeks after birth (Dickman et al., 2016). On the other hand, other studies increase this time period up to one year (2016). Interestingly, Dickman et al. (2016) discuss one case of a baby born with anencephaly that lived for 28 months with no life-support interventions. Yet, this is an exceptional situation.

### 3.3.2. Humans without human dignity

Nussbaum argues that individuals in a persistent vegetative state (PVS) or with anencephaly are unable to be minimally active in a characteristic human way (2007, 2008, 2011a, 2011b). Thus, she claims, their life is not a human life. In other words, individuals in a PVS or with anencephaly are not entitled to a life with human dignity.

Nussbaum contends that individuals in a PVS or with anencephaly do not have minimal capacity for activity.<sup>21</sup> More precisely, she argues it is “impossible” for them to pursue “enough of them [the central capabilities]” so that their life is identifiably human (2007, p. 181). Similarly, Nussbaum defends that “there is no striving [in their lives]” for the central capabilities (Nussbaum, 2008, p. 252). That is, they experience “no reaching out for [the characteristic human] functioning” (2008, p. 252). In other words, individuals in a persistent vegetative state or with anencephaly have a “sufficiently significant” “group of major human capabilities [...] irrevocably and entirely cut off” (Nussbaum, 2007, p. 181). In conclusion, they are unable to gather an open-ended disjunction of the necessary basic capabilities to live a characteristic human life.

Consequently, the life of individuals in a PVS or with anencephaly “is not a human life at all, in any meaningful way” (Nussbaum, 2007, p. 181). For Nussbaum, “the person in a persistent vegetative state and the anencephalic child would be examples” of “the death of anything like a characteristic human form of life” (2007, p. 181).

Note that the case of people in a persistent vegetative state or with anencephaly is different from the situation of Sessa. Nussbaum (2007) explicitly compares these two cases. On the one hand, Sessa lacks some basic capabilities. Consequently, she is unable to access some of the central capabilities. Nonetheless, she gathers an open-ended disjunction of basic capabilities. For instance, Sessa can build an emotional relation with her care givers (Nussbaum, 2007). In consequence, Sessa has enough minimal capacity to live the characteristic human life.

Conversely, people in a persistent vegetative state or with anencephaly lack “any possibility at all of exercising” the central capabilities “at any level” (Nussbaum, 2007, p. 181). Meaning, they have none of the necessary basic capabilities to exercise the central capabilities. They are “without agency of any kind” (Nussbaum, 2011a, p. 31). Therefore, they are totally unable to live in a characteristic human way.

In sum, Sessa has enough minimal capacity to live by the characteristic human life. Individuals in a PVS or with anencephaly do not. Therefore, Sessa satisfies Nussbaum’s second criterion. Conversely, individuals in a PVS or with anencephaly do not.

This has an important consequence. Namely, individuals in a PVS or with anencephaly are not entitled to a life worthy of human dignity (Nussbaum, 2007, 2011a). That is:

“[T]he ten central capabilities are fundamental entitlements inherent in the very idea of [...] a life worthy of human dignity [...]. Where humans are concerned, the basis of these entitlements lies [...] in the bare fact of being a living human being: being born from human parents, and having a minimal level of agency or capacity for activity. That is enough to give a human being a dignity that is

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<sup>21</sup> Please, refer to Chapter 2, Section 2.2.1. for a discussion about having the minimal capacity for activity.

equal to that of every other human being (Nussbaum, 2008). *Thus a person in a persistent vegetative state does not have these entitlements, nor an anencephalic child.*" (Nussbaum 2011a, p. 25, my emphasis)

In other words, all individuals with human parents and with the minimal capacity for activity are entitled to the central capabilities. Individuals in a PVS or with anencephaly do not gather enough minimal capacity. "Thus [...] [they] do not have these entitlements" (Nussbaum, 2011a, p. 25).

To summarise, individuals with severe cognitive disabilities like Sesha are able to live a characteristic human life. This is because they have an open-ended disjunction of basic capabilities. Meaning, they are minimally, and intrinsically able to exercise the central capabilities. In opposition, individuals in a PVS or with anencephaly do not have "any possibility at all" of possessing any of the necessary basic capabilities (Nussbaum, 2007, p. 181). Therefore, they do not meet Nussbaum's second criterion. In consequence, for Nussbaum, "it would be only dogmatism to insist that the life of such a child [with anencephaly] is a human life, whereas Sesha's is clearly such a life" (2007, p. 433). In other words, individuals in a PVS or with anencephaly are not entitled to a life worthy of human dignity.

### 3.3.3. The children of parents without dignity

Nussbaum's approach to human individuals without dignity is somewhat problematic. I present here a case to prove my point. For simplicity, I focus on individuals in a persistent vegetative state. Briefly, imagine a child is born to two individuals in a PVS. Is this child entitled to a life with the ten central capabilities?

Let's suppose that Santiago is born to a man known as Ernest and a woman called Mary Welsh. Both Ernest and Mary have human parents, and the minimal capacity for activity. Thus, they are entitled to a dignified life, according to Nussbaum's definition. Eventually, Ernest and Mary publicly express their desire to have a child. Moreover, they sign a written document in the presence of a notary regarding their willingness to get pregnant. Unfortunately, Ernest and Mary have a car accident before they can get pregnant. They both experience severe brain damage. As a result, they enter a permanent vegetative state. Finally, their families agree on satisfying Mary's and Ernest's desire to have a baby. That is, they retrieve sperm from Ernest and inseminate Mary. After nine months, Santiago is born.<sup>22</sup> Assume Santiago does not have any major physical or cognitive impairment.

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<sup>22</sup> This is medically possible. Sperm can be retrieved from men in a PVS. If it interests the reader, there exists a whole thought-provoking discussion about the morality of such procedure (Strong, 1999). Additionally, women in PVS can get pregnant and give birth to a living baby while remaining in a vegetative state. Siwatch et al. (2020) describe the case of a 32-years old woman who was pregnant. Eventually, this woman fell in a vegetative state. While still in the vegetative state, she gave birth to a live baby at the 37<sup>th</sup> week. Feldman et al. (2000) review two additional cases of pregnancy during persistent vegetative states. Furthermore, Allen (2019), and Scutti (2019) report a case of a woman in a PVS. During the vegetative state, she got pregnant. Ultimately, she delivered the baby. Please, be aware that this case must be treated with respect and care. This woman was a victim of sexual abuse. I encourage the reader to get further information from verified sources (e.g., Allen (2019), and Scutti (2019)).

According to Nussbaum's criteria, baby Santiago is entitled to a dignified life. That is, Santiago (i) is born to human parents. In addition, Santiago (ii) has the minimal capacity for activity in the characteristic human way. Thus, Santiago has human dignity.

However, this conclusion is problematic in two ways. I explain why. First, Santiago is born to two parents without dignity. Nonetheless, he emerges as an individual with human dignity. This implies the following: Nussbaum accepts the possibility that non-dignified parents can give birth to dignified children. This position is not really intuitive.

Second, Nussbaum argues "there is no striving" in the life of individuals in a PVS (2008, p. 252). Similarly, she contends that individuals in a PVS have a "sufficiently significant" "group of major human capabilities [...] irrevocably and entirely cut off" (2007, p. 181). In consequence, Nussbaum refuses that someone in a PVS can satisfy her second criterion.

Yet, these individuals are still able to conceive and deliver a child with human dignity. In other words, individuals in a PVS retain the capacity of producing a baby that can potentially be entitled to a life with human dignity. This, I contend, is an important human-life activity. Thus, Nussbaum's diagnosis of an absolute "cut off" of major human life-activities sounds inaccurate (2007, p. 181).

To summarise, Nussbaum's position about children of individuals in a PVS has some problems. First, Nussbaum must accept that individuals without dignity can give birth to individuals with dignity. This might sound unreasonable. Second, Nussbaum ignores one major human capacity. Namely, having human offspring with (potential) human dignity. Individuals in a PVS have this capacity. Yet, Nussbaum does not acknowledge it. In consequence, Nussbaum neglects their capacity to meet the second criterion.

### 3.4. A possible solution: amending the second criterion

How can Nussbaum avoid the bizarre situation that individuals without dignity give birth to individuals with dignity? Individuals in a PVS fail to satisfy Nussbaum's second condition. In consequence, they are not entitled to a life with human dignity. In this Section, I suggest to amend the second criterion. Meaning, I claim that Nussbaum could include the capacity of having human offspring as one of the basic capabilities of major human life-activities. As a result, individuals in a PVS would enjoy as much dignity as their children.

Let's recall the example of Santiago. Santiago is born to two human beings. Namely, Ernest and Mary Welsh. Ernest and Mary have human parents. Thus, they satisfy Nussbaum's first criterion. Nonetheless, Ernest and Mary are two individuals in a permanent vegetative state. Therefore, according to Nussbaum (2007), they are totally unable to gather a disjunction of the necessary basic capabilities. Meaning, they do not satisfy the second criterion.

Regarding the premise-conclusion structure, Ernest and Mary do not meet Premises 1 and 2. Thus, they are not entitled to a dignified life (C1).

P1: An individual is entitled to a life worthy of human dignity if she has human parents, and she has the minimal capacity for activity.

P2: Having the minimal capacity for activity entails having an open-ended disjunction of the basic capabilities (i.e., intrinsic undeveloped powers) for major human life-activities.

C1: An individual is entitled to a life worthy of human dignity if she has human parents, and she has an open-ended disjunction of the basic capabilities for major human life-activities.

Conversely, Santiago, the son of Ernest and Mary, satisfies both conditions. Therefore, he is entitled to a life with the ten central capabilities.

How can Ernest and Mary enjoy as much dignity as Santiago? In Section 3.3.3., I argue that being able to produce a child with human dignity should be considered a major human capability. In other words, Nussbaum's second criterion should include this basic capability within its open-ended disjunction. This would impact P2 and C1. That is:

P1: An individual is entitled to a life worthy of human dignity if she has human parents, and she has the minimal capacity for activity.

P2\*: Having the minimal capacity for activity entails having an open-ended disjunction of the basic capabilities (i.e., intrinsic undeveloped powers) for major human life-activities. *One of these basic capabilities is having human offspring, potentially with human dignity.*

C1\*: An individual is entitled to a life worthy of human dignity if she has human parents, and she has an open-ended disjunction of the basic capabilities for major human life-activities. *One of these basic capabilities is having human offspring, potentially with human dignity.*

This change would make the second criterion easier to meet for individuals in a PVS. As a result, they would qualify as individuals entitled to a life with human dignity (C1\*). Meaning, with P2\*, parents would enjoy as much dignity as their children.

#### 3.4.1. Problem of a revised second criterion: Adam and Eve

Amending the second criterion, however, does not avoid one main challenge. Namely, the aforementioned problem of Adam and Eve. Briefly, the parents of the first ever human beings do not belong to the human species. In consequence, according to Nussbaum's criteria, the first ever humans cannot be entitled to a life with human dignity. This is problematic. The first ever human beings are as human as any other human being. Hence, they are intuitively entitled to that dignified life.

This affects Ernest and Mary. Meaning, individuals in a PVS might satisfy a revised version of the second criterion. Yet, their entitlements will nevertheless be at risk if they happen to be the first ever human beings. Meaning, Nussbaum would be unable to explain why they are entitled to a dignified life.

To summarise, the problem of Adam and Eve poses a challenge to Nussbaum's CA. Briefly, Nussbaum's two criteria would conclude that a member of the human species with enough minimal capacity for activity is not entitled to a dignified life. This is counterintuitive.

Even if Nussbaum revised her second criterion to include parents in a PVS, her theory would still face the problem of Adam and Eve. As P2\* does not solve Nussbaum's most pressing challenge (i.e., the Adam and Eve problem), I will return to the previous P2.

### 3.5. My criticisms in the literature

Unfortunately, the literature on Nussbaum's CA does not directly discuss my two criticisms. Meaning, it does not analyse the problem of Adam and Eve. Similarly, it does not address the case of parents in a PVS.

Instead, the literature focuses on different aspects. Some authors criticise Nussbaum's notion of human dignity. For instance, Claassen and Düwell (2013), and Formosa and Mackenzie (2014) argue that the notion of human dignity needs further theoretical development.

Similarly, Formosa and Mackenzie (2014) also contend that Nussbaum's critique to Rawlsian theory is flawed. Meaning, they argue that Nussbaum misunderstands Rawls position on Kantian dignity. Briefly, according to Formosa and Mackenzie (2014), Nussbaum defends that Aristotelian dignity is more inclusive with people with cognitive disabilities than Rawlsian dignity. Formosa and Mackenzie (2014) doubt whether this is indeed the case.

Additionally, Claassen and Düwell (2013), Buttrey (2020), Claassen (2014), Hope (2013), Mollvik (2019), Clark (2009), and Gluchman (2019) claim that Nussbaum's conception of human beings as political and social animals does not properly justify the selection of the ten central capabilities. That is, the idea of humans as political and social animals does not necessarily lead to choosing the ten central capabilities. Specifically, Mollvik (2019), Clark (2009), and Gluchman (2019) contend that the definition of human beings as social and political animals is too morally loaded. Meaning, there are some normative assumptions that Nussbaum does not justify.

Finally, Vorhaus (2015) doubts whether a life with no access to the central capabilities entails a life without any dignity. He argues that Nussbaum does not explain the connection between having dignified living conditions, and having a dignified life.

These criticisms are all appealing. Yet, none of them directly discuss the issues I examine in this thesis.

### 3.6. Conclusion

Nussbaum establishes two criteria that individuals must meet to be entitled to a life worthy of human dignity. The two criteria are:

- (i) First criterion: having human parents.
- (ii) Second criterion: having the (minimal) capacity for activity.

In this Chapter I claim that Nussbaum's two criteria lead to counterintuitive results. I present two different criticisms to defend my point. First, the Adam and Eve problem. Second, the case of parents without dignity that give birth to children with dignity.



The first criticism (Section 3.2.) presents the case of the first ever human beings. These individuals are members of the human species with enough minimal capacity for activity. Intuitively, they are entitled to a life with human dignity.

However, the example of the first ever human beings introduces an interesting nuance. Namely, these individuals do not have human parents. In consequence, Nussbaum's criteria would have to conclude that they are not entitled to a dignified life. This, I contend, is a counterintuitive result.

The second criticism (Section 3.3.) alludes to another problematic, counterintuitive situation. Briefly, Nussbaum contends that individuals in a PVS (or with anencephaly) have a "group of major human capabilities [...] irrevocably and entirely cut off" (Nussbaum, 2007, p. 181). Therefore, she defends that they are not entitled to a life with human dignity.

Nevertheless, individuals in a PVS have the possibility of conceiving and delivering a human child with human dignity. I criticise that Nussbaum's position entails two counterintuitive consequences. First, Nussbaum must accept that parents without dignity can produce children with human dignity. Second, Nussbaum argues parents have no dignity because they do not have an open-ended disjunction of basic capabilities. Nonetheless, these individuals retain the capability of originating new human life with human dignity. Hence, Nussbaum must accept that giving birth to children with human dignity is not a major human capability. I contend that both of these positions seem unreasonable.

Finally, I examine a way (Section 3.4.) in which Nussbaum may address my second criticism. That is, I claim Nussbaum could revise her second criterion. More precisely, I defend the second criterion could include the capacity of having offspring with human dignity as one of the considered major human capabilities (i.e., P2\*). Yet, even with a revised second criterion, I show that Nussbaum would still encounter the Adam and Eve problem. Consequently, I return to P2.

In sum, Nussbaum faces a seemingly insurmountable challenge. Namely, the problem of the first ever human beings. That is, Nussbaum would intuitively defend that any human with enough minimal capacity is entitled to a life with human dignity. However, under certain circumstances, her two criteria would contradict this intuition. Namely, Nussbaum's two criteria would conclude that the first humans to ever exist are not entitled to a dignified life.

## Chapter 4 – “You give me much good counsel. [...] I’m tired of it.”<sup>23</sup>: A solution to the Adam and Eve problem

### 4.1. Introduction

In Nussbaum’s CA, an individual’s entitlement to a dignified life depends on two things. First, her parents’ membership to the human species. Second, the individual’s capacity for activity.

Then, in Chapter 3, I claim that, under certain circumstances, Nussbaum is unable to defend why Santiago is entitled to such life. More precisely, Nussbaum cannot escape the Adam and Eve problem. Broadly, Santiago is a human being with enough minimal capacity. Hence, Nussbaum would intuitively try to secure Santiago’s entitlements. However, if Santiago were the first ever human being, he would not have human parents. Thus, Santiago would not satisfy Nussbaum’s criteria. Meaning, Nussbaum would have to conclude that Santiago is not entitled to a life with human dignity. I contend this is a counterintuitive result.

In this Chapter, I examine a solution for the Adam and Eve problem. My claim is that Nussbaum should substantiate the individual’s entitlement without referring to her parents. In other words, Nussbaum’s explanation of why Santiago is entitled to a dignified life should be independent from Santiago’s parents.

My proposal is the following. I defend employing the individual’s genetic information as a substitute for the requirement of having human parents. Roughly, Nussbaum uses her first criterion (i.e., having human parents) to identify which individuals are human beings. Nonetheless, requiring individuals to have (human) parents encounters the Adam and Eve problem.

Therefore, I advocate for an alternative criterion. That is, I suggest focusing on whether individuals have the species-specific genetic information. Meaning, each species has its own species-specific genes. Thus, depending on the genetic information of an individual, she will belong to one species or another. For instance, an individual will belong to the human species if she has the human-specific genetic information. I claim that Nussbaum’s first criterion should request the human-specific genetic information.

Finally, I contend this alternative is superior to Nussbaum’s condition of *having human parents*. First, Nussbaum already alludes to genes in her work. Second, all the individuals who were entitled in the original version of the CA would also be entitled in this updated version. Third, and most importantly, this change allows Nussbaum to avoid the Adam and Eve problem.

In Section 4.2., I investigate the origin of the Adam and Eve problem. Roughly, it originates in Premises 1 and 5. In Section 4.3., I suggest a solution to the problem. That is, I contend that Nussbaum should substitute her requirement of *having human parents* with the condition of *having the human-specific genetic information*. This affects P1 and P5. Thus, they become P1a and P5a. Then, in Section 4.4., I defend that my proposal is superior to Nussbaum’s. The main reason for this is that it avoids the Adam and Eve problem. In Section 4.5., I explore some shortcomings of my position. Finally, I conclude in Section 4.6..

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<sup>23</sup> Hemingway (1952/1999, p. 86)

## 4.2. The root of the problem: P1 and P5

In this section, I address the origin of the Adam and Eve problem. Briefly, the root of the Adam and Eve problem is that Nussbaum requires individuals to have human parents. The first ever human beings do not have human parents. Thus, Nussbaum would have to conclude that these human beings with the minimal capacity for activity are not entitled to a dignified life. Let's identify what premises capture Nussbaum's condition of having human parents.

First, the problem of Adam and Eve affects Nussbaum's criteria to be entitled to a dignified life. This is what I address in Chapter 3. These conditions are captured by Premise 1:

P1: An individual is entitled to a life worthy of human dignity if she has human parents, and she has the minimal capacity for activity in the human-characteristic way.

Broadly, the Adam and Eve problem involves Nussbaum's first criterion for obvious reasons. Meaning, Nussbaum demands that individuals have human parents. Yet, if Santiago were the first human being, he could not have parents from the human species. Thus, he would not be able to meet the first part of P1. In consequence, Santiago would not be entitled to a life worthy of human dignity (C1). In a premise-conclusion form:

P1: An individual is entitled to a life worthy of human dignity if she *has human parents*, and she has the minimal capacity for activity.

P2: Having the minimal capacity for activity entails having an open-ended disjunction of the basic capabilities (i.e., intrinsic undeveloped powers) for major human life-activities.

C1: An individual is entitled to a life worthy of human dignity if she *has human parents*, and she has an open-ended disjunction of the basic capabilities for major human life-activities.

Additionally, the Adam and Eve problem influences another aspect of Nussbaum's theory. Namely, the process of how the species norm is assigned. I will tangentially address this issue, for it is not the focus of my thesis. Briefly, an individual has the human species norm because she belongs to the human species community (P4). In turn, this individual is a member of the species community because she is born to human parents (P5). Thus, an individual will have a human species norm if she is born to human parents (C2a). That is:

P3: A species characteristic way of living is ethically valuable for an individual if it is her species-specific norm.

P4: The species-specific norm of an individual is determined by the species community she is a member of.

P5: An individual belongs to a species community if she *is born to parents from that species*.

C2a: An individual has a species-specific norm if she *is born to parents from that species*.

C3a: A species-specific norm is ethically valuable for the members of the species community. Meaning, for the individuals *born to parents from that species*.

Nonetheless, if Santiago were the first ever human being, he would not be born to human parents. Therefore, he would not belong to the human species community. Consequently, Santiago's species norm would not be human.

To summarise, the problem of Adam and Eve refers to the first ever human beings. Intuitively, these individuals should be entitled to a life worthy of human dignity (and have a human species norm). However, Nussbaum's theory concludes the opposite. This is because Nussbaum requires individuals to have human parents. As the first ever human beings do not have human parents, they do not satisfy P1 nor P5. This is the root of the Adam and Eve challenge.

### 4.3. A solution: new P1a and P5a

In this Section, I explore how Nussbaum can grant the first ever human beings the entitlement to a dignified life (and a human species norm). More precisely, I defend this can be done by alluding to individuals' genetic information. That is, instead of *having human parents*, Nussbaum should require *having the human-specific genetic information*.

Individuals have genetic information. Some of this information is what makes them members of a species. In other words, all members of a species share a specific genetic composition. Moreover, these genes are unique to the species. Meaning, members of different species have different species-related genes. This includes the human species. That is, members of the human species have a particular genetic information. Hence, only those individuals with the human-specific genetic information belong to the human species.

My proposal is to employ this genetic information as the substitute for requiring *having human parents*. In other words, Nussbaum should not ask whether individuals have human parents. Rather, she should ask whether they have the specific genetic information that makes them members of the human species. How would this impact Nussbaum's premise-conclusion structure?

First, this change would affect Premise 1:

P1: An individual is entitled to a life worthy of human dignity if she *has human parents*, and she has the minimal capacity for activity.

This premise captures Nussbaum's requirement of having human parents. If this condition were substituted by *having the human-specific genetic information*, the premise would look as follows:

P1a: An individual is entitled to a life worthy of human dignity if she *has the human-specific genetic information*, and she has the minimal capacity for activity.

In consequence, conclusion C1 would also change. That is:

P1a: An individual is entitled to a life worthy of human dignity if she *has the human-specific genetic information*, and she has the minimal capacity for activity.

P2: Having the minimal capacity for activity entails having an open-ended disjunction of the basic capabilities (i.e., intrinsic undeveloped powers) for major human life-activities.

C1a: An individual is entitled to a life worthy of human dignity if she *has the human-specific genetic information*, and she has an open-ended disjunction of the basic capabilities for major human life-activities.

Second, focusing on individuals' genetic information changes the way in which they are assigned a species norm. Thus, this affects Premise 5. That is, Nussbaum initially defends that:

P5: An individual belongs to a species community if she is born *to parents from that species*.

Now, with the focus on the individual's genetic information, this premise would take the form of a new Premise 5a. That is:

P5a: An individual belongs to a species community if she is born *with the species-specific genetic information*.

Consequently, the conclusions drawn from this part of the premise-conclusion structure would also change. With P5a, the new conclusions (i.e., C2b, and C3b) would include information about genes. That is:

P3: A species characteristic way of living is ethically valuable for an individual if it is her species-specific norm.

P4: The species-specific norm of an individual is determined by the species community she is a member of.

P5a: An individual belongs to a species community if she is born *with the species-specific genetic information*.

C2b: An individual has a species-specific norm if she is born *with the species-specific genetic information*.

C3b: A species-specific norm is ethically valuable for the members of the species community. Meaning, for the individuals born *with the species-specific genetic information*.

To summarise, in Section 4.2. I argue that the origin of the Adam and Eve problem lies in Nussbaum's requirement of *having human parents*. This condition is captured by Premises 1 and 5. In this Section, I suggest a solution to the Adam and Eve problem. Meaning, I defend that the requirement of *having human parents* should be substituted with a different criterion. Namely, *having the human-specific genetic information*. This change affects both Premises 1 and 5. Hence, they become new premises: P1a and P5a.

#### 4.4. Avoiding Adam and Eve

In this Section, I argue that employing individuals' genetic information is superior to Nussbaum's requirement of having human parents. It is superior because of three reasons. First, Nussbaum herself implicitly alludes to genes in her work. Second, all the individuals who are entitled in the original version of the CA would also be entitled in this updated version. Third, and most important, this change allows Nussbaum to avoid the Adam and Eve problem.

First, alluding to genes is not strange to Nussbaum's theory. Nussbaum hints at the genetic element in her work (e.g., 2007, 2008). For instance, she argues that individuals have a human species norm because they are born to human parents. Moreover, in Chapter 2, Section 2.6. I show that individuals would retain their membership in the human species community even if they were detached from their human parents. Hence, membership in the (human) species community is a characteristic that individuals must inherit before birth. Yet, the only information that children can inherit from their parents before birth is genetic. In sum, Nussbaum assumes that being born to human parents results in having some specific genetic composition.

Second, everyone that is entitled in the original version of the CA would also be entitled in this one. Meaning, Nussbaum's basis for the entitlement consists of (i) having human parents, and (ii) having the minimal capacity for activity. I defend substituting *having human parents* with *having the human-specific genetic information*. Everyone who is born to human parents has such genetic composition. Thus, all the individuals that satisfy Nussbaum's first criterion would also meet my requirement. In short, my proposal would not remove the entitlement from anyone who enjoyed it in Nussbaum's original version of the CA.

Third, and most importantly, this change allows Nussbaum to avoid the Adam and Eve problem. By substituting *having human parents* with *having the human-specific genetic information*, Nussbaum can answer successfully to the *Critic*. Let's analyse how this happens.

Before this change, the conversation was as follows:

*Nussbaum*: Santiago is entitled to a life worthy of human dignity. (i)

*Critic*: Why is Santiago entitled to such life? (ii)

*Nussbaum*: Because Santiago *is born to human parents*, and he has the minimal capacity for activity. Meaning, Santiago has an open-ended disjunction of basic capabilities for major human-life activities. (iii)

*Critic*: Why is Santiago required to have the minimal capacity for major human-life activities? (iv)

*Nussbaum*: Because Santiago's characteristic way of living is the human species norm. (v)

*Critic*: Why is Santiago's characteristic way of living the human species norm? (vi)

*Nussbaum*: Because Santiago belongs to the human species community. (vii)

*Critic*: Why does Santiago belong to the human species community? (viii)

*Nussbaum*: Because he *is born to parents from the human species*. (ix)

In short, as Nussbaum refers to the species of Santiago's parents, she falls into the Adam and Eve problem.

With the new requirement, however, Nussbaum could reply in a different manner. Note how answers (iii.a) and (ix.a) are different:

*Nussbaum:* Santiago is entitled to a life worthy of human dignity. (i)

*Critic:* Why is Santiago entitled to such life? (ii)

*Nussbaum:* Because Santiago *has the human-specific genetic information*, and he has the minimal capacity for activity. Meaning, Santiago has an open-ended disjunction of basic capabilities for major human-life activities. (iii.a)

*Critic:* Why is Santiago required to have the minimal capacity for major human-life activities? (iv)

*Nussbaum:* Because Santiago's characteristic way of living is the human species norm. (v)

*Critic:* Why is Santiago's characteristic way of living the human species norm? (vi)

*Nussbaum:* Because Santiago belongs to the human species community. (vii)

*Critic:* Why does Santiago belong to the human species community? (viii)

*Nussbaum:* Because *he has the human-specific genetic information*. (ix.a)

In sum, with the modification I propose, Nussbaum would avoid referring to the individual's parents. Consequently, she would apparently circumvent the Adam and Eve problem.

Nonetheless, the *Critic* could keep interrogating Nussbaum. Meaning, the *Critic* could inquire about the reason why Santiago has such genetic information. That is:

*Critic:* Why does Santiago have the human-specific genetic information? (x)

The immediate answer to the *Critic* might be:

*Nussbaum:* Because he is born to parents with the human-specific genetic information.

However, this reply would push Nussbaum towards the same well-known difficulty. Namely, the Adam and Eve problem. That is, what if Santiago were the first ever human being? His parents would not have the human-specific genetic information. Otherwise, they would belong to the human species. In conclusion, Nussbaum's reply would be incorrect. That is:

*Critic:* Why does Santiago (i.e., the first ever human being) have the human-specific genetic information? (x)

*Nussbaum:* Because he is born to parents with the human-specific genetic information.

In short, Nussbaum's answer to the *Critic* leads her to the same seemingly unavoidable difficulty.

Nevertheless, this does not need to be the case. In other words, I contend Nussbaum can answer the *Critic's* question without encountering the Adam and Eve problem. I show here how.

On the one hand, if Santiago is the first ever human being, he cannot have human ancestry. Meaning, his parents cannot belong to the human species. In other words, Santiago's parents have a different genetic composition than their child. Thus, Nussbaum's answer is incorrect. That is, the reason why Santiago is born with the human-specific genetic information is not that his parents have the human-specific genetic information.

On the other hand, however, genes can only be transferred from parents to children. Meaning, Santiago's parents are the only source of Santiago's genetic information. Therefore, it is true that Santiago has that genetic information because he is born to his parents. In other words, with different parents, he would have different genes. Yet, his parents have different genetic information than him. Hence, even if Santiago inherits his genes from his parents, this does not imply that genetic information is transmitted without modifications.

In consequence, Nussbaum's answer must change. Her reply should still allude to Santiago's parents, for they are the reason why Santiago has his specific genetic information. Nonetheless, Nussbaum's answer should concede that parents might have different species-related genes than their children. That is, the right answer to the *Critic* is the following:

*Critic:* Why does Santiago (i.e., the first ever human being) have the human-specific genetic information? (x)

*Nussbaum:* Because *he inherited it from his parents.* (xi)

The *Critic* could continue the interrogation. Yet, this answer would allow Nussbaum to avoid the Adam and Eve problem. Meaning, she would refer to the individual's parents. However, this reference would not pose a threat to Nussbaum's theory anymore. That is, every individual is born to parents. Furthermore, every individual inherits her genes from her parents. Hence, Nussbaum's answer would be safe from the Adam and Eve challenge.

To summarise, I claim that Nussbaum should modify her requirement of *having human parents*. My proposal is to substitute it with *having the human-specific genetic information*. This alternative is superior to Nussbaum's condition. I offer three reasons as to why this is the case. First, Nussbaum already hints at the genetic element in her work. Second, my proposal would not remove the entitlement from anyone. Meaning, every individual who is entitled in Nussbaum's original CA would also be entitled in this updated version. Third, and most importantly, if Nussbaum adopted my suggestion, she would avoid the Adam and Eve problem. This is the main advantage of the adjustment I defend.

## 4.5. Challenges to my proposal

Assigning the entitlement to a dignified life based on the genetic information of individuals presents some advances. Crucially, it avoids the Adam and Eve problem. However, it also encounters important shortcomings. I have identified some of these difficulties. Nonetheless, I do not have the space to address them. Hence, I trust in the audacity of future researchers to solve them.



First, I doubt whether the distinction between pre-humans and humans could be drawn on an individual level. Meaning, I am sceptic that it would be possible to find real cases of first ever human beings. I find it difficult to conceptualise that the parents are not human, while the child is. Changes between species may be more subtle.

Second, focusing on the genetic information of individuals distorts the boundaries between species community and species. That is, P3a establishes that an individual belongs to the species community if she has the specific genetic information. What would then be the difference between belonging to the species and belonging to the species community?

Third, it might be challenging to determine the genetic information of each species community. Some species may have similar genes.

In sum, these challenges suggest some complications of my approach. Surely, some of them would have to be addressed to solidify my proposal. Nonetheless, I believe they do not extinguish the advantages it may have.

## 4.6. Conclusion

Nussbaum would defend that the first ever human beings are not entitled to a dignified life. Similarly, she would conclude that they do not have a human species norm. I contend this is counterintuitive.

In this Chapter, I discuss a possible solution to the Adam and Eve problem. Namely, I contend that the entitlement to a dignified life should not depend on *having human parents*. Rather, it should depend on *having the human-specific genetic information*. By requiring this, instead of parents' membership in the human species, Nussbaum would be able to avoid the Adam and Eve problem.

In Section 4.2. I identify the origin of the problem. Namely, referring to the human species membership of individuals' parents. This is problematic because the parents of the first ever human beings do not belong to the human species. It affects Nussbaum in two ways.

First, it concerns the basis for the entitlement to a dignified life through Premise 1. In a premise-conclusion form:

P1: An individual is entitled to a life worthy of human dignity if she *has human parents*, and she has the minimal capacity for activity.

P2: Having the minimal capacity for activity entails having an open-ended disjunction of the basic capabilities (i.e., intrinsic undeveloped powers) for major human life-activities.

C1: An individual is entitled to a life worthy of human dignity if she *has human parents*, and she has an open-ended disjunction of the basic capabilities for major human life-activities.

Second, it affects how Nussbaum assigns the species norm through Premise 5. That is:

P3: A species characteristic way of living is ethically valuable for an individual if it is her species-specific norm.

P4: The species-specific norm of an individual is determined by the species community she is a member of.

P5: An individual belongs to a species community if she *is born to parents from that species*.

C2a: An individual has a species-specific norm if she *is born to parents from that species*.

C3a: A species-specific norm is ethically valuable for the members of the species community. Meaning, for the individuals *born to parents from that species*.

In short, Nussbaum's version of the CA cannot explain why the first ever human beings are entitled to a dignified life, and why they have a human species norm.

Then, in Section 4.3. I suggest a solution. Namely, substituting the requirement of *having human parents* with the condition of *having the human-specific genetic information*. This would modify how Nussbaum determines whether an individual is entitled to a dignified life (P1a). That is:

P1a: An individual is entitled to a life worthy of human dignity if she *has the human-specific genetic information*, and she has the minimal capacity for activity.

P2: Having the minimal capacity for activity entails having an open-ended disjunction of the basic capabilities (i.e., intrinsic undeveloped powers) for major human life-activities.

C1a: An individual is entitled to a life worthy of human dignity if she *has the human-specific genetic information*, and she has an open-ended disjunction of the basic capabilities for major human life-activities.

Likewise, it would also change how Nussbaum assigns the species norm (P3a). That is:

P3: A species characteristic way of living is ethically valuable for an individual if it is her species-specific norm.

P4: The species-specific norm of an individual is determined by the species community she is a member of.

P5a: An individual belongs to a species community if she is born *with the species-specific genetic information*.

C2b: An individual has a species-specific norm if she is born *with the species-specific genetic information*.

C3b: A species-specific norm is ethically valuable for the members of the species community. Meaning, for the individuals born *with the species-specific genetic information*.

Finally, in Section 4.4. I show that this alternative is superior to Nussbaum's original requirement. It is superior because of three reasons. First, Nussbaum implicitly assumes genetic information in her work. Second, my alternative would not remove the entitlement from anyone who is entitled in Nussbaum's original CA. Third, and most importantly, requiring the human-specific genetic information helps Nussbaum avoid the Adam and Eve problem. This is how:

*Nussbaum*: Santiago is entitled to a life worthy of human dignity. (i)

*Critic*: Why is Santiago entitled to such life? (ii)

*Nussbaum*: Because Santiago *has the human-specific genetic information*, and he has the minimal capacity for activity. Meaning, Santiago has an open-ended disjunction of basic capabilities for major human-life activities. (iii.a)

*Critic*: Why is Santiago required to have the minimal capacity for major human-life activities? (iv)

*Nussbaum*: Because Santiago's characteristic way of living is the human species norm. (v)

*Critic*: Why is Santiago's characteristic way of living the human species norm? (vi)

*Nussbaum*: Because Santiago belongs to the human species community. (vii)

*Critic*: Why does Santiago belong to the human species community? (viii)

*Nussbaum*: Because *he has the human-specific genetic information*. (ix.a)

*Critic*: Why does Santiago (i.e., the first ever human being) have the human-specific genetic information? (x)

*Nussbaum*: Because *he inherited it from his parents*. (xi)

## Conclusion – “What a fish it was”<sup>24</sup>

Nussbaum claims that certain individuals should have the opportunity to live a life “worthy of the dignity of the human being” (2007, p. 180). In this thesis I analyse such claim.

In Chapter 2, I do four main things. First, I examine (a) the subject of Nussbaum’s statement. Second, I analyse its (b) predicate. Third, I reconstruct Nussbaum’s argument in a premise-conclusion structure. Fourth, I illustrate Nussbaum’s reasoning by exemplifying how she would reply to a *Critic*’s questions.

First, I address (a) the subject of Nussbaum’s claim (Chapter 2, Section 2.2.). Meaning, I discuss which individuals are entitled to a dignified life. Briefly, Nussbaum argues that an individual is entitled to a life with human dignity if she satisfies two conditions (2007, 2008, 2011a). Namely:

- (i) First criterion: having human parents.
- (ii) Second criterion: having the (minimal) capacity for activity.

Second, I examine (b) the predicate of the claim (Chapter 2, Section 2.3.). That is, I inquire into the meaning of *being entitled to a life worthy of human dignity*. Then, I explore the concept of species norm (Chapter 2, Section 2.4.). Roughly, the species norm is the characteristic way of living of a species (Nussbaum, 2007). Subsequently, I address the idea of species community (Chapter 2, Section 2.5.). Broadly, a species community is a group of individuals with the same species norm (Nussbaum, 2007). Moreover, I conclude that membership to the species community depends on the species of the individual’s parents (Chapter 2, Section 2.6.).

Third, I build the premise-conclusion structure of Nussbaum’s argument. That is:

P1: An individual is entitled to a life worthy of human dignity if she has human parents, and she has the minimal capacity for activity.

P2: Having the minimal capacity for activity entails having an open-ended disjunction of the basic capabilities (i.e., intrinsic undeveloped powers) for major human life-activities.

C1: An individual is entitled to a life worthy of human dignity if she has human parents, and she has an open-ended disjunction of the basic capabilities for major human life-activities.

P3: A species characteristic way of living is ethically valuable for an individual if it is her species-specific norm.

P4: The species-specific norm of an individual is determined by the species community she is a member of.

P5: An individual belongs to a species community if she is born to parents from that species.

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<sup>24</sup> Hemingway (1952/1999, p. 96)

C2a: An individual has a species-specific norm if she is born to parents from that species.

C3a: A species-specific norm is ethically valuable for the members of the species community. Meaning, for the individuals born to parents from that species.

P6: The human species norm (i.e., the characteristic way of living of the human species) is living as political and social animals.

C4: Living as political and social animals is ethically valuable for those individuals with a human species norm.

Fourth, I put Nussbaum in conversation with a *Critic*. Chapter 2 shows how Nussbaum would reply to the *Critic*'s questions.

In Chapter 3, I criticise one aspect of Nussbaum's argument. Namely, the criteria that individuals must meet to be entitled to a dignified life. My claim is that Nussbaum's criteria lead to counterintuitive results. Broadly, Nussbaum would intuitively defend that an individual like Santiago is entitled to a life with human dignity. However, I show that, under certain circumstances, her criteria would conclude the opposite.

To support my claim, I defend two criticisms. The first criticism presents the case of the first ever human beings (Chapter 3, Section 3.2.). Namely, the Adam and Eve problem. These individuals are members of the human species with enough minimal capacity for activity. Intuitively, they are entitled to a life with human dignity.

However, these individuals do not have human parents. In consequence, Nussbaum's criteria would have to conclude that they are not entitled to a dignified life. This, I contend, is a counterintuitive result.

The second criticism alludes to another problematic situation (Chapter 3, Section 3.3.). Briefly, Nussbaum argues that individuals in a PVS have a "group of major human capabilities [...] irrevocably and entirely cut off" (2007, p. 181). Thus, she concludes that they are not entitled to a life with human dignity.

Nonetheless, I show that Nussbaum's position implies an uncomfortable situation. Namely, Nussbaum must accept that parents without dignity can give birth to children with dignity.

Finally, in Chapter 4, I contend that Nussbaum's CA cannot solve the Adam and Eve problem. This is because Nussbaum refers to the species of individuals' parents on two occasions. Namely, in Premises 1 and 5 (Chapter 4, Section 4.2.).

To avoid the Adam and Eve challenge, I argue that Nussbaum should stop alluding to the species membership of parents (Chapter 4, Section 4.3.). I suggest substituting Nussbaum's *having human parents* with an alternative criterion. Namely, *having the human-specific genetic information*. Furthermore, with this modification, Nussbaum's CA could circumvent the problem of Adam and Eve (Chapter 4, Section 4.4.). Meaning, the CA would be able to defend that the first ever human beings are entitled to a life with human dignity. In other words, Nussbaum would have the tools to satisfy her intuition.

The adapted premise-conclusion structure would be the following:

P1a: An individual is entitled to a life worthy of human dignity if she *has the human-specific genetic information*, and she has the minimal capacity for activity.

P2: Having the minimal capacity for activity entails having an open-ended disjunction of the basic capabilities (i.e., intrinsic undeveloped powers) for major human life-activities.

C1a: An individual is entitled to a life worthy of human dignity if she *has the human-specific genetic information*, and she has an open-ended disjunction of the basic capabilities for major human life-activities.

P3: A species characteristic way of living is ethically valuable for an individual if it is her species-specific norm.

P4: The species-specific norm of an individual is determined by the species community she is a member of.

P5a: An individual belongs to a species community if she is born *with the species-specific genetic information*.

C2b: An individual has a species-specific norm if she is born *with the species-specific genetic information*.

C3b: A species-specific norm is ethically valuable for the members of the species community. Meaning, for the individuals born *with the species-specific genetic information*.

P6: The human species norm (i.e., the characteristic way of living of the human species) is living as political and social animals.

C4: Living as political and social animals is ethically valuable for those individuals with a human species norm.

In addition, the definitive conversation with the *Critic* would be as follows:

*Nussbaum*: Santiago is entitled to a life worthy of human dignity. (i)

*Critic*: Why is Santiago entitled to such life? (ii)

*Nussbaum*: Because Santiago *has the human-specific genetic information*, and he has the minimal capacity for activity. Meaning, Santiago has an open-ended disjunction of basic capabilities for major human-life activities. (iii.a)

*Critic*: Why is Santiago required to have the minimal capacity for major human-life activities? (iv)

*Nussbaum*: Because Santiago's characteristic way of living is the human species norm. (v)

*Critic*: Why is Santiago's characteristic way of living the human species norm? (vi)

*Nussbaum*: Because Santiago belongs to the human species community. (vii)

*Critic*: Why does Santiago belong to the human species community? (viii)

*Nussbaum*: Because *he has the human-specific genetic information*. (ix.a)

*Critic*: Why does Santiago (i.e., the first ever human being) have the human-specific genetic information? (x)

*Nussbaum*: Because *he inherited it from his parents*. (xi)

To summarise, the purpose of this thesis is simple. I attempt a humble project. First, I analyse one claim from Nussbaum's Capabilities Approach. Then, I identify a slippery problem. This problem confronts (what I defend are) Nussbaum's intuitions with Nussbaum's theory. Finally, I explore a way in which Nussbaum could reconcile her theory with her intuitions.

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