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Nussbaum's Capabilities Approach and Religion

Michael Skerker / *Chicago, Illinois*

Martha Nussbaum has proposed the "capabilities approach" as a universal framework for the assessment of women's quality of life.[1] Hers is an entry into two debates: between cultural relativists and moral essentialists, on the one hand, and between liberal theorists who wish to afford special rights to groups, including religious groups, and those concerned that group rights (particularly for illiberal groups) come at the expense of the rights of women and children, on the other.[2] Nussbaum's proposal is meant to have enough "critical bite" to criticize cultural practices many feel to be exploitative—providing the justification for a government's prohibition of these practices—without forcing members of a pluralistic state to abandon their own cultures and doctrines in favor of an alien, if putatively neutral, political philosophy.

The capabilities approach is meant to be a political-liberal project, structured to correct for the shortcomings of John Rawls's original political-liberal proposal. As such, it is meant to provide a framework for

[1] The proposal is in her book *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000) (hereafter cited as *WHD*), "Nature, Function and Capability: Aristotle on Political Distribution," in *Oxford Studies in Ancient Philosophy*, suppl., vol. 1 (1998), pp. 143–98 (hereafter cited as *NFC*), "Aristotelian Social Democracy," in *Liberalism and the Good*, ed. R. B. Donaldson et al. (New York: Routledge, 1990), pp. 203–52 (hereafter cited as *ASD*), "Non-relative Virtues: An Aristotelian Approach," in *The Quality of Life*, ed. Martha Nussbaum and Amartya Sen (Oxford: Clarendon, 1993), pp. 242–69 (hereafter cited as *NRV*),"Aristotle, Nature, and Ethics," in *World, Mind, and Ethics: Essays on the Ethical Philosophy of Bernard Williams*, ed. J. E. J. Altham and Ross Harrison (Cambridge: Cambridge University Press, 1995), pp. 86–131 (hereafter cited as *ANE*), "Human Capabilities, Female Human Beings," in *Women, Culture, and Development*, ed. Martha Nussbaum and Jonathan Glover (Oxford: Oxford University Press, 1995) (hereafter cited as *HC*), "Human Functioning and Social Justice: In Defense of Aristotelian Essentialism," *Political Theory* 20 (1992): 202–46 (hereafter cited as *HF*), and, with Amartya Sen, "Internal Criticism and Indian Rationalist Tradition," in *Relativism: Interpretation and Confrontation*, ed. Michael Krausz (Notre Dame, Ind.: Notre Dame University Press, 1989), pp. 298–325 (hereafter cited as *IC*).

[2] See, e.g., Susan Moller Okin, *Is Multiculturalism Bad for Women?* (Princeton, N.J.: Princeton University Press, 1999).

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a stable and enduring political union for groups with diverse religious, moral, and cultural allegiances. Such a framework—a "political conception of justice"—would create a common vocabulary and grammar of value with which groups with disparate understandings of the good life could nonetheless communicate and debate proposals for the allocation of the state's resources. A political conception of justice is meant to have relevance to only political, social, and economic institutions—its value terms referring to a shared public culture—with its principles "freestanding," not derived from the metaphysical grounds of any particular religion or philosophy.[3] Nussbaum's list of capabilities is meant to take the place of Rawls's "primary goods," social goods identified by the political conception of justice that seem basic to any particular pursuit of the good life. Nussbaum's particular concern is to conceive of a mode of criticism for what appears to be a cultural or religious group's systematic, gender-specific exploitation in a way that is neither "dictatorial about the good," nor perceived by the group as irrelevant because rooted in an alien (and probably hostile, recently colonial) value system. To avoid these pitfalls, a critique must rest on grounds acknowledged—not necessarily as metaphysically true, but as fit to be "treated as true" for political purposes—by the criticized group. These grounds must be able to be incorporated into a group's "comprehensive doctrine"—its all-encompassing value system—as the political application of that doctrine. If this incorporation can occur, criticism based on these grounds would be congruent with the group's native values and would thus not merely be alien criticism from an outside critic. These grounds of critique—a "political conception of justice"—must not then, like a baboon heart in a human body, irreconcilably conflict with the comprehensive doctrine meant to host it. I will argue that Nussbaum's project has an unintended metaphysical character and so fails to meet its own desiderata, inhibiting its adoption by, and application to, the very sorts of groups with which a feminist ought be most concerned.

Nussbaum allows that since her theory has a normative core, it may conflict with certain doctrines, and that a theorist need not attempt to include every conceivable doctrine in the design of a prescriptive political theory.[4] To be sure, a defender of the capabilities approach can trade on these ambiguous criteria to preserve the coherence of the proposal with its desiderata. I will explore the ways in which the capabilities approach may conflict with extant worldviews, exposing dimen-

[3] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 13.
[4] *WHD*, p. 160.

sions of conflict perhaps unanticipated by the approach's defenders. I will argue that its prima facie exclusion of illiberal groups (e.g., theologically conservative religious groups with inegalitarian gender norms) is problematic for the following reasons: it is precisely these groups whose treatment of women is often of concern to liberals, the proportions of illiberal adherents in modern nations and protonations is significant, and the marginalization of these groups will likely produce political instability.

This article will not criticize the capabilities approach in terms of its quality as a moral doctrine, its notion of the person, or the quality of citizen it hopes to produce. Nor will I criticize its usefulness as a benchmark for development programs—analogous to a nutritional standard or literacy benchmark—that an aid agency may elect to use (prescinding from a process of moral justification).[5] Rather, this article is an attempt to gain some clarity about the nature and scope of the capabilities approach, particularly with respect to religion. By so doing, I will attend also to some general limitations of political-liberal, and liberal theory with respect to religion. In Section I, I will explicate Nussbaum's capabilities approach and the pluralistic environment to which it claims relevance. In Section II, I will offer a theoretical critique, and in Section III, a practical critique. Though I do not have the space in Section IV to develop a political model analogous to Nussbaum's, I will appeal to an early article of hers to sketch an approach to intercultural critique utilizing the capabilities approach as a strictly moral—as opposed to political—theory.

I

Operating in an intercultural arena characterized by many views of the good life, Nussbaum is sensitive to arguments questioning the possibility or propriety of drafting a universal theory of the good or the right. She wishes to avoid the assumption that a Western, secular lifestyle is superior to traditional ones, for example, lifestyles oriented around a theologically conservative religiosity, or ones that for theological or other reasons promote inegalitarian, collectivist, or nonrationalist practices and beliefs.[6] She accepts that a broad range of nonexploitative

[5] An aid agency needs to come to some decision about how to apportion its resources—needs to cut off discussion at some point and elect some standard. Just as a Christian aid agency can judge that people in the developing world need both bread and salvation and can spend its money accordingly, the United Nations or another agency could more or less summarily judge that its resources will be appropriated in ways indicated by the capabilities approach.

[6] *WHD*, p. 41.

cultural practices enriches a society, and so a homogeneous culture should not necessarily be considered the aim of politics and political theory.[7] Finally, her desire to avoid paternalism suggests a political, rather than a comprehensive, liberal model so that we might "respect the many different conceptions of the good citizens may have and to foster a political climate in which they will each be able to pursue the good (whether religious or ethical) according to their own lights. In other words we want universals that are facilitative rather than tyrannical, that create spaces for choice rather than dragooning people into a desired mode of functioning."[8]

A political-liberal model presents its proposals concerning rights and goods owed citizens not as proceeding from a metaphysical or religious anthropology, but as practically indicated by the needs of a pluralistic society. The normative core of a political-liberal theory regards only how people must be considered as political actors (or potential actors, in the case of children). The scheme of rights should, and must, be incorporated into citizens' more comprehensive religious, philosophical, or moral beliefs as the political applications of those beliefs. The point of a political-liberal construction is to reposition liberal philosophy to offer a framework of procedural norms insuring peaceable coexistence and the freedom to pursue individual and group goals, without forcing citizens to accept that framework in place of their more comprehensive value systems.

The paradigmatic situation that the capabilities approach seeks to assess is one in which a woman voices her preference for a situation that strikes an outsider as grossly disadvantageous, when the woman lives in a cultural environment that upholds the disadvantageous position as a norm for women. According to Nussbaum, liberal rights schema and standard economic assessment models are unable to criticize and intelligently assess this situation because they purposely exclude a substantive model of the human good. Abuse cannot be criticized unless there is a normative standard for nonabusive behavior, and the articulation of such a standard is impossible without an account of human nature. The deontological concern with rights and fair procedures assumes that there will be a plurality of goods held by members of a society, all justifiably pursued so long as the pursuit respects the rights of others to do the same. The assumption is that people more or less know what is in their interest and will pursue these goods unbidden. The feminist critique of this assumption points out that in

[7] Ibid., p. 50.
[8] Ibid., p. 59.

many cultures, the self-direction assumed by liberal theory is characteristic of a male prerogative that is denied to women. In many cultures, women are denied the means of determining their own good because of a deprivation in education and a series of cultural and religious practices that inculcate or explicitly demand that women be controlled, cloistered, and made dependent on men. Liberal theories therefore cannot always be used to address women's predicaments, even when useful for criticizing exploitative situations in which men are being denied self-determination. This is the case simply because it cannot always be said that women have a self-identified good (apart from that of their husband's or family's), that is being impinged. If asked about her satisfaction, a woman might well say, "No, I'm fine, what else can I expect?"

Nussbaum does of course recognize the reason behind deontologists' reticence to determine a human good. She recognizes the dangerous, paternalistic tendencies of (predominately Western) moral theories that presume to know the scope of the good life. As a result, her theory has two guiding concerns: it must have enough "critical bite" to address what seem to be instances of gender-specific oppression and, at the same time, leave room for people to follow their own conceptions of the good life. This mix of teleological and deontological motives results in a theory that contains a substantive account of the "fully functioning human being," but which also, for political purposes, avoids mandating the acceptance of the model by all concerned. The substantive account of full human functioning informs the generation of a list of capabilities: capabilities to actually function in a certain way. The capability to use practical reason, for instance, is actualized in the habitual use of practical reason. It is the capabilities—including the capabilities to use practical reason, experience emotions, enjoy social affiliation, enjoy sexual function, and maintain bodily integrity, among others—that are to be politically mandated, with their provision and protection being the governments' business. Their provision or lack of provision ought also to be the common reference for citizens' debates about society's obligations.

Nussbaum develops this notion of fully functioning humanity in dialogue with Aristotle and Karl Marx, intuiting first that "there are certain functions that are particularly central in human life, in the sense that their presence or absence is typically understood to be a mark of the presence or absence of human life." The second intuition is that there is a quality to the performance of these actions when performed by humans that sets them apart from functionally similar actions of nonhuman animals: the involvement of practical reason and sociabil-

ity.[9] The capabilities enable, but do not mandate, the pursuit of various features of the substantive account of fully functioning humanity. It is not the functioning of a person that will be judged good or bad—not whether a woman is sexually active or celibate, for example—but whether or not the conditions have been provided such that she has both the right and the real ability to weigh the merits of each function and then choose the one she deems most appropriate. As Nussbaum conceives it, the theory's emphasis on capability, rather than function, is the novel feature that successfully meets the three guiding concerns mentioned above. It is what makes it a political conception of justice, rather than a comprehensive doctrine.[10] By mandating only the provision of capabilities, and not the execution of specific acts, the capabilities approach preserves the right of individuals to follow the traditions of their own culture. All that must be guaranteed is their real (and not just formal) right to choose one form of life over the other. Thus, provided with the basic capabilities, a woman may elect to pursue a life divergent from the fully functioning life the capabilities are derived from or—since the list is not meant to be an exhaustive moral account—to select functions that go beyond the ones implied by the listed capabilities.[11] At the same time, this framework provides a benchmark for the critique of abusive or exploitative state of affairs by defining injustice as a situation in which these capabilities are not fostered or not allowed to develop.

The critical part of this article will argue that the capabilities approach is not a pliantly neutral system that many different groups could endorse without abandoning their own comprehensive convictions. It could be endorsed by many cultural and religious groups but would not be accommodating of illiberal groups that a theory like Nussbaum's should be concerned to include. Nussbaum recognizes diversity as a value unto itself, but not as an absolute one, and allows that there may well be ways of living that should not be encouraged.[12] In response to this argument,

[9] Ibid., p. 72.

[10] Ibid., pp. 87, 96.

[11] On this point, it must be understood that the capabilities list is meant to refer to what Nussbaum calls combined capabilities, where the internal capability (or power) to do something is met with the external conditions necessary for that function. So, e.g., a woman with the internal capability of practical reason and with enough food to eat can truly be choosing when she decides to fast as part of a religious observance. Lacking either the internal ability to decide for herself or the material environment that makes the choice one between viable alternatives (i.e., there is a difference between fasting and starving), she cannot be said to have freely chosen, and a theorist would be right to call the woman's situation unjust (ibid., p. 85).

[12] Ibid., p. 50.

I would claim the following: it is precisely those cultures fostering the most prevalent types of "principled," gender-specific exploitation that the capabilities approach (or a theory that similarly means to persuade, rather than force people to adopt liberal behavior) needs to be able to address. To be sure, Nussbaum and I can disagree as to whether any particular group is one we want to try and include in our polity, or if it is beyond the pale. Given the philosophical (as opposed to Rawls's putatively historical) grounding of her project, this discussion would also turn on whether the group's self-exemption from the Aristotelian process of cooperatively and dialogically determining human nature betokens a legitimate philosophical critique of that process, or is an aberration from it, like madness or ignorance. Whatever the result of that conversation, the following two practical issues should be considered. First, politically marginalized groups rarely interpret their marginalization as a rebuke to their practices. Rather, they surround themselves with like-minded people, further insulating their notions from challenges. Second, the exclusion of significant minorities from the political process and social structure may lead to political instability. Isolated cults and minority religions are far less likely to wither away and die for inattention today given the power of modern communication technologies to connect individuals, disseminate information, and provide access to dangerous expertise. If members of unpopular, and perhaps justly decried, movements once interpreted their isolation as confirmation of their elect status, and the corrupt state of the world, they do so today armed with the real ability to bring about cataclysms that, in their minds, will illumine the current darkness.

The attractiveness of a political-liberal construction to theorists sensitive about charges of paternalism is clear. Such a construction seeks the conditions for political unity among groups with disparate notions of the good, without forcing these groups to abandon their own notions of the good. This article will argue that if the capabilities approach were adopted by a polity, it would fail to be other than a heteronomous imposition of a sort of comprehensive liberal doctrine. Some groups might reasonably reject the approach as denying their own notions of ultimate reality and, to the extent that the approach undergirds coercive state action, as threatening the continuity of their cultures or religions.[13]

[13] I am using the word "reasonable" in Rawls's sense: a state describing one's willingness to adhere to rules that one in turn expects others to follow.

II

While the capabilities list is meant to be accepted by all, it is not thought to be heteronomous because it is "facilitative rather than tyrannical": it demands the provision of capabilities rather than the performance of actions. In this section, I will argue that even the demand for capabilities is heteronomous, because the character of the substantive anthropological account—which mandates the capabilities—irreconcilably conflicts with the anthropological cores of comprehensive doctrines whose adherents Nussbaum hopes will adopt the capabilities list. In Rawls's terms, the capabilities approach exceeds the parameters of a political conception of justice and amounts to a partial comprehensive doctrine.[14] As such, it appears to be a bad candidate for a political-liberal theory. If we discard the Rawlsian parameters of political liberalism, the capabilities approach still appears to be a bad candidate for a viable and inclusive platform for uniting a pluralistic society, if that society includes illiberal groups.[15]

We first need to clarify Rawls's and Nussbaum's usage of the terms "metaphysics" and "comprehensive doctrines." Neither Rawls nor Nussbaum explicitly delineate what they mean by the term "metaphysics." However, it seems fair to say that they distinguish "metaphysics" in a strict sense, meaning an account of being qua being, from "metaphysics" in a broad sense, meaning roughly the same as a "comprehensive doctrine."[16] With respect to "comprehensive doctrines," Rawls identi-

[14] As I see it, the question of whether Nussbaum's capabilities approach is, or amounts to, a comprehensive or metaphysical doctrine can be answered in one of three ways, the third of which I think is most pertinent to the claims of this article. First, we could ask if the capabilities approach is a recognizable historical comprehensive doctrine to which many adhere, like Catholicism or evangelical Protestantism; the answer to this, clearly, is no. Second, we might ask if it seems to participate in, or be a particular expression of, a historical comprehensive doctrine or metaphysical doctrine. To this we might answer in the affirmative, to the extent that it is consistent with an Aristotelian worldview. Nussbaum argues that hers is not a metaphysical doctrine in part because while it is avowedly an Aristotelian project, Aristotle's moral and political project is not metaphysical (cf. *ANE* [n. 1 above], and *ASD* [n. 1 above], p. 217). I will not engage Nussbaum about the character of Aristotle's work here, but just note her own admission that her thesis is controversial (*ASD*, p. 217). Third, we can ask if the capabilities approach has the general form of a comprehensive doctrine to the extent that it answers, or assumes answers to, profound questions of human and social purpose.

[15] Nussbaum does not say that she intends to strictly follow Rawls's formulations but uses verbiage like "in the spirit of" (*WHD* [n. 1 above], p. 74). Accordingly, my main point is not to convict her of being an inconstant Rawlsian.

[16] Rawls acknowledges that there is no accepted definition of the term (*Political Liberalism* [n. 3 above], p. 29, n. 31) Both thinkers use the term to refer to doctrines historically identified as metaphysical and associated with a particular thinker or school, e.g., Thomist, Cartesian, Leibnizian, etc. They further identify "metaphysics" as something that they wish to avoid in their theorizing and that from which their programs avowedly maintain independence. Rawls allows that the avowed avoidance of metaphysics may imply a metaphysical thesis, namely,

fies such a doctrine as "includ[ing] conceptions of what is of value in human life, and ideals of personal character . . . and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole." A partial comprehensive doctrine is one that "comprises a number of, but by no means all, nonpolitical values and virtues and is rather loosely articulated."[17]

I will now consider how Nussbaum treats the integration of the capabilities list, with its implied notion of human good, into a multicultural polity whose member cultures already have significant understandings of the human good. If the capabilities approach is a political conception of justice, its substantive account of the human good, and the capabilities derived from it, should not displace the substantive elements of prospective "host" comprehensive doctrines. If the substantive aspects of the capabilities approach cannot exist alongside the "host" comprehensive doctrine of the indigenous culture, then this would seem to indicate that there is something blocking its incorporation. In other words, the capabilities approach has elements of a comprehensive doctrine, or it is a comprehensive doctrine itself.

A

Nussbaum treats the problem of assessing an individual's stated preference for a role that seems disadvantageous from an outsider's perspective (i.e., one lacking the capabilities) in a culture where that disadvantage is upheld as the norm. Nussbaum stipulates that while every preference is socially habituated—echoing George Orwell—some preferences must be valued above others. The acceptance of the proposed capabilities in the political environment (or for the purposes of theorizing about the proper foundations of the state) is not optional. "A habituated preference not to have an item on the list (political liberties, literacy, equal political rights or whatever) will not count in the social choice function and the equally habituated preference to have these things will count."[18] A choice for a certain function is legitimate once the capabilities are accepted, but neither A, a choice for a function in the absence of the lexically prior capabilities, nor B, a choice against having one of the capabilities, will be considered politically

that no metaphysical doctrine is required for the purposes of the project. He feels, however, that no particular metaphysical doctrine is required, and, therefore, no particular doctrine is denied, for the construction of his political ideas. Whatever metaphysical theses are implied in his work are too general to be associated with any particular doctrine; as such, the putative metaphysical implications of his project are trivial to the project (ibid.).

[17] Ibid., p. 13.

[18] Ibid., p. 149.

acceptable. For instance, neither an uneducated woman's stated preference to defer judgments about her well-being to her husband (A), nor her preference against receiving an education (B), will be countenanced as authentic choices. Rather, they may be deemed evidence of a "false consciousness," part of an oppressive system that has been adopted by the oppressed.

Nussbaum attempts to account for this bias toward positive choices for the capabilities both theoretically and empirically. With respect to theory, the decision in favor of the capability of practical reason is justifiable because—in reference to the substantive model of human functioning—it constitutes the "enabling core of whatever else human beings choose."[19] The substantive model tells us that choice informed by practical reason is constitutively human. One who is fully human "shapes his or her own life, rather than being passively shaped or pushed around by the world in the manner of a 'flock' or 'herd.'"[20] Qua theorist, Nussbaum knows the capabilities are worthy of privilege, but this certainty is chastened by a concern to avoid paternalism. Nussbaum is therefore concerned to see that people in traditional cultures actually seem to agree with her and to want the capabilities.

Nussbaum argues that one can trust an individual's choice to have one of the capabilities, and distrust a choice against having one of the capabilities, because of the resonance between human desire and the substantive account of human functioning. We ought to consider desire salient, because its suffusion with rationality makes it a humanly significant part of a personality.[21] Conceived "similarly" to Aristotle's *prohairesis* (deliberative desire), I take it that on Nussbaum's account, desire properly includes a component of knowledge about the nature of one's constitutively human good.[22] This is the good that Nussbaum describes (at least in basic form) in the substantive account of the fully functioning human being. This substantive notion of the good, and the desires associated teleologically with it, are understood to hold preculturally—to describe the human being as such. "Desires for food, for mobility, for security, for health, and for the use of reason—these seem to be relatively permanent features of our make up as humans, which culture can blunt, but not altogether remove."[23] A "truly informed" human desire, then, is one that performs its natural teleological func-

[19] Ibid.
[20] Ibid., p. 72.
[21] Ibid., p. 155.
[22] Ibid.
[23] Ibid.

tion with respect to human flourishing, while a malformed desire does not conduce to human flourishing. One might ask how we are to distinguish informed desire from uninformed desire beyond a formal definition of tending toward, and away from, human flourishing?

For Nussbaum, we need not necessarily apply a consequentialist criterion to the evaluation of desires: for example, the good is X; informed desires are for the good; and, therefore, informed desires are for X (or X-derived things). In Nussbaum's use of the phrase "informed desire," the modifier refers to conditions of desire formation in which people have the opportunity to learn about the outside world, free from intimidation and desperate want.[24] Her claim is that desires formed under these circumstances will, more often than not, be the true, informed kind, conducive to human flourishing. The corrupting effects that oppressive cultures may have on desire are corrected against by the removal—at least in the short term (i.e., in a specific workshop or women's shelter)—of suspect cultural elements. Nature, as it were, is allowed to reassert itself. We therefore do not need to use a consequentialist criterion of the human good to distinguish informed desire from uninformed desire, because we have already incorporated congruence with the substantive account of the human good into the conditions of desire formation.[25]

Now, a stated preference for the capabilities, in an environment where women are already treated as capability bearers, may demonstrate nothing more than the idea that humans' preferences are malleable.[26] Nussbaum argues that we can trust a person's informed desire to have one of the capabilities, because the desire is informed by what conduces to true human functioning. The modifier "informed" has objective, and not just culturally contingent, content, referenced to the human being as such. To redeem this claim and refute the critic, Nussbaum needs to show that the conditions for informed desire, recommended by the substantive account (free access to relevant information about the role of the capabilities and associated functions in real women's lives, respect, nonpenury, nonintimidation, etc.) are disanalogous to those suspect conditions of the local culture, which are perhaps also capable of producing desires commensurate with itself. She must show that the recommended conditions are not merely the particular conditions of Western liberal culture but "control" conditions in which true human nature can reveal itself.

[24] Ibid., p. 152.
[25] Ibid., p. 151.
[26] Compare ibid., p. 161.

B

How does Nussbaum know *the* human good (the good that is substantively reflected in the "conditions for informed desire" and formally indicates the salience of desire to ethics)? Most comprehensive doctrines already have understandings of the true human good(s); this was of course the impetus for some liberal and political-liberal theories' prescinding from an identification of authentic human good(s). The capabilities approach has strong claims about the human good, human powers, and authentic human desire.[27] Nussbaum argues, however, that hers is not a metaphysical doctrine.[28] She acknowledges that if it were, it would have to be asserted over and against the metaphysical views of groups to whom the capabilities approach is meant to be amenable. Her Aristotelian method grounds ethics on an account of human nature derived from what a community of conversation partners agrees makes human life worth living, rather than on an extrahuman plane like Plato's ideal forms.[29] Aristotle announces in the beginning of the *Nicomachean Ethics* that his method of inquiry in ethics is the same one that he uses in all other areas: as Nussbaum paraphrases it, "to preserve the greatest number and the most basic of the 'appearances'—human perceptions and beliefs—on the subject."[30] To answer the question "what is a human being?"—which seems to be a question about fact—one must necessarily consult peoples' attitudes about what distinguishes human life from the lives of beasts and gods. It remains that these attitudes will be culturally conditioned, but human beings are irreducibly cultural, so an attempt (like Plato's) to extrapolate to a precultural state is chimerical. Arguments made against human sociability are also usually self-refuting, in that they presuppose a speaker and audience engaged in the question of how good communal life should proceed.[31] These arguments are held by so few people anyway that we may suspect that there is something unnatural about them—that it is they, and not the rest of us, who are aberrant.[32]

So Nussbaum's claim that her account of the fully functioning human being and derived set of capabilities avoids metaphysics rests on the fact that the capabilities approach has not been taken from some

[27] It is this comprehensiveness with respect to the good that leads David Crocker to the conclusion that Rawls would consider Nussbaum's a metaphysical doctrine. See David A. Crocker, "Foundations of Development Ethics," in Nussbaum and Glover, eds., p. 171.

[28] *WHD* (n. 1 above), p. 76.

[29] Ibid.

[30] *ANE* (n. 1 above), p. 102.

[31] Ibid., p. 109.

[32] Ibid., p. 106.

extrahuman source but has been developed through dialogue with people all around the world. The capabilities approach is not meant to be seen as a definitive statement of human nature as such. Rather, it should be understood in the manner of a scientific hypothesis: a working theory arrived at through a posteriori means, meant to "direct attention to areas of special importance."[33] The theory is open to further revision through these same methods.[34]

Yet an initial judgment needs to be made to apply this Aristotelian method to the question of human nature. A decision of this sort implicitly precludes other modes of assessment, be they Augustinian, Whiteheadian, or other. The Aristotelian method might include an Augustinian mode of assessment in the sense that someone with an Augustinian view might be included in the discussion, but the overall approach itself is not Augustinian.[35] If one judges that peoples' opinions about human purpose alone are germane to identifying human purpose, then one judges, or implicitly judges, that revelation, a holy text, or a particular person's, or tradition's, opinions are not germane to this end. This may be because these modes of inquiry are seen as deficient (perhaps because self-contradictory or insufficient to meet the political problems at hand), or that, for positive reasons, the Aristotelian method is sufficient for ethics, because human beings just are the creatures Aristotle described.

In the former event (other modes deficient), the capabilities approach would do more than Nussbaum wishes it to do, in shouldering aside all other comprehensive views prior to political discussion. True, she writes that the theorist need not take all choices into account in forming a political theory (i.e., in contrast to what is to be permitted in actual political debate in a democratic nation, which would presumably be open to all or most claims).[36] This is reasonable to an extent. The political theorist concerned with the challenges of pluralism perhaps ought to avail herself to some sort of putatively extrasectarian theory, rather than a particular moral system, if neutrality with respect to systems is desired (and the idea of an extrasectarian theory's neu-

[33] *ASD* (n. 1 above), p. 219.

[34] *WHD*, p. 77, *HC*, p. 74, *ASD*, p. 217, and cf. *ANE*.

[35] Then again, someone expressing an Augustinian viewpoint might not even be judged as evincing informed preferences, and so their views may be discounted in the "social choice function" because their stated preferences are not in line with the emerging substantive account of human functioning. Here I confess some confusion over whether Nussbaum's assessment of desire occurs at the level of theorizing, during her generation and modification of the capabilities approach, as well as at the time when a theorist consults people's actual desires for, or against, the capabilities.

[36] *WHD*, p. 160.

trality with respect to various moral theories is coherent). Yet because this theory's abstracting common features from apparently different moral systems has a public nature in the form of the institutions it supports, the theorist perhaps lacks the freedom she might have in developing a purely academic account of what is essential to different moral systems. She must be careful with those public theoretical elements conflicting with various comprehensive doctrines' epistemologies or characteristic forms of moral reasoning. A Catholic or Buddhist, for instance, might grant that the political theorist trying to contrive a system inclusive of Catholicism, Buddhism, and so forth, should not, or need not, begin with strictly Catholic or Buddhist conceptions and methodologies. They might be expected to object, however, if the resultant theory requires citizens to effectively abandon their religious convictions as a price of political inclusion. Nussbaum and Rawls (and Isaiah Berlin) agree that public institutions, even if formed without the aim of privileging any one comprehensive doctrine, will inevitably function to the detriment of some conceivable forms of life.[37] If this negative function is a nonmoral effect, inasmuch as it does not result from an intentional marginalization of any group, but the consequences are nonetheless foreseeable, we then must make a practical decision regarding which groups we wish to have fostered or marginalized. If we wish to have a stable and enduring pluralistic union (Rawls) and do so while looking out for women's rights (Nussbaum), we need to include more than just the groups of Rawls's "reasonable pluralism"—groups whose doctrines are already amenable to democracy. If Nussbaum has judged non-Aristotelian modes of inquiry to be deficient, this prima facie exclusion can be expected to show up in institutional form later on and will function against the desired inclusion.

If the theorist's use of an Aristotelian method results from positive reasons, then it seems that an a priori judgment must have been made that the Aristotelian method is sufficient for ethical deliberation because humans just are Aristotelian creatures. Nussbaum's discussion of the absence of a "spirituality capability" seems to indicate the Aristotelian method is in fact used for positive reasons, following an a priori judgment of its sufficiency for ethics.[38] According to Nussbaum, Aristotle did not consider religion to be one of the essential human powers

[37] Rawls, *Political Liberalism* (n. 3 above), p. 195; Isaiah Berlin, *The Crooked Timber of Humanity* (New York: Knopf, 1991), pp. 11–19.

[38] By contrast, John Finnis includes a capacity for spirituality in his Aristotelian list of essential human powers (*Natural Law, Natural Rights* [Oxford: Clarendon, 1980], p. 89).

the statesman was obligated to protect (the protection of such powers being the statesman's job qua statesman). Instead, religion is "one of the ways in which citizens may choose to exercise their powers of thought, emotion, and imagination." As religion is not essential to political life, the statesman is to take the same position of noninterference with religion he takes with the other objects of thought, emotion, and imagination.[39] Aristotle and Nussbaum then know "with as much exactitude as the subject allows," what is and is not essential about human nature (and with it, what is salient to ethical and political deliberation).[40] Ultimately, a decision to rely on an Aristotelian approach to ethics (over and against a religious one) must be made nonempirically, as an a posteriori judgment in favor of the a posteriori Aristotelian approach—a judgment in favor of the Aristotelian approach reached as the result of consulting peoples attitudes about what approach to take—would assume the conclusion purportedly in question. An a priori designation of what is essential to human nature is, by just about any definition of metaphysics, a metaphysical claim.[41]

The dimensions of a broadly metaphysical account (i.e., one that describes what is essential to human nature) can be traced by viewing its deplacement of extant metaphysical doctrines, be they understood in the strict or broad sense.[42] For instance, if a judgment is made that humans are, in the final analysis, Aristotelian creatures, a corollary judgment is at least implied that humans are not creatures of God, loci of creative synthesis, or anything else.[43] To take the first implication: if

[39] *ASD*, p. 236.

[40] Aristotle, *Nichomachean Ethics*, 1094b13.

[41] If it is the case that the selection of any method of moral inquiry implies a judgment regarding the sufficiency of the method to the human condition (and therefore a judgment regarding the nature of the human condition), one might ask if this implies the impossibility of nonmetaphysical ethical inquiry. The answer depends on the purpose of the subsequent account. One can limit the account and make it nonmetaphysical by linking the account to the methods and interests of a particular discipline, e.g., "insofar as human beings are considered biologically, . . . as actors in a liberal political order, . . . as consumers, etc." An a posteriori moral inquiry like Aristotle's can be understood to imply this limiting provision so long as the conclusions of the inquiry are relativized with respect to other moral inquiries, e.g., "According to the opinions of the many and the wise of *this* society, a person's moral responsibilities are . . ."

[42] Rawls allows that his abstaining from metaphysical grounding can be construed as implying a metaphysical position, but no particular one; i.e., whatever is implied by his project is so general as to be inclusive of the major historical metaphysical positions. Begging an evaluation of his argument, my point with Nussbaum is that her abstaining from metaphysics has substantive implications for her project, given its desiderata.

[43] Thomas Aquinas of course understood human beings as Aristotelian creatures but did not judge Aristotle's account as a comprehensive anthropological account. God created human beings with the dimensions that Aristotle was largely successful in describing.

humans are not creatures of God, then a God who creates human beings does not exist, and at least the three Western monotheistic religions are false.

It thus appears that the capabilities approach, contrary to its intentions, is a broadly metaphysical doctrine (or a "partial comprehensive doctrine") by virtue of its derivation and content. A possible response to the above critique would be to suggest that even if the Aristotelian account does do the work of a metaphysical characterization of human nature and was derived by a theorist making, or assuming, the conclusion of a kind of metaphysical stipulation or deduction[44] (so that it is not a "freestanding" view), the capabilities approach asks only that the list of capabilities be treated by political actors as if truly describing human nature. They need not, as it were, convert; they could believe whatever they wished privately, so long as they refrained from actions diminishing the likelihood that they and their fellow citizens realize the capabilities.

Traditional liberal models do not—for good or ill—demand access to a citizen's preference-forming faculties. The legal provision of a right for a particular class of persons in a given polity is sufficient for a member of that class to have the right. Nussbaum expands on Rawls's critique of the bare formalism of this principle; state resources need be expended to ensure that citizens enjoy the "fair value" (Rawls) of the various liberties. But the extent to which the capabilities approach is designed to avoid formalism erodes the facilitative intention of the political-liberal construction. One's mimed compliance with the capabilities model (by way of "treating as true" its substantive account of human nature) would not be satisfactory if such mimicry entailed doing less than providing oneself, one's wife, or one's daughter with the education and the other professional, legal, and cultural opportunities necessary to realize the capabilities. But then this complement of educational, professional, legal, and cultural opportunities are sufficient to provide the capabilities. So treating as true the claim "my daughter has the capabilities" could only be actually to provide her with the capabilities.

C

The discussion up to now has not addressed the sort of comprehensive doctrines the capabilities approach would preclude and the sorts of

[44] Where the major premise is asserted: "humans just are the sort of creature . . . ," or "human powers of cognition just are sufficient to . . . ."

life that might be closed off for someone equipped with the capabilities. What could be controversial about preference-conditions of nonintimidation, nonpenury, and so on? What sort of comprehensive doctrine would not be amenable to the purposively vague and inclusive model of human functioning and derived capabilities Nussbaum has proposed? Again, my intention in this article is not to advocate a particular worldview but to trace out blind spots with respect to religion on the part of the capabilities approach (which it shares with other liberal theories) that may hinder its utilization as effective political theory.[45]

I mean the following sketch to be a generic picture of a theologically conservative worldview, the tenets and practices of which might be categorized as illiberal. Whatever the substance of the claims, the conditions under which they are formed are illiberal in the sense that the actors do not understand their legislative interests to follow on autonomous, rational deliberation oriented toward personal life goals. The preference-forming faculties in this worldview are differently oriented than in Nussbaum's model, yet similarly validated in a circular manner with respect to the substantive anthropology of the system under which they are formed. The functionally identical faculties cannot simultaneously coexist in a citizen.[46] As such, neither of the two systems is accommodating enough to serve as an object of overlapping consensus if the plurality to be united politically includes adherents of the other system. I have argued that illiberal doctrines—of which I take the following doctrine to be an example—need be among those a political theory like the capabilities approach can incorporate and address.

In this alternate view, human beings are seen as constitutively human by virtue of their special relationship with a transcendent plane—a plane that constitutes, or hosts, an ultimate source of meaning for human life. This seat of ultimate meaning is the one true good of human life, which all human beings desire whether they live attuned to or in ignorance of it. Human minds are not seen as competent for the autonomous guidance of a human life. Rather, decisions must be made with the aid of earthly religious authorities, holy texts, or the cooperation of divine inspiration. No capability of practical reason (for the autonomous guiding of a life) can be conferred, as no such power

[45] While I am focusing on theologically conservative religion and the capabilities approach, my overall argument is analogous to the one Stanley Fish makes with respect to religion and liberal theory as such ("Mission Impossible," *Columbia Law Review* 97 [1997]: 2260–2332), and the one Franklin Gamwell makes with respect to religion and political-liberal theory (*The Meaning of Religious Freedom* [Albany, N.Y.: SUNY Press, 1995], chap. 3).

[46] This is to say that they are identical with respect to the job they do, not necessarily with respect to their psychological or neurological composition.

exists. It may appear at times that people make fine decisions about their lives without explicit consultation with authorized sources, but these decisions may be secretly vitiated with unseen flaws (leading to future calamities), or, if actually efficacious, were then obviously graced by covert inspiration. People may be able to voice preferences, but these may have nothing to do with their actual good. These preferences may have been formed because of humans' sinful nature, or because of external temptations and tempters. Hence, the notion of choosing against tradition- or spirit-guided choice and, by so doing, choosing or not choosing to accept this theological anthropology and to live one's life accordingly, is incoherent. Any stated desire to decline the substantive account's implications is discounted (and perhaps called blasphemy, or heresy), because the stated desire is not in keeping with the substantive account of human nature, which describes the act of desiring, properly understood. In fact, any contrary voices will be viewed as evincing the flawed character of human reason or the presence of deluding influences. In contrast, a stated desire to depend on received wisdom transmitted through tradition or to negotiate novel problems with the aid of earthly authorities, and preferences actually so formulated, will be viewed positively. These desires reflect the implications of this substantive model of the fully functioning human being. Human beings are only human insofar as they maintain a relationship with the transcendent plane. We can only know what is proper for a thing if we know what a thing is.

Nussbaum points out that there is something paradoxical about choosing a life without choice.[47] I want to suggest why that description does not hold for the preceding account. First, one would not choose this life but, rather, would be reared for it by her parents. There would be no point where the agent, choosing not to choose, would be forced to conjure up some kind of methodological amnesia. Second, there are important differences between this religious life and the hedonistic one Nussbaum refers to in making her argument. "The life of dumb grazing animals," to which Aristotle compares a hedonistic life, is less than fully human because it lacks the exercise of practical reason.[48] The agent lacks control over her actions; she will automatically pursue pleasure in all cases. The hedonistic life is indeed one without rational guidance, but the sort of life described above is guided, though not explicitly by the individual (at least in her self-understanding), or not by the individual without reference to tradition or authority. Though

[47] *ANE* (n. 1 above), p. 111.
[48] Aristotle, *Nichomachean Ethics*, 1095b20.

the adherent would probably not justify her mode of reasoning this way, an outsider might recognize the rationality in listening to experienced elders and consulting the recorded judgments of the past.

Nussbaum also points out that participation in debate would seem to presuppose the speaker's exercise, and implicit valuation, of the capability of practical reason, so that the putatively illiberal conversant is in a self-contradictory position of trying to defend a way of life where practical reason and choice is not valued.[49] This does not seem quite right, however. An alternative account of subjectivity need not come from someone endowed with the capabilities, but could come from someone who, as mentioned above, has not chosen her worldview. When asked for an accounting, she embarks on her (illiberal) doctrine's signal means of apologia ("bearing witness" perhaps) without any expectation that her (unsaved, uninitiated) interlocutors will either understand or, barring an act of grace, agree with her. Her witnessing is more of a defensive reaction against outside provocation, a way of expressing solidarity with her group. Hers is not an appeal from one epistemologically privileged human being to another. Nussbaum is scant in her remarks about how an interlocutor would show that the witnesser was really implying allegiance with the capabilities.

The doctrine described above differs from the capabilities approach in its anthropological assumptions, yet it displays a similar circularity with respect to preference evaluation and its substantive claims about human nature. A proponent of the second doctrine would evaluate statements endorsing the doctrine's conception of the good with evaluative tools derived from that very conception of the good. Recall that Nussbaum argued that people's preferences for the capabilities bolster her confidence in the capabilities' accurate derivation from a proper account of human functioning, because (according to this Aristotelian account of human nature) people (deliberatively) desire things appropriate to their nature. Demonstrating a similar circularity in the theological model hopefully helps show the limitations of this sort of normative analysis of preference formation. The proponent of the theological doctrine would reject a preference whose conditions and content were licit according to the capabilities approach, because the preference was not formed in a truly human way (i.e., with reference to the grounding source of human authenticity). Nussbaum would make the same judgment about a preference whose conditions and content were licit according to the theological doctrine.

The theological and capabilities pictures of proper preference-

[49] *ASD* (n. 1 above), p. 237.

formation entail different anthropological and epistemological views that cannot, so far as I can see, be reconciled within one person at one time. Again, an advocate of the capabilities approach may say that we do not want to include this sort of group in our polity, on the grounds of not tolerating the intolerant (with early Rawls), or with the more rueful admission of Berlin: that there cannot be a social world without loss.[50] My thesis is that one must include precisely this sort of group, if motivated by the same concerns that give rise to the capabilities approach. A further objection might hold that a political system lacking the desired inclusivity could still suffice as a modus vivendi. This appeal to the calculative interest of the various groups then depends on the groups' believing that their interests would not be better served outside a political union where they have to make important compromises. Rawls, and Nussbaum, presumably, envision an overlapping consensus to develop over time, spurred perhaps by an initial grudging allowance of a modus vivendi. Rawls writes that those in Western democracies who still feel religious toleration to be a mere modus vivendi—a principle to be discarded if the balance of power changes in their favor—are fortunately in the minority.[51] Since Nussbaum is particularly interested in exporting the political-liberal idea to societies without a long history of religious toleration or other liberal observances, the question of what to do in societies with sizeable numbers of illiberals is pressing. The practical implications of the preceding critique will be developed in the next section. I will try to address what, specifically, members of traditional cultures would consider "deal breakers," inhibiting them from joining a polity. It suffices now to say that a political system at odds with a minority group lacking the wherewithal to leave can face instability.

III

I will argue in Subsection IIIA that the substantiveness of the capabilities approach weakens its ability to justifiably criticize illiberal traditions, (in Subsec. IIIB) works against Nussbaum's desire to protect cultures for their own sake, and (in Subsec. IIIC) lessens the likelihood that illiberal cultures would assent to governance that is based on the capabilities approach.

[50] John Rawls, *A Theory of Justice* (Cambridge, Mass.: Belknap, 1971), chap. 35.
[51] Rawls, *Political Liberalism* (n. 3 above), p. 148.

A

The capabilities approach is less able to serve as a benchmark for criticism because it cannot criticize illiberal groups from a neutral perspective. For a political-liberal model, a neutral (or nonheteronomous) perspective is one based on normative grounds not explicitly taken from any one comprehensive doctrine. A member of an illiberal group could justifiably counter that the capabilities approach represents a foreign system of values whose normative foundations his group does not share. The capabilities approach asks group members initially to ignore their most fundamental beliefs and operate on another set of assumptions, thereby treating their comprehensive doctrine as one of among equally viable alternatives eligible for later election. This may effectively deny the entire process by which members of the faith are authenticated; it may in fact vitiate the group's very notion of faith. I will return to this point below.

B

Nussbaum means the capabilities approach to be facilitative and not tyrannical in part because she acknowledges traditional, non-Western cultures as worthy of respect. They should not be automatically forced to conform to a Western model that patently has its own drawbacks. Yet at the same time, the capabilities approach is interested in addressing apparent abuse and exploitation arising in the gender-specific relations of traditional cultures. Nussbaum acknowledges the tension: "We want an approach that is respectful of each person's struggle for flourishing, that treats each person as an end and as a source of agency and worth in her own right. Part of this respect will mean not being dictatorial about the good, leaving individuals a wide space for choice and meaningful affiliation. But this very respect means taking a stand on the conditions that permit them to follow their own lights free from tyrannies imposed by politics and tradition."[52]

It does seem especially hard to have it both ways. Envisioned in practice, it seems the capabilities approach would have to call for a certain kind of public education appropriate to the development of the capability of practical reason. The expectation is that a girl, empowered to think for herself, would decide whether or not to embrace her mother's traditional lifestyle. A traditional way of life, where the girl's role may be subordinate to her male relatives, will deploy a less than

[52] *WHD* (n. 1 above), p. 69.

optimal level of flourishing, but this lower level of functioning is sacrificed in deference to a respect for culture. And, as Nussbaum writes, "one has hardly been harmed by having the chance to choose a life that does [enjoy all the functions]."[53]

The capability of choosing may be more deeply harmful to some illiberal forms of culture than anticipated.[54] In the end, it seems inconsistent to insist that we can protect cultures while simultaneously affirming the right of individuals to choose freely among functions. Cultures determine (at least in part) styles of reasoning.[55] They set the parameters not only of value but of choice.[56] It is unclear to me how we can erect culturally neutral decision-making apparatuses or avoid presenting only a certain field of options by embarking on any one particular pedagogical course. I do not think that Nussbaum would disagree with the foregoing assessment. With Rawls, she would perhaps allow that any public institution will have certain sociological effects, fostering some pursuits and hampering others.[57] Yet the capabilities approach does not coerce acceptance of a certain form of culture and, therefore, does not force one to accept a certain system of values and conceptual tools. All the capability of practical reason demands is the wherewithal to enter into one form of culture by free choice rather than by birth. But this is precisely the problem, I think, because, as argued above, the capabilities approach does have an assumed set of values and an associated style of reasoning: with its values and reasoning style, religion is conceived of as an object of choice and as one of the ways that humans may use their imagination. Nussbaum argues that this cognitive orientation is not heteronomous because of the nature of deliberative desire. Further, I argued that it was precisely this defense that was evidence of the comprehensive nature of the project; deliberative desire can only be considered as such if the nature of the good that is "informing" desire is already stipulated (over and against other notions of the good).

I think Nussbaum would argue that we are not trying to preserve traditional modes of culture at all cost but, rather, to reconceive them

[53] Ibid., p. 88.

[54] Both Rawls and Nussbaum allow that the shape of public institutions may have negative effects on some valuable forms of life. Compare *WHD*, p. 235; Rawls, *Political Liberalism*, p. 200. My point here is to flesh out the consequences of these admissions.

[55] Ian Hacking, "Language, Truth, and Reason," in *Rationality and Relativism*, ed. Martin Hollis and Steven Lukes (Cambridge, Mass.: MIT Press, 1982), p. 60.

[56] Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995) p. 83, cf. Ronald Dworkin, *A Matter of Principle* (Cambridge, Mass.: Harvard University Press, 1985), p. 228.

[57] Rawls, *Political Liberalism*, p. 192.

as permissible forms of life an individual might elect. The difficulties are in determining how much of an individual's autonomy are to be surrendered in deference to traditional ways of life, and how far in the direction of a single comprehensive doctrine—effectively toward an establishment of religion—do we risk moving to root out perceived abuse? Part of the intent behind this article is to encourage reflection on this perennial problem in a way that does not win theoretical coherence at the price of the exclusion or belittlement of "problematic" theologically conservative believers.[58] Good, bad, or indifferent, such believers will not just go away; their numbers are growing. A practical question a proponent of a political-liberal model must face is: How likely is it that members of illiberal groups will assent to the rules being proposed?

C

One should inquire how a child will be educated to bring her to the point where the alternatives of accepting or refusing her family's traditional norms appear as live options. Nussbaum acknowledges that preferences to have, and not to have, items on the capabilities list are both habituated ones. But educating a child in a certain way will likely predispose her not only to choose in a certain way but to feel that it is an appropriate use of human powers to choose (with respect to her own life plan) at all.

Certain traditional ways of life may not seem like real options for a girl unless she is taught in the culture's own conceptual vocabulary.[59] It is possible that one might choose a traditional mode of life and assign oneself a restrictive, gender-specific role, but it is just as likely—if not more likely—that one would choose a life consistent with the very mode of adjudication that enabled her to make the decision. If the capabilities approach wanted to make traditional options viable and not just urge people toward a liberal outlook (in the manner of a comprehensive liberalism), would it require home stays with families participating in an illiberal lifestyle? Or some sort of preliminary religious indoctrination as a complement to what I assume would be a

[58] Fish argues that this move of explaining inconsistencies and tensions in political theory by concluding that the theory cannot include everyone (and labeling those excluded in some perjorative fashion) is characteristic of (or, at least, common to) liberal theory. Fish traces this action in an exhuastive survey of classical and contemporary liberal theory and makes a fairly persuasive argument that this exclusionary tactic is a symptomatic blind spot of liberal theory. I do not, however, agree with the conclusions that Fish draws regarding political theory in general.

[59] Compare Dworkin, p. 231.

traditional sort of Western primary and secondary education? Whereas one sort of lifestyle might be made to seem viable through the traditional means of Western education, others might only seem viable and worthy as modes of life if seen from "the inside," presented in that culture's own conceptual terms.

It should be noted that a choice to affirm a traditional way of life may not have the tenor of a decision reached in what the culture considers to be the proper mode of adjudication.[60] This may prove corrosive to the culture. A choice to join a certain religion, for instance, made in a liberal way—in which the merits of different religions are weighed in relation to the agent's perceived spiritual needs, in a way akin to the selection of a political party—is certainly a different mode of election than some religions acknowledge as affecting conversion. Such a manner of choosing might well resemble Aristotle's description of *enkratic* choice, wherein the agent knows the proper course of action and has the discipline to do it, but not the desire: he does the right thing, but in the wrong way. Such things do have an effect on a religion's and a religious culture's continuities. It has been suggested that the declining membership of mainline American Protestant and Catholic churches and non-Orthodox synagogues has much to do with the way that religion is perceived and contextualized in the larger society: it has become just one more choice among others—going to church on Sunday or going to soccer practice.[61]

Finally, it would seem that a pedagogical application of the capabilities approach would place the interests of the state at odds with a parent's interest in raising her child as she sees fit. Nussbaum acknowledges that the right to worship as one chooses entails an associated right to seek the continuity of one's faith through one's children.[62] A degree of tension will result consistent with the degree to which the traditional form of life the parent wishes to transmit conflicts with the

[60] Obviously, cultures do not make judgments. The choice may not be considered appropriate by the lights of some cultural actors. Nussbaum makes the point that we ought not consider the most conservative voice in a culture, or the voice of the present leadership, as necessarily synonymous with the essence of the culture. I agree, but then we cannot pick some other voice as essential either, be it at random or with respect to some external notion of salience. We could, just as a cultural actor might, study the culture, its sacred texts, etc., and conclude that certain voices are merely reactionary with respect to the culture's history, etc., but this probably is far more than a political theorist sensitive to paternalism wants to do. These considerations lead me to urge avoiding political projects based on essentialist characterizations of cultures or religions.

[61] See Paul Griffiths, in "Religious Allegiance and Political Sovereignth: An Irreconcilable Tension," (paper presented at Sacred and Sovereign Conference, University of Chicago Divinity School, Chicago, October 30, 2000), for one example.

[62] *WHD* (n. 1 above), p. 220.

interests that the state has in creating a freethinking person, who is not dominated by the strictures of illiberal tradition.[63] Such tensions are evident in the *Wisconsin v. Yoder* case, in the demand of both U.S. and French Muslims that their daughters be allowed to wear head covering in school, and in some Fundamentalist and Evangelical Christian groups' ongoing opposition to health and multicultural curricula in U.S. public schools.[64]

Again, the basic argument for the value of a political-liberal arrangement is that it provides for stability and a framework of rights protective of cultural and religious groups' particular pursuits. As with other liberal theories, the caveat on the free exercise of one group's or one individual's rights is that it cannot be at the explicit expense of another's. The capabilities approach draws attention to the effect a given comprehensive conviction might have on certain members within a group, especially women and children. While accepting that a parent's raising her children in line with the parent's cultural norms is an extension of personal and religious rights, Nussbaum is concerned that children raised within an illiberal culture will not have the means to make informed decisions about their lives when no longer under their parents' custodianship. But if intergenerational religious continuity is something important enough to be protected by a right, why ought we expect a parent voluntarily to allow her child to be raised or educated in a manner at odds with her religion? Why would she allow her child to be educated in a way that at least implicitly denies her own comprehensive convictions and conditions the child to accept the reality and validity of a field of questions and goals at odds with tradition? These are a subset of the larger question asked earlier: Why would a person or a group, so threatened, opt for membership in a society at odds with their core values?

Nussbaum indicates that cultures which feel marginalized by a regime based on the capabilities approach might still be willing to remain in the polity for the formal protection of their religious liberty and material security offered therein.[65] This may be, but I would suggest that the field of people grudgingly accepting the trade-offs of po-

[63] Albeit not because it is an illiberal tradition per se, but to the extent that specific practices are at odds with the capabilities.

[64] This is evident in the "parental rights" movement. There are currently over twenty nearly identical Parental Rights Amendments pending in various states: the proposed amendments state that a parent shall have the legal right to direct the course of his child's education. Some have argued that these proposed amendments are legislative cudgels designed to intimidate public school systems into removing programs and curricula offensive to the Christian Right.

[65] Martha Nussbaum, personal correspondence with the author, April 1999.

litical union—at a high cost to their own way of life—would be larger than Nussbaum expects. The substantiveness of the capabilities approach makes it harder to incorporate into comprehensive doctrines and then lessens its protectiveness of associated host cultures. Barring even these criticisms, drawn from the concerns about paternalism, diversity, and culture Nussbaum acknowledges, there is again the practical problem of instability, potentially generated by alienated groups within the polity.

IV

Nussbaum deserves praise for highlighting the shortcomings of standard liberal-economic approaches to women's quality of life, and for attempting to marry the procedural and substantive elements perhaps necessary to make liberal programs coherent and meaningful in this matter. The liberal's dilemma is that she does not want to impose a notion of the good on citizens, thereby hampering their freedom, but at the same time does not want to facilitate an unguided freedom in which citizens are free to do anything, including attack the foundations of other citizens' freedom. Nussbaum is clear about the dilemma and concludes that a theorist must unflinchingly take a stand on a notion of the good robust enough to preserve citizens' freedom.[66] In a sense, a liberal must be a bit illiberal about the political and social foundations of a liberal society.

Where I take issue with Nussbaum is over the timing and authorship of this "liberal illiberalism." We agree with J. S. Mill that a state that frustrates permanent human interests (begging the details for now) acts unjustly and will suffer instability. Nussbaum judges that injustice and instability will occur if we are not strident about a substantive account of the good. I would argue that injustice and instability will occur if the state is too strident about the good. I suspect that problems associated with "unguided" freedom (i.e., unbounded by a state-authorized notion of the good) will work themselves out over time, provided that the state does not act to preserve any particular culture through positive protections or inadvertently, through oppressive tactics that recalitrate cultures otherwise on the wane.

I agree with Jeff Spinner-Halev and, for that matter, John Courtney Murray, that forcing a minority culture to conform to a majoritarian norm in most cases causes more suffering for individuals, and instability

[66] *WHD*, p. 160.

for the polity, than would allowing perceived exploitation to continue.[67] History is replete with political horrors undertaken with the intention of all-at-once uprooting of vice or heterodoxy. Well-intentioned critiques or coercive initiatives by the majority culture can force reactionary readings of history and reality to ossify into the nonnegotiable tenets of orthodoxy. Those whose practices are disturbing to liberals must decide for themselves to abandon or modify their actions. Liberals may attempt to convince them but cannot force them in this direction.

If possible, proponents of illiberal doctrines ought to be engaged on their own terms and shown how their practices fail to contribute even to their own goals. The proper procedure for this persuasion, I think, is actually suggested by Nussbaum in an early article with Amartya Sen (and in various ways by Michael Walzer, Alaisdair MacIntyre, Hans-Georg Gadamer, and others).[68] What follows is a mere sketch of an approach to intercultural critique—the starting point of which is suggested by Nussbaum and Sen—that contrasts with an essentializing route. In this alternate sketch, the question of human nature is deliberately begged. (I can here only apply the conclusion of my pragmatic project on pluralism.)[69] One does not operate with the assumption that Nussbaum's account of human nature and purpose is final or ought to be convincing to all rational actors—only that it is (at the least) one she finds useful for articulating moral claims.

A mode of criticism that means to be genuinely critical and nonheteronomous should be articulated from a perspective of "experienced immersion" in the criticized culture, so that resources from inside the culture are used to criticize other aspects of it.[70] If we abandon an attempt to find a neutral set of norms common to all moral systems—but do not judge that fruitful intercultural critique is impossible for relativist reasons—we are left with our own culture's or doctrine's indigenous procedures for reform, critique, and apology, on the one hand, and those procedures indigenous to the criticized party's culture or doctrine, on the other. First, "it is important for an outsider to get enough understanding of the culture in question to be able to satisfy the requirement that the critique be internal and immersed."[71] If an understanding of the role that the proponent's proposal plays in her own culture (as opposed to the critic's) does not temper the criticism,

[67] Jeff Spinner-Halev, "Feminism, Multiculturalism, Oppression and the State," *Ethics* 112 (2001): 84–113.

[68] *IC* (n. 1 above).

[69] Michael Skerker, "Pragmatism, Pluralism, and the Salience of Doubt" (Ph.D. diss., University of Chicago, 2004).

[70] *IC*, p. 308.

[71] Ibid., p. 316.

I would argue that the critic should offer a careful explanation of a counterproposal, its role in the critic's own worldview, and its ability to meet commonly perceived problems. Barring success there, the critic ought to act as an indigenous critic, as Nussbaum suggests, comparing the fit of the proponent's proposal with the supreme values of the proponent's culture. As I see it, the paradigmatic form of an encounter between critic and proponent would be one of interview, rather than debate. The critic asks the proponent how she sees the controversialized practice contributing to culturally valued, or interculturally valued, goals, given the apparent contradiction between the practice and these goals. Once initiated, communal discussion about values "does not give us back a simple repetition of what each person thought at the start. This is so because when we scrutinize what we think, we will notice inconsistencies and unclarities."[72] I would add that even if the critic is engaged with a savvy proponent of a coherent position, the proponent's explanation will not necessarily be a reiteration of his original views. The critic's questions cannot but be part of a conceptual horizon set by her own moral perspective, and so an interview intended to explore the other's claim and justification procedures will inevitably be given shape by that perspective. The critic will effectively advance her own claim in the characteristic moral vocabulary of the other party: her questions lead the proponent to consider whether something like the critic's good can be accommodated in the proponent's moral system.

For instance, the critic with a capabilities orientation, now treating the capabilities approach as a moral system among others, might ask a conservative Southern Baptist if his call for a wife's "gracious submission" to her husband does not run the risk, given the pervasiveness of sin and the temptation of pride, of being interpreted and applied by husbands in a manner not in keeping with Jesus's example of servant leadership.[73] The capabilities feminist may be moved to question the Baptist out of egalitarian concerns but couches the question in terms of a value system she presumes the Baptist will find intelligible. Without an extrasectarian essentialist account of rationality, the critic does not assume that there is a particular metalanguage in which to couch intercultural appeals and so avails herself to her interlocutor's. Without a relativist account denying such an extrasectarian rationality,

[72] Ibid., p. 319.

[73] Or, she can attempt to defend the capabilities approach as metaphysical, showing why those cultures that Nussbaum now thinks should subscribe to the approach for political purposes only ought really to assent to the values enshrined in the capabilities approach, because they are, in the deepest sense, true.

there is no reason to assume that appeals original to one doctrine will not be translatable into, and justifiable by, the terms of another. Most, if not all, moral systems have numerous historical strands of thought, minority views on certain issues, and so on. The outside critic's position may be analogous to one such indigenous element. The criticized proponent may also demand reciprocal explanations of the critic's position. Begging an ultimate standard of rightness, the two parties can, in a sense, engage in a collaborative (if unwittingly so) search for mutually acceptable answers to moral questions. Again, the question of whose worldview is actually veridical and comprehensive of the other (or if such an account exists) is deliberately begged.

The critic's goal is not necessarily to change the proponent's mind, much less convert her. Without an extrasectarian standard, there is no commonly agreed-on standard for argument resolution. To the extent that these issues are in the public square, an acceptable outcome for the critic would be to produce doubt or hesitation on the proponent's part so that the proponent no longer wishes to press the public acceptance or state enforcement of the contested practice. Even if not in the public square, doubts raised in the proponent's mind may lead to private reconsideration of his position.

It may well be that while a critic understands a given culture on its own terms—at least to the extent that she perceives a given practice as being in tension with that culture's deepest values—it is her outsider status that leads her to problematize the practice. Yet the outside critic should not think she is doing something completely novel (and illicit) in initiating dialogue with a nongroup member. Nussbaum and Sen are right to point out that cultures are not hermetically sealed entities, but are dynamic, mutually influential processes, and were so prior to postcolonial philosophy. The critic can now avoid a "colonialist" stance by sincerely opening herself to a reciprocal critique by the other party.

Without an extrasectarian essentialist standard, though, there are neither grounds for demanding that conflicts be resolved through dialogue, nor extrasectarian means of specifying who is allowed to participate in a dialogue. The dialogical process here recommended is to be urged on those parties, whomever they may be, engaged, for whatever their reason, in dialogue with adherents of a foreign moral system. This would be unacceptable to Nussbaum, as it neither guarantees women's participation in political dialogue, nor addresses the quality of their participation. As solace, what I am suggesting could be a way of conversing with those least apt to accept an egalitarian metanorm anyway, and most wedded to traditional inegalitarian moral structures. These individuals also tend to be those with the most power over the

subordinated groups Nussbaum is concerned to protect. Granted, an individual of this sort will likely not enter into conversation with anyone who cares to engage him. But if his exclusivity is principled, he would have cause to engage a peer who engaged him in terms of those principles. If this seems not to present very bold prospects of success, I am not sure that less would be achieved by, for example, speaking to the village elder, the priest, or mullah, using his own moral vocabulary, personally or via proxy, than would be achieved by explaining to him that he was implicitly endorsing the capabilities of practical reason and sociability, or by secretly meeting, and trying to change the preferences of, his wives and daughters. Further, if it is the case that a woman, for instance, would not be welcome to debate men holding certain inegalitarian beliefs and might need to enlist the aid of a male proxy, it is also likely that a man would not be free to meet with women in traditional societies to talk to them about their capabilities and would need to enlist a female proxy for this purpose.

Adopting this approach may well deny a theorist as robust a critique as perhaps some practices seem to warrant. This may be because a given practice is not obviously opposed to a culture's underlying values, or because cultural actors are less willing to entertain arguments from outsiders. The complaint is fair but must be balanced against the likely success of a more robust critique. A dramatically incisive critique may comfort the critic, but alienate the party whose behavior is in question. As it is couched in unfamiliar value terms, the critique may well seem to the criticized group as gratuitous or a cover for an imperialist agenda. Further, if on the liberal understanding, political coercion is to be justified by the consent of the governed, then the incisive, but unendorsed, critique would seem a poor candidate for popular acceptance and legitimate government action. Instituting a norm that may be consistent with the majority culture but is unacceptable to a minority—say, a ban on polygamy, or wearing head scarves in public—is a recipe for the further alienation of the minority culture from the majority culture, and ultimately, for political instability if members of the minority culture organize in resistance to the government.

My purpose in this article has not been to criticize the capabilities approach as a moral theory, or as a benchmark for development work, but rather to achieve some clarity about its nature and scope as a political theory designed for pluralistic societies. I do not mean to advocate illiberalism, conservative religiosity, or the exploitation of women. Rather, I want to suggest that the causes of liberalism—including the protection and emancipation of women and children—will be better served if liberal theory is more self-aware of its reach, particularly with

respect to religion.[74] In part, my criticism of the capabilities approach has come from asking the question of how to "sell" egalitarian norms to the people holding most of the power in traditional societies. This is not to minimize the importance of empowering the powerless, so that they demand rights for themselves. However, I am concerned about how the husbands, brothers, and religious leaders of these newly emboldened women react to these egalitarian demands. Those with the power to slam the breaks on progress and demand new orthodoxies in reaction to change need to be involved in whatever is occurring. Their involvement needs to be of such a character that a threatening gulf is not perceived between their value system and that of ostensibly well-meaning outsiders.

[74] In this article I have intended to apply the therapeutic approach I am recommending by criticizing a liberal theory in reference to its own value terms (respect for conscience, nonheteronomy, etc.).

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