This is an accessible preprint version of Michael Buttrey, "Capable or Incapable? Disability and Justification in Martha Nussbaum's Capabilities Approach," Religious Studies and Theology 39.2 (December 2020): 177–192.

Capable or Incapable? Disability and Justification in Martha Nussbaum's Capabilities Approach

Michael Buttrey

Regis College

michael.buttrey@mail.utoronto.ca

Abstract

This article evaluates Martha Nussbaum's capabilities approach for its treatment of disability and philosophical grounding. A summary of Nussbaum's claims on how her theory includes people with disabilities is followed by Eva Kittay's demonstration that in Nussbaum's approach exclusion results from the ambiguous role of human dignity. The argument then shows that Jean Porter's appeals to virtue and human nature provide stronger philosophical grounding for making judgments about human flourishing than Nussbaum's non-metaphysical liberalism, insufficient to account for her theory of capabilities. While Porter's account of human nature does not escape Shane Clifton and Hans Reinders' concerns about the exclusion of people with disabilities from the human ideal, her and John Berkman's recovery of Thomistic ideas of infused virtue and grace do provide a more inclusive concept of the human *telos*.

Keywords

Martha Nussbaum, Eva Kittay, Jean Porter, Thomas Aquinas, capabilities approach, disability theory

Introduction

How do we include people with disabilities in substantial accounts of human flourishing? How do we ground our judgements about human flourishing in more than personal intuitions? In this essay, I examine these questions through the careful analysis of the work of political philosopher Martha Nussbaum and various critics. Together with economist Amartya Sen, Nussbaum has pioneered the capabilities approach, a theory of human development and flourishing. Because it focuses on

metrics other than GDP growth and economic resources, the capabilities approach has influenced the methodology of the United Nations Development Programme's annual Human Development Report and Human Development Index (Birdsall 2014, 2-3; UNDP 2010, iv). Two of Nussbaum's myriad contributions to the capabilities approach are the definition of ten central or core capabilities (listed below) that should be supported by all societies, and the argument that theories of social justice can and should consider disability from the outset, rather than assume all members of society have equal abilities and attempt to include people with disabilities at a later stage (Nussbaum 2011, 2006).

Nussbaum's presentation of the capabilities approach has also faced criticism. Disability scholars like Eva Kittay argue that the approach relegates people with disabilities to a less than fully human status. Philosopher John Clark and theologian Jean Porter contend that Nussbaum's non-metaphysical liberalism does not provide stable philosophical grounds to defend her selection of capabilities, with Porter recommending a recovery of Thomistic tradition. On the other hand, theologians of disability such as Shane Clifton and Hans Reinders have argued that the Aristotelian and Thomistic traditions also tend to marginalize people with disabilities, a criticism disputed by Porter and fellow Catholic theologian John Berkman.

My choice of conversation partners for Nussbaum is guided by two principles. First, I seek to illustrate that the work of people with disabilities (Shane Clifton), family members of those with profound disabilities (Eva Kittay, mother of Sesha Kittay), and dedicated scholars of disability (Hans Reinders) will often expose particular insights into the experience of disability potentially neglected by more general approaches like Nussbaum's or Porter's. Second, I try to show how the common Aristotelian influence on the work of Nussbaum and Thomist theologians Porter and Berkman provides a sufficient basis for dialogue, despite their different viewpoints on the

importance of religion and theology. Outside of the work of Clifton, Reinders, Berkman, and a few others, these two different circles of conversation rarely meet, and never with a focus on Nussbaum's capabilities approach. I hope to demonstrate how disability scholarship and theological ethics can enrich one another and broader efforts to develop a widely inclusive, philosophically justified theory of justice.

In the following, I first summarize Nussbaum's presentation of the capabilities approach and evaluate it with respect to two key questions: the inclusion of people with disabilities and the philosophical grounding of her theory. I argue that the denigration of people with disabilities identified by Kittay is an unintended but necessary consequence of the ambiguity in Nussbaum's methodological approach to human dignity. Second, I argue that Porter's explicit appeals to virtue and human nature are a firmer philosophical ground for making judgements about human flourishing than Nussbaum's intuitive liberalism. Finally, I argue that while Porter's account of human virtue does not escape concerns about the exclusion of people with disabilities from the human ideal, her and John Berkman's emphases on explicitly theological ideas of infused virtue and grace offer a more promising ground for inclusion.

The Capabilities Approach

Nussbaum proposes a diverse list of ten central capabilities required for human dignity, ranging from life, bodily health, bodily integrity, senses, imagination, and thought to emotions, practical reason, affiliation, relations with other species, play, and control over one's environment. Capabilities are the product of both personal characteristics—what Nussbaum calls *internal capabilities*—as well as a person's environment. For example, in *Creating Capabilities* Nussbaum defines the capability of practical reason as "being able to form a conception of the good and to engage in critical reflection about the planning of one's life, [which] entails protection for the

liberty of conscience and religious observance" (2011, 34). Nussbaum argues that societies need to develop substantive freedoms when both internal capabilities and the conditions for their exercise are present. Nussbaum also distinguishes capabilities from innate human powers such as intelligence. Given past discrimination against those judged to have lesser natural capacities, Nussbaum insists the goal should be for all to receive the assistance needed to reach a certain minimum threshold in the expression of capabilities.

Some other key convictions of her approach are: consider every person as an end in herself, never as a means; stress the equal importance of each capability; and prioritize dignity over competing notions such as personal satisfaction. To illustrate possible tensions between satisfaction and dignity or freedom, Nussbaum highlights the question of the education of people with cognitive disabilities. She argues that in many cases, children with cognitive disabilities may be able to live satisfying lives without receiving education. Advocates have argued that we do not treat children with Down syndrome with dignity if we do not offer them the same opportunities to develop their mind provided to other children. Education may also be a path to an enjoyable life, suggesting that there can be outcomes compatible with emphasizing both dignity and satisfaction. Nussbaum's concern is simply that a focus on satisfaction alone can risk endorsing policy choices that "infantilize people and treat them as passive recipients of benefit" (2011, 30). Thus, she chooses to always prioritize dignity over personal satisfaction.

The concept of dignity in particular is fundamental to Nussbaum's choice of ten central capabilities. Nussbaum describes dignity as a basic quality all human beings *who are agents* possess equally, excluding those deprived of any agency due to being anencephalic or in permanent vegetative state.[1] Dignity, in turn, sets a standard: "Some living conditions deliver to people a life

1. Nussbaum's grounding of dignity on agency invites further questioning: do human beings enjoying some agency but less than the usual amount have less than full dignity? Nussbaum guards against this conclusion in *Frontiers*

that is worthy of the human dignity that they possess, and others do not" (2011, 30). Nussbaum clarifies that this does not necessarily imply that everyone must have the same living conditions; but rather that these conditions must in many cases be improved to respect human dignity. The concept of dignity provides a criterion or filter for which capabilities are most important. As Nussbaum summarizes: the capabilities approach "focuses on the protection of areas of freedom so central that their removal makes a life not worthy of human dignity" (2011, 31).[2]

Capability and Disability

Already in two of her works we have seen Nussbaum exclude anencephalic children and persons in a persistent vegetative state from having agency, dignity or full humanity. We may then ask: what implications does her approach have for people with disabilities? Disability is one of three major topics addressed in *Frontiers of Justice*, which criticizes how liberal political theories imagine citizens as "free, equal, and independent," treating dependent people with disabilities as special subjects of care. This is short-sighted, Nussbaum argues, because all human beings begin and end their lives dependent on others: indeed, as life expectancy increases, "the relative independence that many people sometimes enjoy looks more and more like a temporary condition"

of Justice, arguing that we should only judge a life unworthy of human dignity if "the entirety of a group of major human capabilities is irrevocably and entirely cut off" (2006, 181). Nussbaum does not explicitly warn against the potential for a gradation in human dignity in *Creating Capabilities*, acknowledging at one point that "dignity is an intuitive notion that is by no means utterly clear" (2011, 29).

2. Concepts of human dignity are often linked to accounts of human nature; Nussbaum is wary of such association. When Nussbaum describes the capabilities approach in *Frontiers of Justice,* she claims that "the notion of human nature in my theory is explicitly and from the start *evaluative*, and, in particular, *ethically evaluative*," because it selects certain features of human life to be fundamental (2006, 181). She then goes on to suggest that lacking enough of these fundamental characteristics may mean that a life is no longer human, as in the case of an anencephalic child or a person in persistent vegetative state. From this, we might conclude that the capabilities approach is itself an account of human nature, in the minimal sense of describing the "nature" that a being must have to be human. In *Creating Capabilities*, Nussbaum rejects this identification, stating that the approach "is not a theory of what human nature is, and it does not read norms off from innate human nature" (Nussbaum 2011, 28). Nussbaum even asserts that accounts of human nature cannot be evaluative: "An account of human nature tells us what resources and possibilities we have […] it does not tell us what to value" (Nussbaum 2011, 28). Unless we read into the texts a silent distinction between a "notion" and an "account" of human nature, there is a clear change of stance here, unfortunately not explained in the later work.

(2006, 101). Dependency is therefore normal, and a key question to be addressed at the heart of a political theory of justice. Equally important for Nussbaum is justice for those—mostly women—who care for dependents. In theory, women in egalitarian societies are free to choose how much care work to do, but in reality, women give significantly more unpaid or poorly paid time to the care of children, the elderly, and people with disabilities than men, and the ratio in many non-Western societies is even more one-sided. Therefore, both the lack of care and the lack of recognition for care are issues of justice Nussbaum wants to address in her approach.

Although Nussbaum remains firmly ensconced in the liberal tradition, her approach departs from modern liberal political theories (such as John Rawls') in several significant ways. First, she argues that human beings can cooperate for a range of motives, including compassion and the love of justice, not just mutual advantage. Second, she emphasizes that human beings begin and end their life dependent on others. Humans are therefore needy and vulnerable, not just autonomous rational agents. These two departures support a third one: the rejection of productivity as the primary goal of human life. In her words, "we do not have to win the respect of others by being productive. We have a claim to support in the dignity of our human need itself" (2006, 160). With these emphases, care for others becomes an inherent question of political justice, rather than an optional luxury, and disability is not immediately excluded from consideration.

By linking human dignity to need, Nussbaum also demonstrates her clear departure from the Kantian tradition of grounding dignity in our human capacity for moral reasoning. Whereas Kant said human rationality sets us apart from the nonhuman animals and makes us more akin to God and the angels, Nussbaum argues human beings are very much animals, sharing with other animals the qualities of mortality and vulnerability (2006, 132). Rather than undermining our dignity, these qualities support it: for Nussbaum, animals can have dignity in their weakness and neediness,

rather than in spite of it. The connection of dignity with neediness is not meant to imply that needs should be left unmet. As she explains, people in terrible conditions retain their dignity, "but it is like a promissory note whose claims have not been met" (2011, 30). Moreover, she understands this mismatch between inherent human dignity and undignified conditions to place a claim on society. She gives the example of a person with limited mobility: proper respect for their dignity entails not only access to a wheelchair, but making public spaces accessible to wheelchair users.

Nussbaum addresses the question of persons living with profound disabilities with reference to Sesha Kittay, the daughter of philosopher Eva Kittay. Suffering from cerebral palsy and severe mental impairment, even with the best care Sesha will never be able to exercise control over her political and material environment, and she may not reach the threshold level for other capabilities. If Sesha has a human life, should not the list of capabilities or their thresholds be modified so she can reach them? Nussbaum is cautious. As she notes, "the persistent tendency of all modern societies is to denigrate the competence of people with impairments and their potential contribution to society" (2006, 188). Instead of recognizing how disability is socially constructed, societies have persistently perceived disability as an apparent fact that is inevitable, intrinsic to the person's nature and body and cannot be accommodated. Nussbaum insists on a universal list of capabilities in part to avoid prematurely foreclosing the potential of people with impairments. She argues that having different lists of capabilities or even different thresholds of capability […] for people with impairments is practically dangerous, because it creates "an easy way of getting off the hook" (2006, 190). Instead, she advocates for providing the personalized programs, treatments, and funding needed for all citizens to approach the same threshold of capability. Indeed, she suggests that upholding the same set of capabilities for all respects people with disabilities as unique individuals *like anyone else*, rather than as subhuman types distinct from so-called normal

humankind. She is convinced that such differentiation is linked to people with disabilities being stigmatized, and so she wants to maintain one universal list and set of goals for all human beings.

Similarly, Nussbaum insists we need to retain one normative standard for the human species for the sake of those who, like Sesha, may never be able to attain the whole list of capabilities, lest we stop working to develop new cures and treatments. In particular, she rejects the idea that people with severe mental impairments are more like higher animals than fellow humans, because such a comparison obscures the tragic nature of Sesha's condition. There are significant differences between Sesha's form of life and that of a chimpanzee: not only does she lack the prospect of achieving a relatively independent and pain-free existence, but she is "surrounded by humans who lack her impairments" (2006, 192). If a cure for Sesha's condition were available, society would be obligated to administer it to her. This obligation is entailed by a species-wide normative standard; without it there would be no obligations to use genetic engineering or other yet undiscovered medical treatments to help people with severe mental impairments develop their capabilities. Nussbaum immediately clarifies that she is not suggesting genetic engineering is the appropriate response to all disabilities, including Down syndrome, Asperger's, blindness, or deafness. Her goal is simply to make society face the question of how to develop the capabilities of each and every person, regardless of their supposed (dis)abilities. This goal flows naturally from her initial choice to value each person as an end, not a means.[3]

Disability Studies Critique

Nussbaum's concern to avoid excluding people with disabilities is clear, but disability scholars like Eva Kittay have criticized her efforts. Before examining Nussbaum's capabilities approach, Kittay provides an overview of approaches to human dignity. Kittay first notes that dignity has

3. Here we see Nussbaum endorsing Kant's second formulation of the categorical imperative.

sometimes been attributed to the human species as a whole: if you are human, you have human dignity, regardless of whether you can exercise any specific or valuable capabilities. According to Kittay the popular liberal view is to hold that some capacity beyond species membership is the basis for human dignity, meaning that individuals need to either have that capacity or at least the potential of exercising it to possess human dignity. She lists various capacities that have been identified as the ground of dignity, including self-creation and moral autonomy. She suggests that the practical demand of the liberal concept of dignity is *empowerment*: "to treat someone with dignity is not merely to refrain from doing certain things to them, but involves allowing them to exercise that capacity or capability" (Kittay 2005, 101).

Kittay's concern with these liberal approaches is that some human beings may never have the capacity of self-creation or moral autonomy. Her critique of Nussbaum's is similar. She approves of Nussbaum's diverse capabilities list and agrees that non-human animals have their own dignity. She is concerned by the fact that Nussbaum "falls short of finding a truly inclusive basis for human dignity" precisely because of the normative character of her list (2005, 109). She quotes one of Nussbaum's criteria: among the many features of human life, "we select some that seem so normatively fundamental that a life without any possibility at all of exercising these, at any level, *is not fully a human life*" (Nussbaum 2006, 181).[4] She sees Nussbaum's refusal to trade one capability for another as reinforcing the need for all capabilities to be present for full human dignity to be recognized. She argues that despite Nussbaum's best efforts, the human dignity of Sesha and others with severe cognitive impairments is still in question.

Kittay's preference is for a relational basis for human dignity that does not rest on individual attributes. She prefers a concept of dignity that does not vary depending on performance, but is

4. Kittay's italics. Kittay refers to the text of Nussbaum's 2002 Tanner Lectures, reproduced verbatim in Nussbaum 2006.

based on our relationships and our capacity to care. In her words, our dignity "is bound both to our capacity to care for one another and in our being cared for by another who is herself worthy of care" (2005, 111). She goes on to observe that humans not only care for their young more than other animals, they also lavish more care on those who are ill, elderly, or have disabilities. "What binds us in our caring relations is a deep sense of the irreplaceable and distinctive worth of each human being, of the life form we share, and of the non-fungible nature of the relationships we form with one another. Dignity is a feature that must be perceived in order to be" (2005, 113). All human beings were once children who received care to reach maturity, care that both recognizes and confers dignity. Her concept of dignity is thus relational: "one is the child of a mother only because another person is someone who mothered one" (2005, 114). Kittay acknowledges that her relational understanding of dignity suggests that infants no one cares for do not have dignity. Her rejoinder is that if there is anyone in a community willing to care for the infant, the latter deserves the opportunity to be cared for by that person.

Nussbaum's concern with Kittay's ethic of care is that it moves in an anti-liberal direction. That is, "insofar as being cared for is the central image of the state's relation to the citizen, then full and equal citizenship does not require independence or a wide range of options" (Nussbaum 2006, 218). Although Nussbaum appreciates Kittay's reminder that independence is always temporary and partial, she is not convinced that being "some mother's child" is a sufficient image for the state's relationship to its citizens. She asks whether people with severe disabilities can expect Kittay's state to foster their potential for independence and liberty. Nussbaum argues those expectations are possible only if we uphold liberal ideals of freedom and justice for all, and extend them to overcome the hierarchy of ability and prejudice against disability.

Clearly, the question of disability is both personal and political for Kittay and Nussbaum. To understand how their perspectives differ, we should remember that Nussbaum's concern is with human *development*, while Kittay's is with *care*. The normative character of Nussbaum's proposal is no accident: she proposes a list of ten central capabilities so that citizens can demand that governments develop them. Nussbaum wonders whether Kittay's position may enable governments (and society as a whole) to continue shirking the responsibility to help people with disabilities develop their often considerable potential for independence. In contrast, Kittay's goal is to support relationships of care for all human beings on an unshakable foundation of human dignity. For that reason, she is concerned with Nussbaum's claim that a life without the most fundamental capabilities is not fully human (1999, 181).

In my view, the key problem with Nussbaum's approach is the ambiguous double role played by human dignity. All human beings have dignity regardless of their capabilities. Dignity also acts as criterion for determining the capabilities list, implying that some lives unable to exercise these capabilities have a tragic "lack" of dignity. Kittay's perspective provides a helpful contrast. Grounding dignity in the perception and care of others makes it relative, such that the abandoned infant has full dignity in a conditional sense, only if someone else is willing to care for her. If Nussbaum followed Kittay's example and distinguished multiple senses of dignity, she could adopt one sense as foundation for universal human dignity, and apply another to develop her list of capabilities. These different meanings may still be related or ordered to each other; they only need to be distinct enough to avoid the double duty observed in Nussbaum's theory.

Methodology and Credibility

Yet Nussbaum's theory cannot be so easily corrected. Like other liberal political theorists, Nussbaum seeks to avoid endorsing any particular religious or philosophical perspective, so as to

keep political principles palatable to citizens endorsing different metaphysical frameworks. She designed her list to be *non-metaphysical*, avoiding "concepts that belong to one major comprehensive metaphysical or epistemological view of the human being rather than another, such as the concept of the soul, or of a natural teleology, or of self-evident truth" (Nussbaum 2006, 182). By keeping her capabilities "thin" and free of controversial moral or teleological claims, she hopes they can be endorsed by a wide variety of citizens who understand dignity in similar ways but disagree on other matters.

Other scholars have raised questions about the intuitive appeal and universal credibility of Nussbaum's approach. For example, philosopher John Clark is sceptical that Nussbaum can achieve consensus just by avoiding metaphysics. "Many of Nussbaum's value commitments are controversial not only among philosophers […] but also among the diverse societies and groups in the world" (2009, 588). In Clark's view, Nussbaum never gives a detailed explanation for why her ten central capabilities are the most important, or at least more than simply her personal favorites. Similarly, he highlights her choice not to include the capability for cruelty on her list, and asks: "What if, in an age of increasing nationalism, resentment of immigrants, and fear of foreign terrorists, a relative consensus emerged in most societies that a certain degree of cruelty […] will promote the general welfare?" (2009, 590). Clark does not himself endorse this position, but raises it as a real possibility in Nussbaum' view.

Nussbaum's lack of justification for her evaluations also feeds Clark's suspicion that she does not actually succeed in avoiding appeals to any controversial metaphysical or epistemological notions. He questions whether ethics can be completely separated from epistemology and metaphysics to the extent that ethical premises do not entail commitments in related fields of philosophy. In particular, he argues that "any appeal to 'intuition' in ethics must have

epistemological implications and any appeal to an ethical or political conception of 'human flourishing' must have metaphysical implications" (2009, 589). Clark also is sceptical about Nussbaum's presumption for the universal appeal of political liberalism. He points out that "for many strict religious standpoints, behavior that liberals would protect on the basis of rights to freedom of speech and action are thought intolerable because they are judged to be blasphemous or immoral" (2009, 591).

Clark's critique is detailed, but he does not provide constructive suggestions for an alternative methodology. Theologian Jean Porter, however, raises questions about the universal credibility of Nussbaum's approach in the process of arguing for a flexible recovery of the Thomistic natural law tradition. First, Porter notes that despite the homages paid to Aristotle in her work, Nussbaum makes a crucial departure from the Aristotelian tradition. Whereas Aristotle provides an explicitly moral analysis of which human activities constitute the ideal of human happiness, Nussbaum avoids specifying a particular moral ideal. She is concerned only with promoting human flourishing and wellbeing through the development of capabilities to a level compatible with multiple ideals. Her reluctance to discuss happiness sits well with her commitment to liberalism and allergy to metaphysics, but Porter is doubtful she can elude such questions forever. For Porter, the problem is that capabilities are exercised "in and through the pursuit of a way of life which will always necessarily be to some extent culturally specific" (2005, 150). Any evaluation of capabilities will be conditioned by the prevailing culture, including ideas of what constitutes happiness. This cultural conditioning need not render any attempt at a general account impossible, but intuitions alone—however widely shared—are insufficient to justify Nussbaum's choice of capabilities.

Porter expands Clark's questions about Nussbaum's choice of capabilities. Rather than focusing on cruelty, Porter argues a more serious challenge is whether she can exclude human capabilities for aggression and dominance, which are certainly pervasive and arguably essential for the survival of individuals and societies. As for the capabilities Nussbaum endorses, Porter wonders if "opportunities for sexual satisfaction," "basic mathematical and scientific training," or "guarantees of freedom of expression" are so crucial to human wellbeing that someone who lacks them is sick, suffering, or deformed. Nussbaum's definition of capabilities as substantive freedoms saves her from requiring that every capability be exercised for human flourishing to be present. Yet, as Porter observes, her emphasis on freedom of choice "reflects a moral judgement about the overriding value of autonomy that is […] culturally specific" (2005, 151). Porter concludes that Nussbaum's list of capabilities largely reflects her moral convictions. She is not convinced it is possible to construct a morally neutral account of human capabilities.

Rather than disavowing moral commitments and seeking to construct a free-standing neutral account, Porter suggests we make our moral judgements about human flourishing and wellbeing explicit, so that they can be debated. She argues that the concept of a shared human nature needs to be rehabilitated in ethical discourse. She is not suggesting we can read a complete moral code off human nature. She emphasizes that "human nature underdetermines moral norms, at least at a level sufficiently concrete to be put into practice" (2005, 126).[5] She defends the more minimal claim that human beings are a kind of living creature with a particular way of flourishing. This account leads to modest conclusions: "if the concept of a human being sketched above is generally corrected, then we are justified in saying that human flourishing includes not only such things as health and physical security, but also participation in some kind of social life" (2005, 142). There

5. Porter borrows this phrase from John Kekes (1985).

are similarities between Porter's concept of human flourishing and Nussbaum's capabilities list, among which are the core capabilities of bodily health, bodily integrity, and affiliation.

On this basis, Porter recommends returning to the question of happiness. Modern ethics and politics avoid addressing the question of "the good life" out of fear of imposing any ideal. Yet as Clark and Porter have demonstrated, even an influential liberal thinker like Nussbaum cannot avoid smuggling in concrete judgements about what is a good and happy life, to ensure that autonomy receives far more weight than aggression in the list of capabilities. In contrast, Porter makes her moral judgements about human wellbeing clear: she wants to recover the classical insight that happiness consists in the practice of the virtues, which are "ordered ways of pursuing, preserving, and enjoying the functional capacities proper to the human creature" (2005, 171). A good life requires not only access to sufficient food and drink, but also the virtue of temperance, which enables agents to enjoy nourishment in a way that sustains their activities and supports their long-term wellbeing. Using Nussbaum's language, we might say human happiness consists not only in having the capability to form a concept of the good (part of the capability of practical reason), but also in exercising that freedom to govern the consumption of adequate nutrition (part of the capability of bodily health.)

To be sure, invoking the concepts of human nature, happiness, and virtue is controversial. Different methodologies provide different trade-offs. The intuitive, non-metaphysical character of Nussbaum's capabilities approach is a clear strength in terms of breadth of influence: because the approach lacks many particular commitments, scholars from a wide range of perspectives can adopt it if they find it compelling. At the same time, the thinness of Nussbaum's proposal makes it harder to set her choices of capabilities as valid and stabilize her use of human dignity, leaving her approach open to Kittay, Clark, and Porter's critiques. Porter's approach involves explicit

philosophical and theological commitments, limiting its influence—but also providing a firmer ground for normative concepts of human nature and virtue.

Disability and Virtue

If a recovery of the Thomistic tradition has the resources to be a serious alternative to Nussbaum's liberal capabilities approach, the reintroduction of virtue and an explicitly moral concept of human nature may seem to carry serious risks for people with disabilities. The idea of the good or happy life being bound up with the practice of virtue would appear to be another demand that many may not be able to satisfy. Substantive accounts of human nature have been used historically to divide humanity into superior and inferior types.[6]

Shane Clifton sees both as necessary implications of Aristotelian virtue ethics. Aristotle held that *eudaimonia* (happiness or flourishing) requires virtue and, furthermore, that women and slaves are incapable of *eudaimonia* due to their limited (women) or absent (slaves) deliberative faculties. Even free men who lacked certain qualities could be deemed incapable of true flourishing: "a person who is altogether ugly in appearance, or of poor birth, or solitary and childless cannot really be characterized as happy" (Aristotle 2012, 1099b). Aristotle saw being ashamed of receiving generosity from others as virtuous, because "receiving a benefaction" is a sign of "one who is inferior" (2012, 1124b). Given that people with disabilities are often perceived as being mentally deficient, "of poor birth," ugly, and/or recipients of care, Clifton infers that "for Aristotle, it is impossible for the disabled person to be truly happy" (2010, 57). It therefore follows that

6. The use of Aristotelian categories raises additional concerns, such as whether the concept of virtue can be disentangled from ancient epistemology and metaphysics, as neo-Aristotelians generally try to do. A full explication and evaluation of neo-Aristotelianism is beyond the scope of this paper, but one entry point is Nussbaum's discussion of neo-Aristotelianism in Nussbaum 2000, 103-107. Rosalind Hursthouse, whose account of virtue ethics has influenced Porter's, discusses neo-Aristotelianism in Hursthouse 1999, 8-16.

Aristotelian virtue ethics, in its original form, must regard people with disabilities as inevitably unhappy and inferior to those who have more ability to exercise virtue.

Thomistic tradition is heavily influenced by Aristotle, especially in its understanding of virtue. Does it avoid Aristotle's negative evaluation of people with disabilities? Hans Reinders argues that Roman Catholic thought oscillates between considering human beings in terms of their *genesis* and in terms of their *telos*, and it is the latter, more Thomistic emphasis that is actually challenges upholding the humanity of people with disabilities. Reinders explains that in the *genesis* view, the status of human beings rests not on their development, but on their descent from other human beings. For example, *Donum Vitae* states that a fertilized egg is "the life of a new human being with his own growth. It would never be made human if it were not human already" (CDF 1987, 5). Therefore, the question of the humanity of persons with profound disabilities is easily resolved—they are human because they have human parents—and so any elaborate attempt to ground human identity in theological categories is redundant.

Not so fast, Reinders replies; although the Vatican document implies that persons with disabilities share in the *genesis* of all human beings, it does not clarify how they can participate in the human *telos.* He gives the example of Kelly, a woman with the profound disability of micro-encephalia, to argue that "we not only need to identify her origin as a human being; we also need to ask how she participates in our final end as a human being" (2008, 92). The *telos* view, which Reinders associates with Thomism, holds that a human person needs to have and develop capacities of reason and will to pursue their natural end. In the *Summa Theologiae* Aquinas does suggest this, agreeing with Damascene that human beings are made in "God's image, insofar as the image implies an intelligent being endowed with free-will and self-movement" (Aquinas 2012, I-II Prologue). Although people like Kelly are human by their *genesis*, their inability to develop

intellectually marks them as "subhuman" in terms of the human *telos*. For this reason, Reinders rejects the Thomistic position, arguing that its account of the human *telos* reproduces the same basic problem originally found in Aristotle—exclusion of people with disabilities from full humanity.

Does the return to Thomistic natural theology that Porter recommends necessarily entail the problems Clifton and Reinders identify? Porter's own comments on disability are limited, but she does acknowledge the risk. As she puts it, "if we believe that we have identified the defining characteristics of a 'real' human being, does this not imply that those who lack these characteristics [...] would not count as human persons?" (2005, 107). Porter's initial rejoinder is that general definitions of a species' characteristics do not entail that every example of that species will display all such characteristics. For example, birds can be most broadly defined as feathered vertebrates. However, some birds are born without feathers, and some develop diseases that lead them to lose their feathers. Are these featherless animals birds? Porter would contend that they are, because further definitions are implied whenever we "identify various types of incapacities as forms of illness or disability" (2005, 146). A bird born without feathers is still a bird, because it shares other characteristics with its parents and will develop feathers; a sick bird without feathers is a still a bird, because its lack of feathers is due to sickness rather than a difference in kind.

Personally, I doubt Reinders would find such analysis reassuring, as Porter still seems to retrace the steps leading to questions of how people with disabilities participate in the *telos* of human beings. Porter is right to argue that all general definitions of a species will inevitably set out characteristics that some members of the species lack, but the rhetoric of her argument suggests that measuring people against such an evaluative standard is intrinsic to all conversations about disability, making the questions of *genesis* and *telos* inseparable. A more promising angle is

provided by Porter's account of virtue. She follows Thomas Aquinas in distinguishing between *acquired* virtues that "can be attained by human action" and *infused* virtues that "cannot be acquired but must be bestowed […] directly by God" (2005, 164).[7] Infused virtues are the most important, because only virtues infused by God can lead human beings to attain their ultimate end of union with God. Given only by the grace of God, the highest end or *telos* for human beings can never be considered an accomplishment of natural human ability. Although a Thomistic account of human nature can retain a role for the development of human capabilities and virtues, in the end grace displaces human ability from its pride of place.

John Berkman strengthens this argument by drawing our attention to Aquinas' discussion of baptism. Like Augustine, Aquinas holds that children should be baptized before they have the use of reason, because they "receive salvation not by their own act, but by the act of the Church" (2012, III 68.9 ad 1). Aquinas then goes on to explicitly extend this argument to those who are mentally impaired: "For some […] show no signs of the use of reason. And with regard to these it seems that we should come to the same decision as with regard to children who are baptized" (2012, III 68.12). Indeed, Aquinas argues that in baptism God gives both infants and those with mental impairments the gift of wisdom (2012, II-II 45.5 ad 3). As Berkman points out, this stance on baptism makes little sense if Aquinas sees rationality as the decisive characteristic of human beings. Rather, Berkman argues, "this should be seen as another instance in which Aquinas gives priority of place to God's gracious initiative to all humans" (2013, 94). In Aquinas' theology, God's grace bestowed in baptism takes precedence over any variation in human rationality.

The introduction of divine grace and baptism may appear to be an even more arbitrary basis for the inclusion of people with disabilities than a simple appeal to shared humanity. As with the

---

7. Aquinas discusses the distinction between acquired and infused virtue in Aquinas 2012, I-II 55 and 61.

trade-offs between Nussbaum and Porter's approaches, I submit that what is lost in intuitive appeal is gained in stability. Like Kittay, Aquinas argues for a relational ground for human dignity, but rather than proposing human parents (especially mothers) as a source of care which can sometimes fail, he sees the divine as the unfailing source of care and therefore dignity for human beings. Due to its explicitly theological content, such an account will almost certainly not appeal to the same range of readers as Nussbaum (and Kittay's) non-metaphysical approach. Instead of avoiding questions about moral particularity and cultural specificity, a Thomistic approach is explicit about both, allowing well-grounded arguments for how people with disabilities—even profound cognitive disabilities—can participate in the human *genesis* and *telos*. As Kittay, Clifton and Reinders remind us, normative standards of human flourishing carry risks of exclusion. For the sake of grounding the dignity of people with disabilities, preference should be given to accounts that articulate the human ideal in terms of universals—such as divine grace—rather than in terms of capacities or capabilities that vary across the human species.

References

Aristotle. 2012. *Nicomachean Ethics*. Translated by Susan D. Collins and Robert C. Bartlett. Chicago: University of Chicago Press.

Aquinas, Thomas. 2012. *Summa Theologiae*. Translated by Laurence Shapcote. Lander, WY: Aquinas Institute for the Study of Sacred Doctrine.

Berkman, John. 2013. "Are Persons with Profound Intellectual Disabilities Sacramental Icons of Heavenly Life? Aquinas on Impairment." *Studies in Christian Ethics* 26(1): 83–96.

Birdsall, William F. 2014. "Development, Human Rights, and Human Capabilities: The Political Divide." *Journal of Human Rights* 13: 1–21.

Clark, John P. 2009. "Capabilities Theory and the Limits of Liberal Justice: On Nussbaum's Frontiers of Justice." *Human Rights Review* 10(4): 583-604.

Clifton, Shane. 2010. *Crippled Grace: Disability, Virtue Ethics, and the Good Life*. Waco, TX: Baylor University Press.

Congregation for the Doctrine of the Faith [CDF]. 1987. *Donum Vitae*. https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html (last accessed June 4, 2020).

Hursthouse, Rosalind. 1999. *On Virtue Ethics*. Oxford: Oxford University Press.

Kekes, John. 1985. “Human Nature and Moral Theories.” *Inquiry* 28: 231-45.

Kittay, Eva Feder. 1999. *Love’s Labor: Essays on Women, Equality and Dependency*. New York: Routledge.

———. 2005. “Equality, Dignity and Disability.” In *Perspectives on Equality: The Second Seamus Heaney Lectures*. Edited by Mary Ann Lyons and Fionnuala Waldron. Dublin: Liffey.

Nussbaum, Martha C. 2000. “Aristotle, Politics, and Human Capabilities.” *Ethics* 111: 102–140.

———. 2006. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, MA: Belknap.

———. 2011. *Creating Capabilities: The Human Development Approach*. Cambridge, MA: Belknap.

Porter, Jean. 2005. *Nature as Reason: A Thomistic Theory of the Natural Law*. Grand Rapids, MI: Eerdmans.

Reinders, Hans S. 2008. *Receiving the Gift of Friendship: Profound Disability, Theological Anthropology, and Ethics*. Grand Rapids, MI: Eerdmans.

United Nations Development Programme [UNDP]. 2010. “Human Development Report 2010: The Real Wealth of Nations—Pathways to Human Development.” http://hdr.undp.org/en/content/human-development-report-2010 (last accessed June 4, 2020).