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Pluralism, Perfectionism and Political Neutrality: Probing the Political Liberalism of Martha Nussbaum's Capabilities Theory of Justice

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Abstract

Since her purported moderation of Aristotelian essentialism in the late 1990s, Martha Nussbaum has cast her capabilities theory of justice in the light of the political liberalism broadly associated with John Rawls. In recent decades, however, several authors have expressed considerable doubt about the status of Nussbaum's theory as politically liberal. This thesis aims to systematically examine the political liberalism of Martha Nussbaum's capabilities theory of justice. Through a critical assessment of the existing scholarship on political liberalism, I partially vindicate Nussbaum's self-description, arguing that a politically liberal orientation – far from being antithetical to – is consistent with the structural configuration of, and weak perfectionist tendencies within, her account. Nevertheless, certain articulations of her account contain ambivalences that Nussbaum has good reason to disambiguate if she is to bolster the political liberalism of her account.

Introduction: Pluralism, Justice and Political Liberalism

Modern societies are shaped by the inescapable reality of *pluralism*. Indeed, how to reckon with the demands that arise from this reality is a central political question of our time: Should the state decide which lifestyles and cultural practices to promote and which to denounce? Or should it remain neutral? And given the panoply of worldviews diffused in society, to what extent should it have a say in what is to be deemed valuable? It is hard to ponder these issues without invoking the broader theoretical question of *justice*. After all, part of what it means to think about justice is to determine how to organise society amidst the deep pluralism shaping modern democratic life today. In his 1993 work 'Political Liberalism', John Rawls articulated what is arguably the most rigorous account of the relationship between the demands of justice and the reality of pluralism that exists to date. In order to adequately conceptualise justice, Rawls contends, any political theory must accommodate the reasonable pluralism that exists in society, institute fair procedures – and thus refrain from pronouncing and imposing any morally controversial assumptions about the good. Only by remaining thus neutral can the liberal state ever hope to respect and thus ever hope to be seen as legitimate in the eyes of its diverse citizenry. Or so argued Rawls following his conception of *political liberalism* (Rawls 2005).

The academic debate about pluralism and its role in political theorising has hardly abated since the publication of Rawls's seminal work – nor has the intellectual conversation about justice. One of the most preeminent contributions to have emerged from this conversation is Martha Nussbaum's capabilities theory of justice. In it, Nussbaum tells us that the primary role of justice is to enable people to lead *flourishing* lives, as reflected in a list of fundamental human capabilities. In so arguing, Nussbaum conjoins considerations of justice with an insistence on a particular idea of the good, constituting a significant departure from Rawls's work (Nussbaum 2007, 162). However, Nussbaum argues that her account remains pronouncedly Rawlsian in at least one central respect: its orientation towards political liberalism (Nussbaum 2000, 76). For, although proceeding from a specific notion of the good, Nussbaum claims to pay sufficient heed to the deep pluralism shaping modern society and to respect people's freedom to choose and pursue their own ideas of the good life (Nussbaum 2007, 6).

In recent years, however, several authors have vociferously disputed Nussbaum's self-description. Linda Barclay (2003, 5) for example, has noted that she is "unconvinced by [Nussbaum's] view that it is the political liberalism more recently defended by John Rawls that describes her liberal view". More recently, Ingrid Robeyns (2016, 411) has argued that particular theoretical commitments of Nussbaum "undermine her claim to be fully politically liberal". In the same vein, Claassen and Düwell (2013, 511) point out that specific components of Rawls's political liberalism "provide problems for Nussbaum" and her assertion to be politically liberal. Thomas Wells (2013, 41) weighs in, speaking of "perfectionists like Nussbaum" and arguing that Nussbaum's intimations to the contrary have "not altered the [perfectionist] substance of her account". Nevertheless, several scholars side with Nussbaum in describing her account as politically liberal. Richard Arneson (2020, 165) for instance, writes that scholars like "Nussbaum have developed theories of justice that conjoin the capabilities approach and political liberalism". Similarly, Cornelia Mügge (2017, 27) concurs with Nussbaum in noting that hers is a "conception according to political liberalism, which is justified independently of specific conceptions of the good".¹ There is thus significant scholarly engagement with and disputation about whether Nussbaum's theory of justice qualifies as a politically liberal theory of justice.²

The following thesis critically examines this question. Specifically, it explores whether and to what extent Nussbaum navigates the relationship between the demands of justice and the reality of pluralism, as broadly envisioned by Rawls. Does Nussbaum's capabilities theory adequately consider the plurality of conceptions of the good that can be found in society? Does it remain neutral towards these conceptions in the relevant sense, or does it lapse into perfectionism? In brief, does it meet the criteria of political liberalism or ultimately fall short of them? It is these questions that provide the essential point of departure for the ensuing thesis.

¹ This passage was translated by the author from the original German, as were all passages taken from original German sources cited hereafter.

² For additional critiques of Nussbaum's political liberalism, see also (Biondo 2008; Katzer 2010; Stark 2009; Terlazzo 2014; Ferracioli and Terlazzo 2014; cf. Claassen 2018, 32).

The capability approach is a well-rehearsed and widely employed framework across a broad range of academic disciplines (cf. Robeyns 2017). Questions about Nussbaum's capabilities theory and its intricate relationship with liberalism, individual freedom, and neutrality are therefore anything but new (e.g. Deneulin 2002; Begon 2017). So why reexamine the relationship between political liberalism and Nussbaum's capabilities theory? Two things should be noted in response. First, although the relationship between Nussbaum's theory and political liberalism has received substantive treatment, existing publications continue to be marked by two distinct desiderata: They are sometimes incomplete, failing to take stock of the full scope of Nussbaum's capabilities theory of justice (e.g. Winkler 2016); and they are often insufficiently embedded in the literature on political liberalism, proceeding from an implausibly narrow understanding of political liberalism restricted to the work of John Rawls (e.g. Barclay 2003). It thus seems called for to refine the existing discussion by taking a comprehensive look at Nussbaum's capabilities theory and by situating it more thoroughly in the literature on political liberalism. Second, recent years have seen a surge in scholarly discussions about political liberalism and its liberal perfectionist counterpart, not least as pertains to its relation to the capability approach (e.g. Arneson 2020). This only heightens the importance of revisiting the political liberalism of Nussbaum's theory. For doing so will enable scholars on either side of the dispute to arrive at a more nuanced evaluation of Nussbaum's theory and its place in the contested terrain between political and perfectionist liberalism – which might bear significantly on either side's appraisal of her account.

This thesis proceeds in four chapters. In chapter I, I provide an overview of the capability approach in general and Martha Nussbaum's capabilities theory of justice in specific. In chapter II, I outline the main ideas contained in Rawls's political liberalism, before considering several conceptual developments and clarifications. At this point, I hope to have covered sufficient ground to engage with my research question. In chapter III, I do just that, first outlining Nussbaum's arguments that her theory is politically liberal and then proceeding with arguments that posit an essential discontinuity between the two. In chapter IV, I critically evaluate this debate in light of the conceptual clarifications provided in chapters I and II.

1. The Capability Approach

The last four decades have witnessed the inexorable rise of the capability approach (e.g. Robeyns 2017). In the first part of this chapter, I provide a short overview of the capability approach. I briefly elaborate on the central animating concerns of the approach as laid out by its pioneer Amartya Sen, before presenting Ingrid Robeyns' modular conceptualisation as an apt systematisation of the capability approach, from which the requirements of a specific capability *theory* of justice can be derived. The second part of this chapter reconstructs Martha Nussbaum's capabilities theory of justice along the dimensions extracted from Robeyns' account. In addition to providing a useful template with which to conceive of Nussbaum's capabilities theory, I contend that Robeyns' organising framework also supplies an account of the sites of contestation, in which the political liberalism of Nussbaum's theory has been discussed in recent years. I return to this point in chapter three. For now, let me put this to one side in order to explicate the conceptual core of the capability approach.

1.1. *The Capability Approach: A Conceptual Overview*

Amartya Sen articulated the capability approach in a series of writings on development theory beginning in the 1980s (Sen 2008; 1985). To bring out the animating concerns and normative commitments of Sen's approach, consider a helpful explication presented in his so-called *Tanner Lectures* (Sen 1980). Here, Sen takes the example of a disabled person and asks us to compare her life with that of an able-bodied person. In assessing their respective quality of life, Sen contends, it is insufficient to merely register their subjective welfare or disposable resources. For while the able-bodied person can easily use her resources to engage in welfare-enhancing activities, like riding a bicycle, the disabled person cannot. Moreover, even if the disabled person were equally satisfied with her condition – having adapted her subjective welfare to her less fortunate predicament – this would not make her equally well-off.

This is because the disabled person is still disadvantaged in terms of what she can actually *do* or *be* – that is, which *ends* she can attain. In Sen's terminology, these 'doings' and 'beings' are called *functionings*, while the effective freedom to achieve these functionings is termed *capabilities*. Centrally, the capability approach is characterised by its focus on capabilities and their corresponding functionings as the relevant space in which to evaluate how well life is going for a person. As Sen summarises, its "basic concern is with our capability to lead the kinds of lives we have reason to value" (Sen 2000, 285).

To be sure, this brief explication leaves out several pertinent aspects. Positing capabilities and functionings as the relevant *evaluative* space, for example, raises the prior question of which capabilities and functionings are *valuable* to begin with (Wells 2013, 22). Moreover, it leaves unaddressed whether to attach more importance to capabilities or achieved functionings in evaluative exercises or how to turn the commitment to capabilities and functionings into a more specific political *theory*. Sen himself remains reticent on these issues. For instance, he resists taking up the task of specifying which capabilities and functionings should be deemed valuable, arguing that this task is context-bound and so should be left to local decision-making processes and public reasoning (Sen 1999, 78–79; 2004).

Owing to this lack of specificity, several philosophers have criticised Sen's approach for being unduly vague. (Wells 2013, 39). Nussbaum, for example, enjoins Sen to commit to a concrete list of capabilities, lest his approach becomes insufficiently robust. As she writes: "Sen needs to be more radical than he has been [by] describing a procedure of objective evaluation" (Nussbaum 1987, 175). Wells (2013) has argued that this charge rests on the assumption that Sen should supply an operationalizable *theory* which can be judged by its ability to give concrete normative guidance in a series of real-world situations. If assessed on this ground, Sen's work may indeed be deemed wanting (cf. Pogge 2010). Plausibly, however, Sen is not concerned with articulating a coherent normative theory but merely with carving out an evaluative structure which is compatible with, but does not *ipso facto* dictate, any coherent theory at all. Sen (1987, 27) echoes this, writing that his approach "does not lead to one particular theory of valuation".

In this light, Sen's work should be viewed as a broad approach rather than a complete normative theory. Philosopher Ingrid Robeyns (2017) makes a compelling case for this, arguing that we should distinguish the capability approach as an open-ended and underspecified framework from specific capability theories. Robeyns argues that the capability *approach* consists of a set of constitutive and conceptually central commitments that all capability scholars must endorse. However, a given capabilities *theory* comprises further propositions and commitments that are not entailed by an allegiance to the capabilities approach *per se*.

Having established the general distinction between the capabilities approach and specific capability theories, Robeyns (2017) goes on to present a modular conceptualisation. Broadly, this means that the capability approach consists of a non-optional core-module that largely dovetails with the structure carved out by Sen. To this, scholars must then attach a series of optional and contingent modules to render it a specific capability theory. Robeyns' conceptualisation thus provides philosophical grounding for the insight that "it would be a mistake to identify Nussbaum's specific theory with the generic capability approach" (Crocker 2008, 193), thus discarding the erroneous assumption that Nussbaum and Sen's work are two *variants* of the capability approach. Regrettably, this presumption still permeates and, I would argue, muddles the philosophical literature today (e.g. Winkler 2016, 37; Mügge 2017, 30; Straßenberger 2019; Fischel and McKinney 2020, 405). In what follows, I shall therefore focus on the political liberalism of *Nussbaum's theory* rather than the political liberalism of the *capability approach* as such.

Aside from sensitising us to the methodological and conceptual differences between Sen and Nussbaum, Robeyns' framework also supplies a list of modules required to construct a capabilities theory of justice. Let me briefly mention the modules necessary for constructing a capabilities theory of justice. This, in turn, will organise our discussion of Nussbaum's capabilities theory. First, a capabilities theory of justice must spell out the basis on which its principles of justice are justified. In other words, it must explain *why* capabilities and/or functionings should concern us when thinking about justice. Second, a theory must decide whether to prioritise functionings or capabilities when selecting a metric of justice. That is, it must state whether it is an outcome-oriented (functionings) or opportunities-oriented (capabilities) theory. Third, a capabilities theory must specify how capabilities and functionings are to be selected and appropriately weighed. This selection and weighing process can take the form of either a procedural approach, whereby capabilities are derived from a process of public reasoning, or it can take the form of a specific list. Fourth, a capabilities theory must propose a specific *rule* by which the selected metric is distributed, such as equality, sufficiency, or priority. Finally, a capabilities theory must specify who are the relevant recipients to whom justice applies (Robeyns 2017, 153-57). As we shall see, the first three requirements are particularly pertinent sites of contestation as to the relation of Nussbaum's theory to political liberalism.

Now that we have obtained a clearer understanding of the broad architecture of the capability approach and the modules required for a capabilities theory of justice, we can reconstruct Nussbaum's capabilities theory.

1.2. *Martha Nussbaum's Capabilities Theory of Justice*

Martha Nussbaum developed her capabilities theory of justice in a series of writings dating from the late 1980s and early 1990s (Nussbaum 1987; 1992). Since then, Nussbaum has substantially modified her account. Importantly, Nussbaum shifted from a thoroughgoing Aristotelianism, which permeated her earlier work, to a more Rawlsian approach (Winkler 2016, 38), dominant since the publication of her first book-length treatment of her capabilities approach 'Women and Human Development' (Nussbaum 2000). In what follows, I focus on the later Nussbaum, referring to her earlier more avowedly Aristotelian work only to aid our understanding.

Following Robeyns, what is the *justificatory basis* on which Nussbaum proceeds? When reconstructing Nussbaum's capabilities theory, it is essential to start with her fundamental notion of human dignity. Building on Kant, Nussbaum argues that every human is an inviolable *end in itself* and thus possesses inherent dignity. When considering questions of justice, Nussbaum argues that we should proceed from this intuitive notion and reflect carefully on the conditions necessary for people to live dignified lives (Nussbaum 2000, 72). As Nussbaum (2007, 74) writes: "The basic intuitive idea of my version of the capabilities approach is that we begin with a conception of the dignity of the human being and of a life worthy of that dignity". However, this imperative raises several questions that need answering before we can arrive at a richer understanding of her account. For by itself, the concept of dignity is too abstract to offer any guidance on issues of justice (Nussbaum 2008, 245). Importantly, we need to know:

- (i) what due respect for dignity requires and what it entails;
- (ii) what, if anything, it is based on; and
- (iii) to whom it applies (Winkler 2016, 39).

It is in answering these questions that we arrive at an understanding of Nussbaum's account. According to Nussbaum (i), the notion of dignity is inextricably linked to and instantiated in a *list of fundamental human capabilities*. Nussbaum argues that, absent a set of fundamental capabilities, a dignified human life cannot be conceived. That is, Nussbaum thinks that a dignified life is possible only if one can live or act in a distinctly human way across important areas of human life. Ultimately, justice is about protecting these fundamental human capabilities. Thus, only by examining the unique features of human life and the capabilities required for a life of dignity can we gain a clearer understanding of what society owes each of us *qua* being human.

This provides us with an answer to (ii.) and (iii.). Nussbaum's notion of dignity is based on an idea of a normative account of *human* nature and what she calls the 'species norm'. Having an account of human nature is important for Nussbaum since she claims that non-human animals, too, are endowed with dignity (Nussbaum 2007, 326). In demarcating what we owe to human beings, it is thus paramount to examine the distinctive features of *human life*. In her early writings, Nussbaum pursued an 'Aristotelian essentialist' method, arguing that there are essential human functionings which constitute our human nature. In this vein, she proposed conceiving her list as deriving from an inquiry into the central functionings that must exist for a being to live a discernibly human life. As she notes, her theory was "an account of the most important functionings of the human being, in terms of which human life is defined". (Nussbaum 1992, 214). However, this theoretical emphasis made her account vulnerable to the charge that it excludes those beings who fail to exhibit one or more of the characteristic functionings identified as central to human life.³

Nussbaum's later work retains traces of this theoretical orientation, insisting that an evaluative inquiry into our human life form and species-specific forms of functioning is imperative for specifying what constitutes a dignified human life (Mügge 2016, 36; Nussbaum 2008, 252–53). Yet, to ward off accusations of exclusivity, her recent work lends priority to the idea of a *species norm*. Here, membership of the human species is seen as sufficient for being endowed with human dignity. Thus, "any child born into a species has the dignity relevant to that species, whether or not it seems to have the 'basic capabilities' relevant to that species" (Nussbaum 2007, 347) so that "dignity does not rest on some actual property of persons, such as the possession of reason or other specific abilities" (Nussbaum 2007, 7).

What, then, is it about our species that grounds its distinctively human dignity? Nussbaum's notion of dignity and the human life form is complex, and it is impossible to reconstruct it exhaustively here. For our purposes, however, it is important that Nussbaum considers human dignity as thoroughly entwined with our animality. Here, she invokes an Aristotelian/Marxian notion of dignity whereby humans are sociable, embodied creatures who, besides being rational, are also vulnerable and in constant need of care and support. Nussbaum argues that she thereby diverges from the purely Kantian idea of dignity, which draws a clear contrast between our animality and humanity, regarding the latter as the locus of moral reason and freedom and, thus, of human dignity. In doing so, she claims to offer a "richer and [more] moralised account" than do other authors (Nussbaum 2007, 163).

³ Indeed, Nussbaum herself (1995, 82) wrote that "it follows from this that severely damaged infants are not human ever, even if born from two human parents".

The purpose of Nussbaum's evaluative inquiry into basic human functionings and her emphasis on a species norm is to inform us about what is necessary for living minimally decent human lives across different domains of life. Nussbaum (2007, 181) often refers to this as the first threshold below which life "is not a fully human life, a life worthy of dignity". By extension, however, this exercise also helps us to articulate a more demanding second threshold, above which "not just mere human life, but good life, becomes possible" (2007, 181). Armed with this understanding, Nussbaum articulates a *list* of basic human capabilities. Recall that Nussbaum insists that this list is already implicit in the very notion of dignity that constitutes the impetus for her theory. Therefore, the list of basic human capabilities is not merely instrumental to the notion of *dignity*. Instead, the list of fundamental human capabilities is a way to *flesh out* the highly abstract notion of dignity. As she puts it: "The capabilities are not understood as instrumental to a life with human dignity: they are understood, instead, as ways of realizing a life with human dignity" (Nussbaum 2007, 161). With these points clarified, the following capabilities feature on Nussbaum's list:

1. Life: Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living
2. Bodily health (includes nourishment and shelter)
3. Bodily integrity: free movement, freedom from sexual assault and violence, having opportunities for sexual satisfaction
4. Being able to use your senses, imagination, and thought; experiencing and producing culture, freedom of expression and freedom of religion
5. Emotions: being able to have attachments to things and people
6. Practical reason: being able to engage in a conception of the good and critical reflection about the planning of one's life
7. Affiliation: being able to live with and toward others, imagine the other, and respect the other
8. Other species: being able to live with concern to animals, plants and nature
9. Play: being able to laugh, to play, to enjoy recreational activities
10. Control over one's environment: political choice and participation, being able to hold property, being able to work as a human being in mutual recognition

(Nussbaum 2007, 76–78; summary taken from Coeckelbergh 2011, 83)

According to Nussbaum, this list provides an explicit account of human flourishing – specifying what is required for, and owed to, a person to live well. In doing so, Nussbaum unabashedly proposes a *specific* conception of the good as a yardstick for justice (Nussbaum 2007, 162). As discussed below, this creates an interesting tension with the ideas of neutrality and equal respect, as they are thought to inhere in political liberalism. However, before we turn to this point, note that Nussbaum views her conception as avowedly *vague*. She insists that her list can be interpreted and implemented differently in accordance with local cultures and contextual values, provided the basic underlying ideas remain in place. The precise meaning of the human capability to play, for example, is contingent upon local circumstances, allowing it to be realised in multiple ways. In addition, Nussbaum argues that her list is also modifiable and open-ended (Nussbaum 2007, 78-79). Thus, her account is expressly not a final, trans-historically valid account of human flourishing grounded in metaphysical reality (Nussbaum 1992, 212-13).

Moreover, Nussbaum focuses on people's *capability* to function rather than on achieved functionings *per se*. Nussbaum stresses that it is imperative that the state not force its citizens to function in specific ways but rather *enable* them to function as they wish. This does not mean that functionings are altogether unimportant. For not only are functionings significant in assessing how “fully human” someone has lived their life (Nussbaum 2000, 87). In specific areas such as children's education they may even take precedence over capabilities (Nussbaum 2000, 87). Furthermore, where human dignity and self-respect are concerned, achieved functionings, rather than capabilities, should be the goal of state action (Nussbaum 2007, 172). Nevertheless, Nussbaum tells us that “for political purposes it is [usually] appropriate we shoot for capabilities, and those alone” (2007, 172).

It is important to note that Nussbaum limits herself to identifying a *sufficientarian threshold* of basic capabilities that should be politically and constitutionally guaranteed. That is, far from specifying the requirements of justice exhaustively, Nussbaum contends that her list of fundamental human capabilities constitutes the minimal requirement of justice. This connects back to her notion of dignity. For Nussbaum argues that this notion implies that people are owed not just any life but a life worthy of dignity (Nussbaum 2007, 292). Nussbaum's list is, therefore, a minimal basis for judging whether a state enables its citizens to function in a dignified way in key areas of human life such that a shortfall in any of the relevant dimensions constitutes a failure of justice in this sense. Nussbaum emphasises that this minimum guarantee is not the *only* goal of social justice. However, she does not elaborate on what justice requires beyond this threshold. In this regard, her theory is a partial rather than complete theory of justice that makes *sufficiency* its metric of distribution (Nussbaum 2007, 71).

Though *partial*, Nussbaum's theory is nevertheless *comprehensive* as it extends its scope to all citizens worldwide (Robeyns and Byskov 2021). This stands in stark contrast to Rawls, who restricted the applicability of his theory of justice to specific Western liberal states (Rawls 2005, xxvi; see also 2003). Nussbaum, on the other hand, conceives of her theory as a global theory of justice that applies universally, both within nations and in the international realm. This means that the relevant *recipients* of justice encompass all of humankind. After all, Nussbaum argues that every human being around the world is imbued with equal dignity and so, given the entanglement of dignity with the requirements of justice, the latter ought to be guaranteed to *everyone* globally (Nussbaum 2007, 278; 2015).

So far, I have described the broad contours of the capability approach and reconstructed Martha Nussbaum's capabilities theory of justice. In doing so, I hope to have provided sufficient background for the ensuing discussion of the political liberalism of her account, to which I will turn in chapter three. There, I will map the relevant dimensions to the discussion of the political liberalism of her account. Before we can cogently address this question, however, we require a more rigorous theoretical background to political liberalism. It is only through the lens of such rigorous engagement that we can arrive at a nuanced assessment of the relationship between it and Nussbaum's capabilities theory. Let us therefore turn to a critical examination of *political liberalism*.

2. Political Liberalism

John Rawls is widely regarded as the founder of political liberalism. This chapter begins by outlining the main components of political liberalism as set out in Rawls' paradigmatic work of the same name. Though much of the contemporary discussion about political liberalism remains closely associated with Rawls, recent scholarship has expanded upon his ideas. The second part of this chapter therefore provides an overview of recent developments in political liberalism. This chapter aims to extract the central theoretical commitments of (any plausible construal of) political liberalism. In the next chapter, I then apply these components to Nussbaum's capabilities theory, turning to recent discussions about its contested relationship with political liberalism.

2.1 *The Political Liberalism of John Rawls*

Modern societies are characterised by profound disagreement about the most fundamental questions of human life. For example, people disagree about the nature of the good life and the moral, religious and philosophical issues that underpin it (Quong 2011, 36). This fact of widespread disagreement and the pluralism that is its result is central to Rawls's political liberalism. For its animating concern is how the reality of pluralism can be reconciled with the legitimate exercise of state power. In short, it asks: "How is it possible for there to exist over time a just and stable society of free and equal citizens who still remain profoundly divided by reasonable religious, philosophical and moral doctrines?" (Rawls 2005, 4). Rawls' political liberalism is thus fundamentally a response to the twin challenge of *legitimacy* and *stability* under conditions of pluralism.

In liberal societies, people commonly hold different beliefs. Some adhere to Christianity, others to Islam, and yet others to no faith at all. Consequently, people hold vastly different ideas about what constitutes a valuable way to live. In Rawls's terminology, these are referred to as *comprehensive doctrines* (Wenar 2021) – and pluralistic liberal societies encompass a wide variety of them. This, Rawls argues, is no historical accident. Nor is it the result of blatant irrationality. Instead, under conditions of freedom, people inevitably adhere to different comprehensive doctrines due to what he terms the *burdens of judgment*. These are, as Rawls (2005, 56) puts it, "the many hazards involved in the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life". For example, the evidence we use to support our views may be contradictory, complex, and difficult to evaluate. Furthermore, our evaluation of it is significantly shaped by our life experiences. Thus, the ability to think and reason freely leads to a state in which people naturally disagree about important moral, religious, and philosophical issues. This is important because it means that the pluralism that characterises modern liberal societies cannot be resolved through rational persuasion or educational initiatives. Since pluralism is rooted in insurmountable obstacles to human judgement, it is rather an enduring feature of liberal society. Consequently, modern liberal societies are characterised not only by disagreement, but by *reasonable disagreement* that cannot easily be resolved (Rawls 2005, 55).

According to Rawls, this has important implications for thinking about the legitimate use of state power. For if people persistently diverge in their comprehensive doctrines, any attempt to privilege one doctrine is bound to be oppressive (Rawls 2005, 54). Each attempt to ground state power in a particular conception of the good thus runs afoul of the crucial criterion for the legitimate use of coercive state power, namely that it be *publicly justifiable*. This implies that the use of coercive power is justifiable only if it can be justified to all persons to whom it applies. In other words, state power is legitimate only on grounds that are accessible to and mutually endorsable by all (Vallier 2022). Hence, state power must conform to what Rawls calls the *liberal principle of legitimacy*, whereby its exercise “is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in light of principles and ideals acceptable to their common human reason” (Rawls 2005, 137). Rawls argues that we only respect our fellow citizens as free and equal when we offer *public* reasons for the use and exercise of state power. For otherwise, we would impose on them ideas and principles that *we* alone happen to accept, thereby undermining their status as equals (cf. Freeman 2003, 2042).

This goes some way toward explaining what constitutes the legitimate use of state power. However, it begs the question of what conception people can reasonably adhere to and endorse. Part of the answer lies in Rawls's notion of the *reasonable citizen*. Rawls argues that reasonable citizens accept the burdens of judgement that lead to reasonable pluralism, which characterises liberal society. Yet, importantly, they also accept that the use of state power should be publicly justifiable. That is, they are “willing to propose and abide by mutually acceptable rules, given the assurance that others will also do so” (Wenar 2021). This is partly because they recognise that many of the moral, philosophical and religious issues that they disagree about are rooted in forms of *reasonable disagreement*. Reasonable citizens will therefore resist grounding state power in their own comprehensive doctrines. Instead, they will want to appeal to a doctrine that is justifiable to and reciprocally endorsable by *all* reasonable citizens, irrespective of their conceptions of the good.

What is the nature of such a doctrine? Here, we encounter the idea of a *political conception*, which is the centrepiece of Rawls's political liberalism. A political conception is a conception of justice devised for political purposes, which remains agnostic about divisive ethical issues. It is not intended to be applicable to all areas of human life but only to those pertaining to the basic institutions of society that constitute a system of social cooperation over time – the ‘basic structure’ (Rawls 1991, 224-25). Thus, a political conception is designed such

that it is not predicated on or derived from any comprehensive doctrine. Importantly, the political conception must be reconcilable with all reasonable comprehensive doctrines, lest it become illegitimate. For recall that, according to the principle of liberal legitimacy, coercive state power must be based on reasons that can be mutually endorsed. Rawls articulates this idea by stating that the political conception must be justified in a *freestanding* way. In other words, it must be “expounded apart from, or without reference to, any [comprehensive doctrine]” (Rawls 2005, 12). As such, it must be able to attach itself like a module to various reasonable comprehensive doctrines (Rawls 2005, 12). The political conception is thus limited both in scope – i.e. it does not cover the whole terrain of what makes life valuable – and in justification – i.e. it is expressed in a modular fashion that is justifiable to all reasonable comprehensive doctrines (Nussbaum 2011, 17).

As the political conception is justifiable in a freestanding way, it purports to be *neutral* between competing conceptions of the good. For it refrains from advancing any comprehensive ethical doctrine and confines itself to setting out the main political principles and rules that should underpin a liberal political framework. In this way, Rawls' political liberalism embodies the idea that “the right is prior to the good”. (e.g. Doğan 2011, 316; cf. Rawls 2005, 173–74). This means that the political conception is thought to delimit the neutral political space in which people can pursue their own conception of the good life (Rawls 2005, 174). This is not to say that the political conception is silent on moral issues. Indeed, among other things, the political conception is based on a moral conception of persons as free and equal and able to formulate, pursue and revise their own conception of the good. It is also based on the idea that society ought to be a fair system of social cooperation (Wenar 2021). As such, “[t]he political conception of justice is a moral conception. The relevant opposition here is political *vs* comprehensive, not political *vs* moral” (Rossi 2014, n.p; emphasis own). Moreover, Rawls argues that the requirement of neutrality extends only to the realm of ‘constitutional essentials’, i.e. to the realm of fundamental political structures and individual rights. However, in political questions concerning less fundamental issues, such as the funding of the arts, Rawls leaves considerable room for conceptions of the good to feature in political discourse and decision-making (Rawls 2005, 214; Caney 1995, 250).

If the political conception is based on such moral ideas, one might wonder how it can be justified in a *freestanding* way. After all, many extant views depart from these ideas. Where, then, do the moral ideas underpinning the political conception come from so that they nevertheless appeal to all reasonable comprehensive doctrines? The answer lies in what Rawls

calls the *public political culture*. Rawls argues that for a political conception to appeal to all reasonable comprehensive doctrines, its founding ideas must be rooted in what people *already* share. They must arise, that is, from “a fund of implicitly shared ideas and principles” (Rawls 2005,14). In a liberal society, this fund refers to “a constitutional regime and the public traditions of their interpretation [...], as well as historic texts and documents that are common knowledge” (Wenar 2021). This, then, provides the central background against which the moral, political conception can be designed.

Justifiable, as it is thought to be, to all reasonable comprehensive doctrines, Rawls asserts that his political conception meets the *liberal principles of legitimacy*. Predicated, as it is intended to be, on ideas implicit in the public political culture, Rawls also believes that the political conception will prove *stable* over time. In this context, Rawls adduces the idea of an *overlapping consensus*. According to Rawls, the political conception must be such that people can affirm it for reasons *inherent in* their comprehensive doctrines if it is to prove stable over time (Wenar 2021). Expressed differently, each reasonable comprehensive doctrine must regard the political conception as congruent with their own considered judgments and so affirm the political conception for their own moral reasons. For example, for there to be an overlapping consensus on the right to free speech, all reasonable comprehensive doctrines must be able to assent to this, each for their own moral reasons. As Quong (2011, 41) puts it, “the overlapping consensus refers to the possibility or the ideal that each different reasonable comprehensive doctrine [...] will provide its own reasons to endorse the political liberal conception of justice”. However, being a possibility or ideal, Rawls does not argue that an overlapping consensus currently exists. Rather, his “aim is only to present an account of liberal justice that *could* be the subject of such a consensus” (Quong 2011, 41). As such, the device of an overlapping consensus is different from a situation of *actual agreement*; what is important is that the political conception be designed such that each reasonable doctrine can converge on the political doctrine over time.

This concludes our discussion of Rawls' political liberalism. Before moving on, let me briefly contrast this with *perfectionist* or *comprehensive forms* of liberalism. Here, it is apposite to turn to Jonathan Quong's landmark discussion of perfectionist liberalism. According to Quong, different forms of liberalism are organised around diverging answers to two fundamental questions, namely whether (1) they should be based on a comprehensive conception of what is valuable or worthwhile in human life, and (2) they consider it permissible for a state to promote certain perfectionist considerations about value. In Quong's classification, *comprehensive*

liberalism is based on an affirmative answer to the first question, while *perfectionist liberalism* is based on an affirmative answer to the second question (Quong 2011, 15, 19). Thus, comprehensive liberalism seeks to ground political principles in a particular notion of what makes life valuable or what makes for a flourishing human life, while perfectionist liberalism regards it as legitimate or even obligatory for the state to promote specific valuable forms of life (Arneson 2020, 165). By contrast, political liberalism is based on a negative answer to both questions – and thus resists proceeding from a single comprehensive idea of human value and from encouraging and promoting certain perfectionistic considerations and activities deemed valuable (Quong 2011, 20-21).

2.2. Political Liberalism: Developments and Conceptual Clarifications

In this section, I focus on two significant contributions to and clarifications of political liberalism that will be particularly important for our discussion of Nussbaum's political liberalism in chapter four. These contributions relate, first, to the relationship between the idea of the right and the good within the political liberal framework and, second, to the notion of state neutrality. Let me turn to the latter aspect first.

As noted above, the idea of neutrality features prominently in Rawls' political liberalism. For the latter's aim is to arrive at a freestanding political conception that citizens can espouse independently of their specific conception of the good. As such, the political conception embodies the idea of *state neutrality*. Only a conception that is neutral between competing comprehensive doctrines can be publicly justifiable and ensure stability over time (Rawls 2005, 192). Given the centrality of this idea, one might believe that it constitutes a *strict moral requirement* for political liberals. In other words, one may think that the principles of political liberalism are undermined *whenever* the state violates its duty to remain neutral. In a recent article, Alan Patten (2012, 250) notes that this is a popular reading of state neutrality, invoked *inter alia* in the seminal treatment of the idea by George Sher (Sher 1997). Here, neutrality is cast as an absolute prohibition on ideas about the good; it is seen as "a principle that forbids the state from relying on such judgments" (Patten 2012, 250). However, Patten challenges this assumption, arguing that, far from being a strict prohibition, neutrality is a significant *pro tanto* constraint.

This means that claims to state neutrality carry considerable normative force but can, in principle, be overridden by other concerns. Thus, for example, a state may depart from complete neutrality when this is necessary to advance an important public interest or when it can prevent a particular conception of the good from disappearing at negligible costs to adherents of

alternative views. In such cases, the state's *pro tanto* reason to remain neutral may legitimately give way to countervailing concerns (Patten 2012, 267-68). According to Patten, this construal of neutrality follows from its status as a *downstream value*. Patten argues that neutrality does not stand 'upstream' to other values. Instead, it is because of other justifiable values, like freedom and equality, that the state has a reason to be neutral. Since freedom and equality are not the only important values, however, Patten argues that state neutrality is sometimes overridden by other concerns (Patten 2012, 252-54). This is consonant with Rawls' insistence that the political conception *is* a moral conception – and is reflected in Rawls' willingness to exclude unreasonable doctrines that are anathema to these moral values from the overlapping consensus (Rawls 1988, 258).

Patten insists that his construal of neutrality does not embrace a form of perfectionist liberalism. This is because, even in situations where the state favours a particular conception of the good to achieve an important social goal, thus violating the principle of neutrality, this represents a genuine normative sacrifice for political liberals. For the state's *pro tanto* requirement to be neutral remains intact. By contrast, perfectionist liberals would resist this framing. After all, they believe that it is perfectly legitimate for the state to encourage certain conceptions of the good. As Patten (2012, 251) puts it, "proponents of perfectionism [...] have not acknowledged anything approaching a general, standing reason for the state to remain neutral". On the other hand, political liberals supply precisely such a standing reason, arguing that a strong *pro tanto* requirement for the state to remain neutral follows from the *liberal principle of legitimacy*. Indeed, as Vallier (2022) emphasises, "perfectionists reject the [public justification principle] itself [...] and they reject the ideas of 'neutrality' and 'restraint' that justify [it]".

The upshot of this is that political liberalism permits appeals to perfectionist judgements on two conditions: (i) they do not permeate the 'constitutional essentials'; that is, the domain of fundamental political issues in which the principle of public justification should unrestrictedly hold sway; and (ii) they respect the state's *pro tanto* requirement to remain neutral between competing conceptions of the good, by retaining a strong theoretical commitment to state neutrality. This challenges Quong's (2011, 3; emphasis own) view that political liberalism entails that "the liberal state must not act for *any* reasons grounded in particular judgments about the good life".

This brings us to a second point: The interpretation of Rawls' idea that the right should be prior to the good. This may be interpreted as entailing that the political conception must remain agnostic about the good. We have already seen that Rawls takes his conception of the good to be a *moral* conception. It bears noting, however, that Rawls also viewed the political conception to be entwined with ethical ideas of the *good*. Rawls (2005, 191) states that "some forms of liberalism are neutral in the sense that they use no ideas of the good at all" but maintains that his conception "is not neutral in this way". Indeed, Rawls (2005, 174) argues that "the right and the good are complementary" and that "a political conception *must* draw upon various ideas of the good" (Rawls 1988, 253). The point is that these ideas should not derive from any *comprehensive doctrine*. Instead, the ethical content of the right "must be political ideas; that is, they must belong to a reasonable political conception of justice" (Rawls 2005, 176). Thus, Rawls believes that appeals to ideas of the good are admissible, provided these ideas are *political* ideas on which free and equal citizens with different conceptions of the good can converge and that these do not derive from a specific comprehensive doctrine (Rawls 1988, 253; 2005, 176).

3. Nussbaum's Capabilities Theory and Political Liberalism

Now that I have provided an overview of Nussbaum's theory and the conceptual architecture of political liberalism, we are able to critically assess Nussbaum's political liberalism. This chapter surveys the existing views on this subject. I begin with Nussbaum's arguments that her capabilities theory is compatible with political liberalism. Subsequently, I present those arguments that regard them as mutually discontinuous.⁴

3.2. The Continuity Thesis

As mentioned above, Nussbaum's early writings on the capability approach were characterised by a thoroughgoing Aristotelianism (1992). Indeed, as Nussbaum (1987, 40) notes, she followed "Aristotle's ethical thought [that] contains an account of human functionings of the diverse activities whose excellent performance constitutes the good human life". However, Nussbaum now stresses that her capabilities theory no longer derives from an Aristotelian conception of the good but can be expounded apart from any comprehensive doctrine. Has she succeeded in this endeavour?

⁴ In what follows, I shall bracket criticisms of Nussbaum's political liberalism on account of its explicitly global scope (Barclay 2003, 12-13). I believe this omission is justified given how extensively Nussbaum has addressed the issue herself (e.g. Nussbaum 2007, chapter 5; Nussbaum 2015).

Nussbaum's own answer is in the affirmative. To bolster this claim, Nussbaum provides three main lines of argument, mapping the three sites of contestation as derived from Robeyns' account. First, Nussbaum contends that her justificatory basis can be articulated as a *political conception*. Nussbaum, that is, argues that her notion of dignity is not predicated on any comprehensive doctrine or controversial ideas about the good. Instead, it is based on an *intuitive* notion of dignity that is accessible to, and endorsable by, all reasonable comprehensive doctrines. In this way, Nussbaum (2007, 79) thinks that her list can be publicly justifiable as a "free-standing 'partial moral conception' [...] introduced for political purposes only, and without any grounding in metaphysical ideas". This may be surprising to some readers since Nussbaum proposes a *specific* idea of the good. However, Nussbaum is adamant that this idea does not amount to a comprehensive view of the good life. For she "understand[s] capabilities as the basis for a specifically political conception of central human goods" (Nussbaum 2001, 140). Thus, while proposing a view of the good life, Nussbaum argues that it does not derive from any *comprehensive* doctrine; rather, it can be supported by adherents of different doctrines and is articulated for political purposes only. In so arguing, Nussbaum claims that her account is sufficiently aligned with the demands of neutrality and public, freestanding justifiability to become the subject of an overlapping consensus over time (Nussbaum 2000, 5).

Second, Nussbaum argues that her account respects pluralism, choice and freedom, by focusing on capabilities above achieved functionings. As I have shown, Nussbaum emphasises that she is not interested in imposing on people a definitive list of functionings. Rather, she is interested in giving people the genuine freedom to choose the life they regard as valuable, as encapsulated by their own conception of the good. As she puts it, "even when we feel confident that we know what a flourishing life is [...] we do not respect people when we dragoon them into this functioning" (Nussbaum 2000, 88). Thus, we may believe that achieving bodily health is paramount for living a good life. However, Nussbaum argues that the choice to lead a healthy lifestyle should be left to people themselves and that there is nothing objectionable about people opting for an unhealthy life, provided one has the opportunity to live healthily (Nussbaum 2007, 171-72). Again, this is said to align with political liberalism's insistence on *public justifiability* and freestanding justification. For Nussbaum does not ground state power in a particular idea of human functioning, thus increasing the likelihood that different comprehensive doctrines can view the basic capabilities as a 'module' that they can attach to their own comprehensive doctrines. After all, a person pursuing an unhealthy lifestyle may endorse the capability of bodily health but would likely protest the inclusion of the corresponding functioning. Nussbaum

argues that this focus on capabilities naturally follows from respecting people's dignity. For respecting dignity requires "being respectful of the many ways citizens choose to live" (Nussbaum 2007, 297). Nussbaum, then, believes that her focus on capabilities inoculates her account against the charge that it is unduly perfectionistic.

Third, Nussbaum claims that she satisfies the demands of political liberalism in the way she articulates her list. Specifically, she argues that her list respects the reality of pluralism and choice by being presented as open-ended and modifiable and allowing for multiple realisations across cultural contexts. Remember that Nussbaum does not present her list as a final, trans-historically valid account of the good life but rather as a proposal that is subject to further revision. This, Nussbaum argues, allows people to revise the list in light of their considered judgements and so fundamentally respects their freedom. Furthermore, the particular items on her list can be implemented differently across different cultures and so do not have to conform to a fixed pattern. Thus, for example, the capability to engage in free speech may be instantiated and realised differently in various countries due to pre-existing cultural norms deriving from these countries' different histories (Wells 2022). Again, this leaves sufficient space for individuals to discuss and deliberate about the specific items on the list and the way they want to see them implemented, further respecting their freedom and choice to pursue their own conception of the good (Nussbaum 2007, 78-79).

3.3. The Discontinuity Thesis

Having summarised Nussbaum's three principal reasons as to why her capabilities theory qualifies as politically liberal, this section provides an overview of recent criticisms of the political liberalism of her account.

First, consider the objections lodged against Nussbaum's account relating to its justificatory structure. Here, Nussbaum attaches particular importance to the 'intuitive' notion of human dignity, which forms the basis from which fundamental human capabilities are derived. Given the centrality of this notion, it is surprising that Nussbaum never explicates its precise origins. As Winkler (2016, 39) notes, "ultimately, Nussbaum provides no answer to the issue of the justification [of human dignity] and instead posits it as an imperative". By appealing to its "intuitive power", Nussbaum thus simply posits that it is normatively significant (2000, 72). Some authors argue that her notion of dignity is thus under-theorised (e.g. Formosa and Mackenzie 2014, 875). More importantly, this lack of rigorous theorising introduces a tension to her account that may undermine its allegiance to political liberalism. Specifically, the criticism is twofold: First, insofar as it is compatible with political liberalism, her notion of dignity cannot do the normative work required to ground her list

of basic capabilities and so poses problems to the coherence of her justificatory structure (Claassen and Düwell 2013, 501). Second, to the extent that her notion does do normative work, it commits her to a comprehensive liberalism that she should reject on pain of inconsistency (Formosa and Mackenzie 2014, 875).

Formosa and Mackenzie (2014) have developed this argument most rigorously. To establish it, they distinguish between the general *concept* of dignity and specific *conceptions* of dignity. The former refers to the general, pre-theorised idea of dignity at a high level of abstraction, while the latter refers to a more specific, theorised idea that can ground political principles. Nussbaum's notion of dignity, as discussed above, falls into the latter category, as she herself makes clear (Nussbaum 2008, 245). However, Formosa and Mackenzie (2014) argue that while the *concept* of dignity has widespread cross-cultural appeal and can become the object of an overlapping consensus, Nussbaum's conception of dignity is too controversial to meet this task. For, despite her claim to the contrary, it continues to be informed by a comprehensive Aristotelianism. As Formosa and Mackenzie (2014, 888) put it:

[T]he Aristotelian elements in her theory, which are grounded in her conception of dignity and based in an appeal to intuitions about flourishing and proper species functioning, push her towards the view that individual flourishing through proper functioning should be the goal of justice.

This becomes evident when we consider Nussbaum's remarks on what constitutes a dignified human life. As we have seen, Nussbaum argues that dignity is inextricably linked to the characteristics of the distinctly human life form. She contends that only through an evaluative inquiry into the human life form can we determine what constitutes a life worthy of dignity. For such an inquiry brings out the fundamental human capabilities without which the distinctly human life form could not be conceived. Now we have seen that Nussbaum no longer believes that it is the *actual presence* of these capabilities that endows someone with dignity, but rather membership of the human species. Nevertheless, she retains her 'Aristotelian' insistence on an evaluative inquiry into the specific human life form to flesh out and ground her notion of dignity and the related idea of human flourishing. According to Formosa and Mackenzie (2014, 891):

Nussbaum has therefore not avoided making controversial ethical assumptions. Instead she seems to be committed to [...] perfectionist liberalism, based on a substantive conception of human dignity and flourishing.

Formosa and Mackenzie argue that the substantive and controversial nature of Nussbaum's conception of dignity manifests in two distinct ways. First, Nussbaum's notion of dignity is rejected by many comprehensive doctrines. For example, Nussbaum's contention that dignity is rooted in humans' neediness and sociability, might be dismissed by Kantians who premise dignity solely on our being rational and autonomous actors. Similarly, the idea dignity requires the state to positively promote a space of basic human capabilities, rather than merely a commitment to non-interference, will be dismissed by libertarians like Nozick. Furthermore, the idea that dignity is predicated on a specific *human* life form which is distinguishable from non-human forms of life strikes adherents of some religious groups as objectionably 'humanist' (Formosa and Mackenzie 2014, 890-91). This renders Nussbaum's claim that her notion of dignity can ground a freestanding partial political conception distinctly "puzzling" (Formosa and Mackenzie 2014, 891) – especially since she "explicitly contrasts her Aristotelian/Marxist conception of human beings [...] with Rawls' Kantian conception of the person and his thin theory of the good" (Formosa and Mackenzie 2014, 881).

Second, while Nussbaum tempers the perfectionist implications of her account by ascribing normative priority to capabilities over functionings, this distinction is not robust throughout her account. After all, there are myriad cases where Nussbaum promotes achieved functionings. Hence, there is a tension between her political liberalism, which manifests in her prioritising of capabilities, and her perfectionism, which is evidenced by her 'Aristotelian' commitment to species-specific forms of human functioning. For example, in child education, Nussbaum believes that the achieved functionings should be the appropriate political goal. Nussbaum argues that this is important not only because education is a prerequisite for realising relevant *other* capabilities on her list but also since the state has a "compelling interest" in the "equality of its citizens" (Nussbaum 2000, 233). However, Formosa and Mackenzie (2014, 888-89) contend that there is unlikely to be an overlapping consensus on such compulsory education schemes, as the opposition of Amish citizens in the context of the United States testifies. In this context, her insistence on achieved functionings is thus indicative of her "Aristotelianism trumping her political liberalism" (Formosa and Mackenzie 2014, 889). Or consider the case of paternalistic laws – such as mandatory seat-belt regulations – where the state interferes with citizens' self-interest to protect them from harm. These sit uneasily with political liberalism's commitment to state neutrality as they inevitably disfavour specific conceptions of the good. However, Nussbaum is reluctant to condemn them outright. Instead, she believes that these decisions should be made on at the level of democratic processes within each state. Once again,

this reticence underscores an unresolved tension between her political liberalism, which prohibits such legislation, and her perfectionism, which welcomes it (Formosa and Mackenzie 2014, 889-90).

This brings us to the second site of contestation. Here, the target is Nussbaum's normative focus on capabilities to achieve functionings as the relevant metric of justice. Specifically, the concern is whether Nussbaum's focus on capabilities sufficiently inoculates her account against charges of perfectionism. Jessica Begon (2017) has argued that it does not. For Nussbaum still ascribes independent value to the performance of certain functionings in a way that subverts the neutrality and inclusivity, and hence political liberalism, of her account. Begon (2017, 159) argues that this manifests, not least, in Nussbaum's commitment to promote functionings in some cases. To this extent, Begon's criticism mirrors the second part of Formosa and Mackenzie's critique.

However, Begon's critique cuts deeper and points to a conceptual issue that cannot be resolved by Nussbaum relinquishing her arguably inconsistent focus on the performance of specific functionings in some cases. For Begon (2017, 160; emphasis own), "the important point is not whether she *sometimes* endorses forcing individuals to function [...] but whether she conceptualises capabilities as the ability to perform valuable functionings". Thus, even in cases where Nussbaum *does* focus on capabilities, she does not dodge the charge of perfectionism. This follows from how Nussbaum conceptualises capabilities, namely as opportunities to achieve specific, *valuable* functionings. As Claassen (2018, 25) puts it, "even if a theory only provides capabilities [...] it still relies on a specific theory of the good to select these capabilities". As such, the distinction between capabilities and functionings and Nussbaum's normative focus on the former does little by way of establishing a robust connection to political liberalism. According to Begon (2017, 164), this is particularly problematic when considering individuals who not only choose not to perform a functioning but who are, by virtue of a specific condition, *unable* to perform that functioning.

To illustrate, Begon considers the example of asexual individuals. Recall that one of the items on Nussbaum's list, bodily integrity, includes "having opportunities for sexual satisfaction" (Nussbaum 2007, 76). Begon argues that this item figures on Nussbaum's list because she thinks that sexual satisfaction is an important ingredient of a dignified and flourishing human life, such that people should have extensive opportunities to achieve this functioning if they so wish. To be sure, Nussbaum does not think that we should force people to function sexually since sexual functioning does not feature in *every* reasonable conception

of the good. Still, the value of a person's capability derives at least partially from the value of the corresponding functioning. However, asexual people are often *unable* to achieve sexual satisfaction. Thus, "they cannot choose to perform the functioning, since they have failed to achieve what is uniquely valuable about it – a satisfying sexual experience" (Begon 2017, 165).

This has problematic ramifications for Nussbaum's political liberalism. For asexual people cannot endorse the view that having opportunities for sexual satisfaction is constitutive of a dignified human life. As such, they are unable to participate in an overlapping consensus on the value of this capability – and so, problems arise as to Nussbaum's claim to be neutral between different people's conceptions of the good. For assuming they may not seek to be 'cured', asexual people will *never* be able to sign up to an overlapping consensus on the value of this functioning and so the inclusion of this item in the political conception fails to meet the desideratum that it be publicly justifiable to all reasonable people (Begon 2017, 165-66). In other words, if Nussbaum conceptualises capabilities as opportunities to achieve *valuable functionings*, she does not offer a political conception that is respectful of, and can be endorsed by, those who are unable to value these functionings, undermining its neutrality and so threatening her commitment to political liberalism with its liberal principle of legitimacy and demand for public justification.

The third site of contestation pertains to Nussbaum's decision to derive a concrete *list of capabilities* from her notion of human dignity. Even if we concede that Nussbaum's notion of dignity and her conceptualisation of capabilities as opportunities to achieve valuable functionings do not preclude a commitment to political liberalism, we may still think that there is something suspect about settling on *one specific* and universal list of human capabilities (cf. Mügge 2017, 136-37). Nussbaum's decision to devise a specific and universal list of basic capabilities has met with intense discussion in recent years (e.g. Robeyns 2003; 2005; Sen 2004). Here, two things stand out. First, some authors query if specific *items* on Nussbaum's list undermine her commitment to political liberalism. Second, others object that the device of a unified list itself is incompatible with political liberalism and its liberal principle of legitimacy (cf. Claassen 2011, 494).

The first challenge is, then, intimately tied to the charge levied against Nussbaum by Begon (2017), to wit, that the items on Nussbaum's list cannot satisfy the test of liberal legitimacy and neutrality because they exclude certain reasonable conceptions from the overlapping consensus. Thus, for example, Okin (2003, 296) describes the inclusion of practical reason as an important capability as forming part of a "highly intellectualized conception of a fully human life". Similarly, Robeyns (2016, 410) objects that the extensiveness of Nussbaum's list, spanning as it does ten items, renders it unlikely to secure an overlapping consensus among

reasonable comprehensive doctrines. More specifically, Robeyns is sceptical that the capability for bodily integrity, which includes “having opportunities for sexual satisfaction and for choice in matters of reproduction” (Nussbaum 2007, 76) can imply, as Nussbaum has recently suggested (Dixon and Nussbaum 2011), a general legal right to access abortion, without jeopardising the very commitment to freestanding and public justification that is so characteristic of political liberalism (Robeyns 2016, 410-11).

This criticism is distinct from a second objection. This objection runs deeper and implies that by assuming the prerogative to devise her list, Nussbaum trespasses the boundaries of political liberalism. As we have seen, political liberalism rests on the tenet that state power should be grounded in a political conception that is publicly justifiable to all those to whom it extends. *Prima facie*, this sits rather uncomfortably with the fact that Nussbaum *herself* has devised her list as the basis for a political conception. For is this method of justification, the imposition of a list of capabilities by a single philosopher, not precisely what political liberalism is committed to rejecting? As Robeyns (2005, 199) notes:

[T]he process by which the list has been created itself needs to be legitimate. If the people to whom the list will apply reasonably feel that it is imposed on them, then the list will lack the necessary legitimacy that is needed for the list to have any political effect.

This is problematic from the perspective of political liberalism. For by devising and subsequently imposing a specific list of capabilities, Nussbaum has committed what an allegiance to political liberalism forbids: the grounding of political principles in individual, private viewpoints about which people may reasonably disagree. Jagger (2006, 314) echoes this, arguing that there is “no place in [Nussbaum’s] extensive writings on capabilities where she questions her own authority to decide what should be included on the list and what should be excluded”. As Claassen (2011, 493) summarises, the “main point is that Nussbaum’s method bypasses those people that its theory is to be applied to in practice”. Thus, Nussbaum’s philosophical method of devising a list of fundamental capabilities appears to conflict with the political liberal demand for public justification, whereby only principles that are mutually endorsable by reasonable citizens may guide coercive state action.

4. Evaluation: Is Nussbaum's Capabilities Theory Politically Liberal?

The foregoing exposition has highlighted the abiding scholarly debate surrounding Nussbaum's political liberalism. This final chapter aims to evaluate this debate along the three sites of contestation that have organised my discussion so far. In doing so, I advance three arguments. First, I argue that criticisms of Nussbaum's justificatory basis and its relationship with political liberalism are unsatisfactory. In particular, I argue that these criticisms are (i) insufficiently attentive to the extent to which Rawls himself relies on contentious ideas of the good and (ii) that the modest perfectionist tendencies that prompt Nussbaum to prioritise functionings in certain areas do not *ipso facto* commit her to perfectionism. Second, I argue that criticism of Nussbaum's political liberalism on account of her commitment to promote capabilities for *valuable* functionings, while justified, does not prove insurmountable for the political liberalism of her account. Third, I argue that criticisms of Nussbaum's capabilities list are valid at the level of individual *items* but that a commitment to political liberalism does not require her to jettison her list.

First, why are recent criticism of Nussbaum's justificatory basis unsatisfactory? Recall that Nussbaum justifies her account by recourse to an 'intuitive' notion of human dignity that underpins a freestanding partial political conception that is hoped to secure an overlapping consensus among different comprehensive doctrines over time. The criticism here is that her notion can only do the normative work required for deriving a capabilities list if it is articulated as an Aristotelian *conception* of dignity, about which people may reasonably disagree. Now, the question of whether Nussbaum's notion of dignity can play its intended role hinges decisively on how *controversial* it is and whether it can indeed be justified in a public and freestanding way. *If* it can be shown that Nussbaum's conception of dignity is so controversial as to presuppose a comprehensive doctrine, then any claim to political liberalism would be untenable. Therefore, let us consider if Nussbaum's notion of dignity is indeed objectionably controversial.

When approaching this issue, we should recall that *every* moral idea appears controversial to *some* people. Thus, even Rawls's political conception, based as it is on ideas of freedom and equality, is controversial to those who oppose these fundamental ideas. However, the important point is that these ideas should not be controversial to *reasonable* people who accept being governed by coercive laws given the like acceptance of others. Pointing to the fact that libertarians may object to the implications of Nussbaum's account thus qualifies as a valid critique only if libertarianism *itself* constitutes a reasonable doctrine. Rawls would reject this since libertarians are unwilling to view society as a fair system of social

cooperation over time and so fail to meet the criterion of reciprocity (Wenar 2021, section 3.4). Furthermore, recall that, for Rawls, there need not be an overlapping consensus on the political doctrine *right now*, provided there is *some hope* that one will emerge in the future. Hence, the fact that Nussbaum's notion of dignity is *currently* controversial to *some* people does not undermine its connection to political liberalism.

To point this out, of course, is not yet to vindicate her political liberalism. For we may imagine a reasonable Christian who regards Nussbaum's notion of dignity as unduly 'humanistic' and thus controversial. Here, it is important to note that the reasonable Christian need not assent to the *truth* of Nussbaum's idea of dignity if she can, over time, endorse it as a reasonable basis for a political conception. Rawls (2005, 129) was clear in stating that "the idea of the reasonable is more suitable as part of the basis for public justification [...] than the idea of moral truth". So, even if the Christian does not believe Nussbaum's notion of dignity to be *true*, and even if in private she abides by a different, more comprehensive idea of dignity, this does not threaten Nussbaum's political liberalism provided she can view Nussbaum's political idea of dignity as a reasonable basis for a mutually acceptable political conception of justice. This further blunts the force of the objection that, by virtue of adopting a notion of dignity that some people may reject, Nussbaum has left the politically liberal field.

Still, doubts may be raised as to whether Nussbaum's notion of dignity really is mutually acceptable to reasonable people as a basis for a political conception. After all, it *does* unabashedly presuppose a thick and moralised account of the good (Formosa and Mackenzie 2014, 881). As clarified above, Rawls (1988, 253) also employs ideas of the good, arguing that his political conception is not neutral on moral or ethical grounds. However, Rawls propounded a deliberately *thin* idea of the good, drawing on a Kantian idea of persons as autonomous and rational agents capable of devising their own conception of the good (Rawls 2005, 176-77). Nussbaum, by contrast, proceeds from an Aristotelian/Marxist idea of persons as thoroughly social, needy, and striving beings and of dignity as intertwined not only with our rationality but also our *animality*. As such, Nussbaum's notion of dignity, and the idea of the good through which it is embodied, is considerably 'thicker' and more demanding than Rawls's idea. Does this render Nussbaum's account prohibitively *controversial*?

I argue that it does not. For controversiality is not simply a function of *demandingness*. Ultimately, a more demanding idea of the good may be less controversial, more inclusive, and thus more acceptable than an idea that is thin and narrow. As Mügge (2016, 135) argues, thin and narrow ideas of dignity and personhood, too, require justification, albeit for what they *do*

not presuppose rather than for what they *do*. Hence, we should ask whether Rawls has convincingly shown that in *omitting* human beings' fundamental neediness and animality in his grounding idea of personhood, he has rendered his political conception *more* rather than *less* acceptable. This is not to deny that abstemiousness is an advantage in terms of the acceptability of a political conception insofar as it asks us "to avoid controversial ideas of the type that divide citizens who reasonably disagree" (Nussbaum 2011, 16). Yet, we should notice that certain ideas and assumptions may divide citizens precisely because of how *under-specific* and narrow they are.

To illustrate, consider how a focus on rationality and autonomy as constitutive elements of personhood has frequently been criticised as an exclusionary and unduly Western and androcentric perspective (cf. Mügge 2016, 135). The critique here is that by positing human rationality and autonomy as central, one perpetuates an idea that is, by no means, universally appealing. For example, many feminist scholars have argued that a strong theoretical emphasis on rationality is indicative of a uniquely Western, masculinist epistemology that sidelines the constructive role of emotions and marginalises 'non-male' and 'non-white' sources of knowledge (e.g. Jaggar 2014). Similarly, one might object that a narrow focus on freedom and autonomy, as suggested by Rawls (cf. Nussbaum 2007, p. 159), discounts the paramount role played by human sociability, relationality, and care, as foregrounded by non-Western philosophies such as *ubuntu* (e.g. Hoffmann and Metz 2017). Moreover, a sole focus on freedom and rationality as components of personhood and human dignity may alienate people from their constitutive relationship with their land and the natural world – a point often emphasised by postcolonial scholars (Kohn and Reddy 2024, section 6). Proponents of these views may be reluctant to subscribe to Rawls's political conception, which proceeds from a Kantian notion of the person as free and rational, thus undermining *its* possibility of becoming the object of an overlapping consensus.

Against this background, Rawls's thin idea of the good may be deemed controversial and ultimately unacceptable by many people, not despite but *precisely because* of how thin and abstemious it is. By contrast, Nussbaum's conception of human dignity, founded on our neediness and striving nature, and the pluralistic list through which it is embodied, incorporates these three points, stressing the importance of emotions (item five), sociability (item seven), and our relationship with the natural world (item eight). Hence, I would argue that Nussbaum's 'thicker' notion of the good is indeed more acceptable than Rawls's 'thinner' conception, particularly in the context of feminist philosophy and intercultural discourse. Given that

acceptability to *all* reasonable doctrines is an important criterion of political liberalism, bound up as it is with the possibility of freestanding justification and overlapping consensus, this lends *prima facie* plausibility to Nussbaum's political liberalism (cf. Mügge 2016, 135-36).⁵

Even so, we may wonder why Nussbaum promotes functionings over capabilities in myriad cases such as child education. Indeed, does this partial emphasis on functionings not undermine a categorical commitment to neutrality and freestanding justification? To some extent, it certainly does. For insofar as specific functionings are promoted by the state, the latter is no longer neutral between the activities that citizens may want to pursue. For example, by introducing mandatory seat-belt laws, the state abandons its claim to be neutral between those who approve and those who disapprove of such laws. However, the crucial question is whether, by allowing the state to introduce such legislation, one has *ipso facto* left the political liberal field. Formosa and Mackenzie (2014, 889; emphasis own) exemplify this position, arguing that these cases are indicative of "Nussbaum's Aristotelianism *trumping* her political liberalism". This suggests a stark opposition between permitting perfectionist policies and being committed to political liberalism; the guiding assumption seems to be that state neutrality acts a strict requirement whose violation belies any purported commitment to political liberalism.

But recall our prior discussion of state neutrality and its role in political liberal theorising. As discussed, neutrality is best seen not as a strict prohibition but as a significant *pro tanto* constraint. To say that political liberals have a strong *pro tanto* reason to oppose perfectionist policies is thus entirely consistent with suggesting that they sometimes have good reasons to accept them, *all-things-considered* (Patten 2012). Thus, imputing the view that it is acceptable for the state to pursue perfectionistic policies under certain conditions is insufficient to label someone a liberal perfectionist, provided that two conditions are met: (i) the permitted policies do not permeate the level of 'constitutional essentials', and (ii) a strong *pro tanto* requirement for state neutrality is upheld at the level of theory.

Reading Nussbaum's justification for allowing the state to promote functionings in the cases cited by Formosa and Mackenzie reveals that both conditions obtain. Take, for example, her elaborations on the example of mandatory education in the case of Amish children. Here, Nussbaum believes that mandatory education for Amish children *may* be legitimate, even absent universal agreement, given the state's "compelling interest in the "equality of its citizens" (Nussbaum 2000,

⁵ One might argue that, by incorporating a wider range of assumptions about human life, Nussbaum's richer concept of the good is more acceptable than Rawls's, and thus *prima facie* more likely to generate an intercultural overlapping consensus. However, it may still fail to ground a freestanding political conception since the idea of freestanding justification is itself incoherent (Mügge 2016, 150–154). Addressing this point would require a more foundational engagement with the constitutive ideas of political liberalism that is beyond the scope of this thesis.

233). However, Nussbaum states that this is “a truly hard case” and she is abundantly clear that “religious schooling should be a protected [...] option”. Thus, she maintains a strong theoretical commitment to neutrality, equal respect, and religious freedom (Nussbaum 2000, 232). Consequently, she favours a “balancing approach” when “compulsory education [...] interfere[s] with religious requirements”; one that pays due consideration of “whether a substantial burden has been imposed on religious free exercise” (Nussbaum 2000, 232). This is perfectly consonant with the politically liberal idea that the state has a strong *pro tanto* reason to be neutral between competing comprehensive doctrines.

Moreover, the compelling consideration that overrides the states’ strong *pro tanto* reason to remain neutral in these cases, is internal to political liberalism itself and flows from its commitment to state neutrality on the level of ‘constitutional essentials’. For by signing up to the political conception that governs the constitutional essentials, members of different reasonable doctrines commit to the political values of freedom, equality, and reciprocity that compulsory state education is supposed to instil. These are, Rawls says, “reasonable requirements for children’s education” that are intimately connected to the political conception and the idea of equal citizenship itself (Rawls 2005, 199). Doctrines that outright reject these values, recall, are *unreasonable* and thus excluded from the overlapping consensus. The fact that some comprehensive doctrines may still find it straining to accept the political conception, on the other hand, is a problem that these doctrines themselves must figure out (Nussbaum 2011, 37). Far from being reflective of Nussbaum’s “Aristotelianism trumping her political liberalism” (Formosa and Mackenzie 2014, 889), her tentative defence of compulsory education follows from considerations that are internal to political liberalism itself.

This line of reasoning also applies to the other cases in which Nussbaum permits the promotion of functionings. Thus, the objection that Nussbaum does not categorically oppose paternalistic state laws that “enforce proper functioning” (Formosa and Mackenzie 2014, 889), while *prima facie* problematic for her political liberalism, is not conclusory once we construe neutrality as a *pro tanto* constraint. Again, Nussbaum (2000, 95; emphasis own) acknowledges that “these issues are controversial because they do raise *legitimate* concerns about paternalism”, thus demonstrating a robust commitment to neutrality at the level of theory that liberal perfectionists reject. Just as a case for mandatory state education can be derived directly from Rawls’ (2005, 199) political conception and its moral commitment to freedom, equality and reciprocity, so too can the guarantee of certain functionings, like health and bodily integrity, fundamental to the presence of other capabilities be justified – provided that Nussbaum’s

political conception itself meets the antecedent requirement of public justifiability. The fact that there are some normative considerations “so important in relation to all the other capabilities that they are legitimate areas of interference” (Nussbaum 2000, 95) is therefore no embarrassment to her political liberalism.⁶ Nor is Nussbaum’s view that “the state must be neutral only at the level of constitutional essentials” such that paternalistic laws may be decided upon at the level of democratic self-governance (Formosa and Mackenzie 2014, 890). Here, Formosa and Mackenzie ignore that Rawls’s overlapping consensus itself only concerns ‘constitutional essentials’ and that it is no requirement of political liberalism that an overlapping consensus be achieved on *every* democratic decision. Thus, there seems to be less to Formosa and Mackenzie’s critique of Nussbaum’s political liberalism than meets the eye.

Let us move on to the second site of contestation. Here, the charge was that Nussbaum’s conceptualisation of capabilities as opportunities to achieve *valuable functionings* requires an account of the independent value of these functionings. This, the argument goes, undermines the public justifiability and freestandingness of Nussbaum’s account. As Begon (2017, 159) puts it, “conceptualizing capabilities as the ability to achieve certain valuable functionings [proves] problematic, and threaten[s] the neutrality and inclusivity of her approach”. Begon’s critique implies that in *all cases*, Nussbaum retains a tacit commitment to the value of achieved functionings. Consequently, Nussbaum’s account is structurally incapable of being endorsed as the basis of a political conception by people who *cannot* perform the functionings on her list, failing to meet the criteria of public and freestanding justification.

It is certainly possible to question if this is an accurate interpretation of Nussbaum. After all, Nussbaum is clear that her account does not encapsulate a singular idea of flourishing that should be endorsed by all citizens. Rather, it is a partial political account of the minimum that people should be capable of doing and being in order to live dignified lives, articulated in a way that is agnostic about people’s specific conception of the good. Nevertheless, an ambiguity remains in that Nussbaum still holds that functionings have some independent value. This is evidenced by her continued commitment to ask, “among the many things that human beings might develop the capacity to do, which ones are *really valuable*?” (Nussbaum 2000, 28; emphasis own). What is more, Nussbaum’s (2007, 193) suggestion that “we could cure [a] condition [...] because it is good, indeed important, for a human being to be able to function in

⁶ Notice, however, that in more recent contributions, Nussbaum has moderated her view that state intervention in matters of health and bodily integrity is legitimate, thus further buttressing her commitment to political liberalism (Nussbaum 2007, 171; cf. Mügge 2016, 66).

these ways” seems unsatisfactory and indeed *illegitimate* as a resort. For the assumption that it is important for humans to be able to function in ways they cannot themselves endorse seems at odds with the liberal principle of legitimacy and political liberal commitment to state neutrality (Begon 2017, 167-68).

Nussbaum has good reason to respond to this critique if she is to effectively ward off charges of perfectionism. For if perfectionism is defined as a “theory that regards certain activities, such as knowledge, health or artistic creation as good, independent of any subjectivity” (Deneulin 2002, 2) such that state power is *generally* grounded in the value of certain activities, then charges of perfectionism are sticky for Nussbaum. What is important to effectively vindicate her political liberalism is that she not cast the functionings that figure on her list as valuable *in se*. For as long as this is the case, her account commits her to the value of the functionings on her list, independently of whether people can and do value them, thwarting some people’s reasonable conception of the good – and so departing from the principle of state neutrality.

Does this criticism prove insurmountable for Nussbaum’s account and its marriage to political liberalism? In this context, consider Begon’s (2017) response. To render Nussbaum’s theory less vulnerable to charges of perfectionism, Begon suggests reconceptualising capabilities as *opportunities to control* normatively central domains of life. Here, capabilities are no longer conceived as opportunities to realise *valuable* functionings but as domains of control. This, Begon argues, would align Nussbaum’s account more closely with the normative commitments of political liberalism. For while reasonable people may disagree about the independent value of *specific functionings*, such as the ability to attain sexual satisfaction, they are more likely to reach an overlapping consensus about specific domains, control over which is central to a dignified and flourishing human life. Thus, for example, an asexual person may be able to take control of their sexual life – by deciding to either enter or *not* to enter sexual relationships they are unable to enjoy – even though they cannot achieve sexual functioning themselves. By the same token, a religious celibate may value *control* over their sexual life, even though they do not consider sexual functioning to be valuable *per se* (Begon 2017, 170). Thus, reconceptualising capabilities as domains of control “allows individuals to be included in the consensus on central capabilities without having to acknowledge the value of functionings they cannot or do not want to perform” (Begon 2017, 172). This definition of capability is more inclusive and neutral towards people’s conceptions of the good, as it allows individuals to pursue their own plural conceptions within the relevant domains. This is preferable to implicitly relying on an account of value that regards certain functionings, which excludes people who may not unreasonably object to the inclusion of such functionings from the overlapping consensus.

Begon (2017, 169) is clear that this reconceptualization does not “require either culling the list of capabilities, or abandoning the capability approach” and acknowledges that “we must distinguish between those goals and domains that are a concern of justice and those that are not” (177). In this way, her proposal is consistent with the fundamental *structural configuration* of Nussbaum’s theory as an account of the enumerable basic capabilities, deriving from an intuitive idea of human dignity, that should be constitutionally protected and guaranteed to all citizens to a specific threshold. Thus, it does not require Nussbaum to abandon her notion of dignity, jettison her list of capabilities, or relinquish the conception of the good she mobilises to articulate her account. Instead, it simply requires her to redefine capabilities as opportunities to take control within specific domains, viewed as particularly important for leading a dignified life.

Far from rendering her theory inescapably perfectionist, then, Nussbaum’s definition of capabilities as opportunities to function in valuable ways merely introduces a significant, if easily avoidable, tension to her political liberalism. At this stage, however, I should reemphasise that this does not forbid Nussbaum from countenancing the promotion of functionings in specific, well-circumscribed cases – *pace* Jessica Begon (2017, 178). For as long as Nussbaum defines capabilities in a way that is generally equally accommodating of and neutral regarding people’s conception of the good, the fact that she *sometimes* recommends perfectionist policies is entirely consistent with political liberalism for the reasons outlined above.

Even if we reconceptualise capabilities as opportunities to control central domains of life, one might criticise that Nussbaum herself delineates these areas. This brings us to the third site of contestation relating to Nussbaum’s decision to select relevant capabilities through a specific list. Recall that the criticism here was twofold. The first criticism argues that certain *items* on Nussbaum’s list pose challenges to Nussbaum’s political liberalism on the grounds that they cannot become the object of an overlapping consensus between adherents of different conceptions of the good. The second criticism implies that by *privately* devising the list of fundamental capabilities, Nussbaum violates the political liberal demand for mutual justification, whereby only *public* reasons can legitimately ground state power (Claassen 2011).

As regards the first point, I argue that we can grant the criticism while resisting the conclusion that it poses deeper problems for Nussbaum’s political liberalism. For suppose that Robeyns (2016, 410) is correct in stating the capability of “having opportunities for choice in matters of reproduction” is too controversial and divisive to figure in an overlapping consensus between people who disagree about the nature of the good life. Even if this were true, we should

note, first, that the theoretical resources to avert this criticism are already inherent in Nussbaum's account. As I have repeatedly stressed, Nussbaum presents her list as inherently flexible, open-ended and multiply realisable according to local circumstances (Nussbaum 2000, 76). Criticism like the one mounted by Robeyns are thus entirely congenial to how Nussbaum envisions her own theory. The fact that some items may reveal inconsistencies in the political liberalism of Nussbaum's account can therefore be rectified by deploying Nussbaum's *own* arguments that actively encourage ongoing revision. Second, the force of Robeyns' criticism is significantly defused if Nussbaum were to reconceive capabilities as domains of control – as I suggested she should. For if, instead of conceptualising the capability in the area of senses, imagination and thought (item four) as opportunities to imagine, think and reason in “a way informed and cultivated by an adequate education” (Nussbaum 2007, 76), she was to think of them as *taking control* of one's senses, imagination and thought, Nussbaum would no longer justify this item by recourse to the value of a specific functioning. This would make her more accommodating and inclusive of those who may not aspire, or are unable to, reason in a way informed by an adequate education – providing an additional reason for why Nussbaum should consider redefining capabilities as areas of control.

Regardless of whether we are swayed by this argument, we should note that the inclusion of certain items does not render the process of list-making problematic *per se* (Claassen 2011, 494). Therefore, we must distinguish the first criticism relating to specific items from the second criticism that pertains to the list-making process itself. The criticism here is that Nussbaum violates the principle of public justification in the way she presents her list by single-handedly deciding what should feature on it in a manner that “bypasses those people that its theory is to be applied in practice” and so “fails to respect the persons of which the public consists” (Claassen 2011, 493). Here, too, two things should be noted in response.

First, it is unclear if Nussbaum, in fact, ‘unilaterally’ selects the relevant capabilities on her list (Claassen 2011, 497). For the list itself is informed by an ongoing intercultural dialogue. This was already apparent in Nussbaum's earlier writings (Nussbaum 1999, 76). However, the later Nussbaum retains a strong role for intercultural discourses, as is evidenced by her statement that “[t]he list represents the result of years of cross-cultural discussion” and that “the input of other voices has shaped its content in many ways” (Nussbaum 2000, 76). For example, Nussbaum notes that the inclusion of the items of ‘bodily integrity’, ‘control over one's environment’, and the central role more recently ascribed to dignity and non-humiliation derive from extensive cross-cultural dialogue conducted in India (Nussbaum 2000, 78). Indeed, Nussbaum considers cross-cultural dialogue as constitutive of the broader justificatory structure of her account in that it reflects and reinforces her commitment to achieving an overlapping consensus on the items on her list

(Nussbaum 2000, 76). As such, the central normative role ascribed to cross-cultural discourse goes a long way towards satisfying the political liberal requirement for public justification, since the experiences, reflections and self-descriptions of the participants in the overlapping consensus figure prominently in the formation of the list. Therefore, it is unclear if Nussbaum violates the demand that “the process by which the list has been created itself needs to be legitimate” (Robeyns 2005, 199).

Second, to the extent that Nussbaum *does* take charge of the list, the objection seems to misunderstand the role Nussbaum assumes in devising her list. This emerges when we consider a recent argument by Rutger Claassen (2011). Put simply, Claassen asserts that Nussbaum’s method of philosophical list-making, far from bypassing the democratic process, is actually congenial to it. Claassen argues that criticisms of philosophical list-making trade on a mistaken idea of the relationship between philosophy and democratic practice within the philosophical position. He illustrates this point by distinguishing between the *philosopher-king* view and the *philosopher-citizen* view of the relation between philosophical theory and democratic practice (Claassen 2011, 501). The philosopher-king view states that “the philosopher, by virtue of his claim to truth, wishes his theories to be enacted immediately and without reserve”. By contrast, in the philosopher-citizen view, the philosopher “offers his theory as input into a democratic process run by others” while realising that “the philosophical truth of his theories does not confer practical legitimacy upon him” (Claassen 2011, 501). According to Claassen, the legitimacy-based objection to philosophical list-making only holds on the former view, while it is the latter position that Nussbaum defends. For not only does her list not represent a trans-historically valid and fixed, but contingent and inherently flexible account. Nussbaum also insists on a sharp distinction between the justification and implementation of her list (Wells 2013, 51-52; Claassen 2011, 501). As she writes:

I believe that we can *justify* this list as a good basis for political principles all round the world. But this does not mean that we thereby license *intervention* with the affairs of a state that does not recognize them. It is a basis for persuasion. (Nussbaum 2004, 198; emphasis own)

However, the legitimacy objection derives its plausibility from the idea that Nussbaum’s list has “the effect of upsetting and insulting people” by making them “reasonably feel that it is imposed on them” (Robeyns 2005, 199). Hence, it seems to impute on Nussbaum a position she explicitly rejects: the philosopher-king view. As Claassen (2011, 501) writes, “[o]therwise, it is incomprehensible why the democratic position would hold that the philosophical position does not leave certain essential elements to the democratic process”. We should, then, follow Claassen’s argumentation and discard the idea that Nussbaum violates the public justification criterion of political liberalism by virtue of adopting a philosophical method of list-making.

Conclusion

In recent decades, political liberalism has made significant inroads in academic discussions about state legitimacy and is, as Richard Arneson (2020, 185) recently put it, riding on an updraft of popularity. This should not come as a surprise. After all, pervasive social phenomena such as global migration are unmistakable reminders that modern society is shaped by a *pluralism* that is as wide as it is deep. This throws the central animating question of political liberalism — how coercive power can legitimately be imposed upon a diverse citizenry — into sharp relief. Following a significant theoretical shift from her erstwhile thoroughgoing Aristotelianism, Martha Nussbaum has presented her capabilities theory of justice as an instantiation of political liberalism. Instead of basing her theory on a single idea of human flourishing, Nussbaum now presents it as a freestanding political conception that can secure an overlapping consensus among people with competing ideas of the good. In recent years, however, myriad authors have challenged Nussbaum's allegiance to political liberalism on different grounds. This thesis has critically evaluated this discussion.

To this end, I have mobilised Ingrid Robeyns' modular framework of the capability approach to organise the complex scholarly terrain. Employing her conceptualisation, I have identified three areas as particularly pertinent sites of contestation:

- (1) the basis on which Nussbaum justifies her capabilities theory, namely her notion of human dignity and her evaluative account of human life;
- (2) her metric of distribution, namely the capability to function in valuable ways; and
- (3) her decision to select capabilities through an open and humble yet concrete list.

Nussbaum's critics have objected to her political liberalism on all three accounts. First, they have argued that her notion of dignity retains traces of a comprehensive Aristotelianism, which undermines her political liberalism. Second, they have contended that Nussbaum's focus on capabilities does not vindicate her political liberalism if capabilities are construed as opportunities to achieve valuable functionings. Third, they have asserted that her philosophical list-making fails to apply the liberal principle of legitimacy to itself, thus subverting her claim to be politically liberal.

While all these criticisms have *prima facie* plausibility, I have argued that only the second withstands critical scrutiny and carries serious argumentative force. For a critical engagement with political liberalism reveals that the other two objections either trade on an implausibly strict understanding of the requirements of political liberalism or else misunderstand the precise role Nussbaum assumes in devising her list. Specifically, I have advanced three claims. First, I have argued that Nussbaum's notion of dignity and related conception of the human good does not contradict her political liberalism. For Rawls, too, articulated a conception of the good that is arguably *more* rather *less* controversial than Nussbaum's 'richer and moralised account'. Here, I have largely followed Nussbaum's own defence and Mügge's argument for why it is convincing. Second, the objection that Nussbaum contradicts her political liberalism by promoting 'functionings' in some cases largely falters once we consider the role of state neutrality in political liberalism to be a significant but ultimately defeasible *pro tanto* constraint. In this respect, I have supplied an additional defence of Nussbaum's political liberalism that she has yet to employ herself. Third, I have argued that while the inclusion of specific *items* on her list, such as opportunities for choice in matters of reproduction, may be disputed on neutralist grounds, the theoretical resources to accommodate this criticism are already inherent in Nussbaum's account since she presents her list as open, humble, and modifiable by its very nature. However, the more fundamental critique of Nussbaum's philosophical list-making *as such* does not establish that Nussbaum fails to extend the principle of liberal legitimacy to itself. For as she embeds her account in a process of cross-cultural dialogue that is predicated on due consideration for public justifiability and regards her list as a proposal for, rather than strict constraint upon, public decision-making processes. In this context, I have concurred with Nussbaum's own arguments and adduced an argument by Rutger Claassen to bolster her defence.

That said, one criticism of Nussbaum's political liberalism is likely to persist, namely her decision to define capabilities as opportunities to perform *valuable* functionings. For if capabilities are thus construed, individuals who are unable to perform such functionings will be excluded from an overlapping consensus on their necessary relationship to a flourishing and dignified human life (Begon 2017, 179). Far from requiring Nussbaum to abandon her list, alter her metric of distribution or reconfigure her basis of justification, however, this criticism asks for a relatively straightforward and easily accommodable modification: that Nussbaum should define her capabilities as opportunities to *take control* of domains that are essential to a dignified and fully human life.

If successful, the foregoing thesis has demonstrated that, while recent criticisms of Nussbaum's political liberalism are partially cogent, they do not successfully impute to her a firm commitment to perfectionist liberalism. Instead, Nussbaum's commitment to political liberalism, relevant ambiguities notwithstanding, is largely convincing – *pace* recent critiques. In light of this, critical scholars would do well to be more charitable towards Nussbaum's political liberalism and allow her to benefit from the updraft of popularity that political liberalism has experienced in recent years.

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