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DIGNIFIED ANIMALS:

HOW "NON-KANTIAN" IS NUSSBAUM'S CONCEPTION OF DIGNITY?

by

MARY LEUKAM

Under the Direction of Dr. Christie Hartley

ABSTRACT

Martha Nussbaum's conception of dignity is integral to her capabilities approach. She argues that dignity is rooted in the flourishing and striving of animals. Her view is distinct from Kant's, as Kant claims that persons have dignity in virtue of their rational nature. Though Nussbaum's conception of dignity is important to her approach, its exact content and its relation to her thought is not clearly stated in her work, and I will attempt to provide an overview of Nussbaum's conception of dignity. Also I will compare and contrast Nussbaum's dignity with Kant's (and contemporary Kantians'). Nussbaum provides four reasons for why her approach is superior to the Kantian split between rationality and animality, all of which I will examine. Finally, I will look at three areas of Nussbaum's theory which require further exploration.

INDEX WORDS: Martha Nussbaum, Human dignity, Animal dignity, Immanuel Kant, Capabilities approach

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MARY LEUKAM

A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of

Masters of Arts

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I. Nussbaum's Conception of Dignity

Martha Nussbaum's capabilities approach is a political theory according to which the state should provide certain central capabilities to all members of society as a matter of minimal justice.[1] Her approach to justice "starts from the notion of human dignity and a life worthy of it," and she says, "Its basic moral intuition concerns the dignity of a form of life that possesses both abilities and deep needs."[2] Certain capabilities, according to Nussbaum, partly comprise, "a life with, or worthy of, human dignity."[3] Human dignity, she says, is not grounded solely in rationality as some have claimed, but, instead, is grounded in animality. This view allows her to claim that certain human beings with severe mental impairments have human dignity. She further argues that not only human beings have dignity but, also, nonhuman animals. This inclusion of the severely mentally impaired and nonhuman animals within dignity's scope, she claims, better reflects common intuitions about justice than alternative accounts.[4]

Nussbaum recognizes she is working in a long tradition of philosophical thought concerning human dignity and its foundation. She traces the notion of the inviolability and equality in human dignity back to the Stoics, who influenced a vast and varied array of future philosophers, including Kant and Nussbaum herself.[5] The Stoics' believed dignity was a binary feature that one had in its entirety or lacked completely, and, once bestowed, it needed no further development. They claimed human beings had equal dignity and, consequently, deserved respect.[6] Rational capacity is shared equally among humans, reflects the divine, and is the root of moral worth. The worth of rational capacity is "wonderful and worthy," surpassing the social trappings of wealth and status.[7] The Stoics believed each human being has rational capacity and is, thereby, a person to be respected equally with other persons. According to the Stoic's conception, "dignity of reason [which is the basis of the dignity of rational beings] is worthy of

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[1] Martha Nussbaum, *Frontiers of Justice* (Cambridge, MA: Belknap Press of Harvard Univ. Press, 2006), 71.
[2] Nussbaum, *Frontiers of Justice*, 346.
[3] Nussbaum, *Frontiers of Justice*, 162
[4] Nussbaum, *Frontiers of Justice*, 171-9.
[5] Martha Nussbaum, "Human Dignity and Political Entitlements," *Human Dignity and Bioethics: Essays Commissioned by the President's Council on Bioethics* (Washington DC, 2008), 352-4.
[6] Nussbaum, "Human Dignity and Political Entitlements," 352.
[7] Nussbaum, "Human Dignity and Political Entitlements," 352.

respect wherever it is found."[8] For the Stoics, dignity is delineated as a central human feature and a source of wonder: inviolable, equal among all people regardless of their external features or social position, and worthy of deep respect.

Nussbaum agrees that dignity is inviolable and equal among nearly all members of a species. Nussbaum also recognizes that her intuitive ideas of dignity include the Stoics' reluctance to allow fortune to decide dignity.[9] This means that those who are lucky, have more material goods, or who have been gifted with certain talents do not have more dignity than others. Since the Stoics believed that the basic moral capacity stemming from rationality is equal among people and the source of their dignity, they thought the caprices of fortune do not influence the amount of dignity one has.[10] This is important because it founds the sense that all humans share equal, inviolable dignity which is worthy of equal respect. However, Nussbaum does not fully identify her theory with that of the Stoics or their followers. Nussbaum openly rejects the emphasis on human rationality that was present in the Stoics' conception and influenced Kant. As we will see, rejecting the basis of dignity in rationality opens the door for Nussbaum's more inclusive account of justice which recognizes the dignity of both nonhuman animals and human beings with severe mental impairments.[11] Also, she rejects the detachment from the world prevalent in Stoicism because, according to Nussbaum, we are also dignified in our need.[12] Kant's conception of dignity was influenced by the Stoics and retains the emphasis on rationality as the basis of dignity. Though admittedly "non-Kantian," Nussbaum realizes the important role that Kant's philosophy plays in many contemporary theories of justice such as Rawls; hence, Nussbaum, addresses the superiority of her view of dignity relative to Kant's or Kantian views.

In this thesis, I will investigate the content of Nussbaum's conception of dignity for both humans and nonhuman animals. Dignity plays an important role in Nussbaum's capabilities approach, but she does not often directly address its content or the precise way in which she uses it in her theory. In the re-

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[8] Nussbaum, "Human Dignity and Political Entitlements," 352.
[9] Nussbaum, "Human Dignity and Political Entitlements," 352.
[10] Nussbaum, "Human Dignity and Political Entitlements," 355.
[11] Nussbaum, "Human Dignity and Political Entitlements," 354-7.
[12] Nussbaum, "Human Dignity and Political Entitlements," 357.

mainder of this first section, I aim to clarify what Nussbaum means when she says "dignity" and how it fits into her capabilities approach. Nussbaum contrasts her conception of dignity with Kant's rationality-based dignity. In order to better understand the differences between Nussbaum and Kant and the implications that those differences have, in the second section I will look at Kant's conception dignity as well as the way two contemporary Kantians, Christine Korsgaard and Allen Wood, interpret rationality-based dignity. After I have explored Nussbaum's and Kant's conceptions of dignity, I will critically analyze the differences between Kantian dignity and Nussbaum's conception of dignity in Section III. I argue that Nussbaum's animality based dignity is better at addressing concerns regarding justice for nonhuman animals and humans with severe cognitive impairments. Though Nussbaum's broad conception of dignity has many advantages for theories of justice, there are still some unanswered questions regarding Nussbaum's conception of dignity that I raise and explore in Section IV.

A. Human Dignity

As a neo-Aristotelian, Nussbaum says that human dignity arises from our status as "political animals" and that animality underwrites human dignity.[13] As political animals, "the person is imagined as having a deep interest in choice, including the choice of a way of life and of political principles that govern it," while simultaneously, "it stresses the animal and the material underpinnings of human freedom."[14] Human dignity rests not in rationality, but rather in the flourishing, striving, and vulnerability that we have as embodied creatures. Nussbaum's primary focus on animality rather than reason enables her conception of dignity to include human beings she believes are entitled to the central capabilities but who fail to meet Kant's rationality requirements to be considered dignified, for example, some cognitively impaired humans. Nussbaum claims that intuitively children, the severely cognitively impaired, and those

[13] Nussbaum, *Frontiers of Justice*, 87-92.
[14] Nussbaum, *Frontiers of Justice*, 88.

suffering from diseases which damage one's rationality still have human dignity and should have a life worthy of it.[15]

In *Frontiers of Justice*, Nussbaum discusses three particular people with different cognitive impairments. Philosopher Eva Kittay's daughter Sesha suffers from congenital cerebral palsy and severe mental retardation, resulting in her inability to walk, talk, read, or care for herself. Nussbaum notes, however, that despite these difficulties, Sesha is affectionate, likes music, and visibly responds to others.[16] Nussbaum also shares with her reader stories of her nephew Arthur, who suffers from Aspberger's and Tourette's syndrome. Though he is communicative, alert, and highly intelligent, he struggles with social skills and cannot flourish in a normal school setting. Whether or not he will be able to live independently is yet unknown.[17] Finally, Nussbaum highlights Jamie Bérubé who has Down Syndrome, and "loves B.B. King, Bob Marley, and the Beatles. He can imitate a waiter bringing his favorite food, and he has a sly verbal sense of humor."[18] Nussbaum uses these examples of impaired children and young adults as intuitively dignified people whose needs must be meet in a just society.

Jamie, Arthur and Sesha all have atypical needs and require care at times to ensure their flourishing; however, Nussbaum notes that needing care is not limited only to those with severe disabilities. Nussbaum refers to "the fiction of competent adulthood."[19] Nussbaum claims that Kantian, rationality-based dignity fails to capture that non-impaired humans are not consistently rational over a lifetime. Given infancy, old age, sickness, and injury, no one can be described as fully rational and independent throughout his or her entire life.[20] There are many adult humans who, over the course of a life, remain in dependent relationships with others due to physical, emotional, or psychological need, and "these lifelong states of asymmetric dependency are in many respects isomorphic to the states of infants and the elder-

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[15] Nussbaum, *Frontiers of Justice*, 92, 96-103, 169.
[16] Nussbaum, *Frontiers of Justice*, 96.
[17] Nussbaum, *Frontiers of Justice*, 96-7.
[18] Nussbaum, *Frontiers of Justice*, 97.
[19] Martha Nussbaum, "The Future of Feminist Liberalism," *Proceedings and Addresses of the American Philosophy Association* 74 2 (Nov. 2000), 49.
[20] Nussbaum, "The Future of Feminist Liberalism." 54-55.

ly."[21] Nussbaum claims that Kantian theories do not adequately reflect the reality and neediness of human life.[22] By using animality as the basis of dignity, Nussbaum's account addresses the dependency of human life and common intuitions of dignity; her conception of human dignity is able to account for the cohesive dignity of a human being throughout all stages of his or her life.

Nussbaum notes the need for a more inclusive conception of human dignity than Kant's to meet the intuition that almost all humans as such possess dignity. Again, as she says, "The capabilities approach begins from a political conception of the human being and of a life that is worthy of the dignity of the human being. A notion of the species and of the characteristic activities of a species does, then, inform it."[23] The species norms upon which Nussbaum bases her central capabilities are developed by the traits necessary for the flourishing of each species.[24] Importantly, those born of human parents but lack a "characteristic form of human life" would be excluded from Nussbaum's conception of human dignity and, consequently, her capabilities approach. She describes such beings as near the medical definition of dead, and she feels they would already be outside of the scope of our intuitive beliefs about human dignity.[25]

Though vague on the explicit content of human dignity, Nussbaum is clear about dignity's consequences and insists that it is a powerful and intuitive idea.[26] It is imperative in her approach that we respect human dignity and work toward providing all people with a life worthy of human dignity (by working to ensure the capabilities). Human dignity in her arguments is associated with not only being born of human parents,[27] but also with elements of being human. For example, Nussbaum associates human dignity with non-humiliation, self-respect, being treated as an end and not a mere means, giving rise

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[21] Nussbaum, "The Future of Feminist Liberalism," 49.
[22] Nussbaum, "The Future of Feminist Liberalism," 49.
[23] Nussbaum, *Frontiers of Justice*, 180.
[24] Nussbaum, *Frontiers of Justice*, 181.
[25] Nussbaum, *Frontiers of Justice*, 181. Nussbaum gives the examples of people in persistent vegetative states or infants with anencephaly.
[26] Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000), 72
[27] Nussbaum, "Human Dignity and Political Entitlements," 363.

to moral claims, integral to the central capabilities, and even reason.[28] These potent ideas are linked with Nussbaum's human dignity in varied ways and point how far-reaching and influential human dignity is for her approach. Through identifying essential elements of human flourishing, Nussbaum develops a list of central capabilities that are required for a life worthy of human dignity.

B. Human Dignity and the Central Human Capabilities

Nussbaum delineates ten capabilities which she argues "are all, each and every one, fundamental entitlements of citizens, all necessary for a decent and dignified human life."[29] Dignity is integrally related to Nussbaum's capabilities approach because "dignity is not defined prior to and independently of the capabilities, but in a way intertwined with them and their definition…The guiding notion therefore is not that dignity itself, as if that could be separated from capabilities to live a life, but rather, that of a life with, or worthy of, human dignity, where that life is constituted, at least in part, by having the capabilities on the list."[30] She says that human capabilities are "what people are actually able to do and to be" and are determined when one can "argue, by imagining a life without the capability in question, that such a life is not a life worthy of human dignity."[31] Nussbaum's claim is that certain capabilities—as opposed to functionings—are a matter of minimal justice. Once people possess a capability, they can choose whether or not to act upon it (have it "functioning"). Importantly, Nussbaum stresses that, with little exception, the concern of justice should be providing and ensuring capabilities and not demanding the functioning of those capabilities for a number of reasons, including respect for autonomy and for the plurality of conceptions of the good.[32] Nussbaum illustrates this point by noting that some orthodox religions "prohibit their members from access to the popular press and other media," but "can still support the idea of freedom of the press as an important value for a democratic society to contain, even though it has nothing much to do

[28] Nussbaum, *Frontiers of Justice*, 77; *Women and Human Development*, 79; *Women and Human Development*, 284-5; *Frontiers of Justice*, 363
[29] Nussbaum, *Frontiers of Justice*, *166*.
[30] Nussbaum, *Frontiers of Justice*, 162.
[31] Nussbaum, *Frontiers of Justice*, 78.
[32] Nussbaum, *Frontiers of Justice*, 78-80.

with their own conception of flourishing."[33] Members of these orthodox religions can endorse freedom of the press as valuable in society, but choose not to have it functioning in their lives. Even those who choose not to have a capability functioning, according to Nussbaum, find it valuable to have because "there is something good about having choice in these matters… the choice to read a free press or not to read it."[34] Another example Nussbaum gives is that "people should be given ample opportunities to lead a healthy lifestyle, but the choice should be left up to them; they should not be penalized for unhealthy choices."[35] Respecting people's autonomy, which is a part of respecting people's dignity for Nussbaum, involves allowing choice in exercising the capabilities. The choice whether or not to have some capabilities functioning "is good in part because of the fact of reasonable pluralism: other fellow citizens make different choices, and respecting them includes respecting the space within which those choices are made." Nussbaum argues this respect for choice regarding functioning capabilities ensures that those who do not see some of her central capabilities as necessary for their flourishing human lives (such as the Orthodox Jews in Brooklyn) will still see the value in keeping on the list those capabilities they do not have functioning.[36]

Sometimes, however, functioning should be the concern of justice: "Only in the area of self-respect and dignity itself do I think that actual functioning is the appropriate aim of public policy."[37] Since dignity has invaluable worth and plays a fundamental part in the capabilities, it cannot be traded or compromised, and must be a guaranteed functioning for all people. Dignity cannot be something people choose not to act upon and expect that choice to be respected. According to Nussbaum, "it seems important for government to focus on policies that will actually treat people with dignity as citizens and express actual respect for them, rather than policies (whatever those would be) that would extend to citizens a mere option to be treated with dignity."[38] When she explains why our concern with dignity should be

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[33] Nussbaum, *Frontiers of Justice*, 183.
[34] Nussbaum, *Frontiers of Justice*, 184.
[35] Nussbaum, *Frontiers of Justice*, 80.
[36] Nussbaum, *Frontiers of Justice*, 182-8.
[37] Nussbaum, *Frontiers of Justice*, 172.
[38] Nussbaum, *Women and Human Development*, 91-2.

functioning rather than capability, she is very straightforward: "We want political principles that offer respect to all citizens, and, in this one instance, the principles should give them no choice in the matter."[39] This stance that dignity must be functioning markedly differs from the other capabilities according to Nussbaum's methodology in which choice about which capabilities to utilize is vital to respecting autonomy which, like Kant, Nussbaum sees as related to dignity.[40] Nussbaum justifies this difference because in order for persons to be autonomous, dignity must be respected. For most non-impaired adults, dignity and self-respect should be functioning. In addition, Nussbaum says the severely cognitively impaired and children need to have compulsory functioning with respect to education and healthcare. Her concern is such that these persons do not possess the needed abilities to reason about those issues.[41]

Nussbaum argues that human dignity is inviolable and equal for all human beings and that each human being deserves to have the capabilities needed for a flourishing life. The notion of a human being is a normative idea for Nussbaum:

> First of all, the notion of human nature in my theory is explicitly and from the start *evaluative*, and, in particular, *ethically evaluative*: among the many actual features of a characteristic human form of life, we select some that seem so normatively fundamental that a life without any possibility at all of exercising one of them, at any time, is not a fully human life, a life worthy of human dignity, even if the others are present.[42]

In this way, she suggests that self-respect and dignity are the basis for capabilities. However, Nussbaum says, "I believe the capabilities approach avoids this problem [of determinate content of dignity] insofar as it considers the account of entitlements not as derived from the ideas of dignity and respect but rather as ways of fleshing out those ideas."[43] Despite the difficulty of completely reconciling all of Nussbaum's claims about the role of dignity in her approach, it is clear on her view that obtaining each capability is necessary for a life worthy of human dignity.

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[39] Nussbaum, *Frontiers of Justice*, 172.
[40] See Section IV of this thesis for further discussion of the overlap between Kant's and Nussbaum's autonomy.
[41] Nussbaum, *Frontiers of Justice*, 172-3.
[42] Nussbaum, *Frontiers of Justice*, 181.
[43] Nussbaum, *Frontiers of Justice*, 174.

As I just noted, Nussbaum is not explicit, and at times unclear, about the role that dignity plays in her argument.[44] Again, dignity and the capabilities are separable in regard to mandated functioning, but at other times the capabilities are "implicit in the idea of a life worthy of human dignity."[45] Regardless of dignity's exact relationship to the capabilities, dignity plays an important role in the development and the resulting list of human capabilities. Over the years, Nussbaum has developed and revised her list of central human capabilities. Nussbaum says her approach is a political, not metaphysical, project, producing political goals which must be attained at a threshold level. Nussbaum believes that her current list reflects central human capabilities, including 1) life, 2) bodily health, 3) bodily integrity, 4) senses, imagination, and thought, 5) being able to have emotional attachments to entities outside of ourselves, 6) practical reason to form a conception of the good, 7) affiliation and nondiscrimination, 8) living in relation to other animals and nature, 9) play, and 10) having control (to the extent possible) over one's environment.[46] Nussbaum claims that principles of minimal justice can be fashioned from her list of central human capabilities.

As noted, rationality is not the source of dignity on Nussbaum's account, which makes a distinct departure from a Kantian perspective. Nussbaum believes that a fundamental focus on rationality will lead us to fail to respect some humans as bearers of human dignity and also lead us to fail to respect important aspects of humanity as sources of human dignity.[47] However, by not making rationality the source of dignity, Nussbaum does not denigrate or eliminate rationality entirely from her conception. One of Nussbaum's central human capabilities is that human beings are "able to use the senses, to imagine, think, and *reason* – to do these things in a 'truly human' way."[48] Like all other capabilities, rationality (but not necessarily its functioning) needs to be ensured in order for a life worthy of human dignity. Nussbaum argues that incorporating rationality in this way encapsulates the special role rationality plays

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[44] I further address this concern about the unclear role of dignity in Nussbaum's approach in Section IV, Part A of this thesis.
[45] Nussbaum, *Frontiers of Justice*, 70.
[46] Nussbaum, *Frontiers of Justice*, 76-8. See Appendix A for complete list of the central human capabilities as Nussbaum forms them in *Frontiers of Justice*.
[47] Nussbaum, "Human Dignity and Political Entitlements," 354-7.
[48] Nussbaum, *Frontiers of Justice*, 76. Italics added.

in lives worthy of human dignity, but not to the exclusion of other human characteristics as well as being able to include humans with varying capacities for reason. Though not all humans will be able to fully utilize the capability of rationality, all individuals are still entitled to the capabilities. Hence, this view demonstrates how Nussbaum seeks to ensure capabilities to all, which would include rationality. In this manner, Nussbaum is able to account for rationality being included as a capability constituting a life worthy of human dignity while simultaneously acknowledging that utilizing this capability for some may be complex.

C. Nonhuman Animal Dignity

In order to highlight the common intuition that nonhuman animals possess a kind of dignity, Nussbaum opens her discussion of justice for nonhuman animals in *Frontiers of Justice* with an example. Nussbaum cites an Indian court that ruled the mistreatment of some circus animals' forced them to live "undignified" lives. The animals were "squeezed into cramped and filthy cages, starved, terrorized, and beaten, given only the minimal care that would make them presentable in the ring the following day."[49] For Nussbaum, the humans who perpetrated these undignified actions against the circus animals were, in fact, guilty of committing an injustice.[50] To mirror common intuitions, as Nussbaum thinks her approach does, the reaction of the Indian court needs to reflect the view of many others who agree that these circus animals were living an undignified life and suffered injustice. Another example that nonhuman animals intuitively possess dignity comes from Elizabeth Anderson who argues "the fact that we can conceive of mocking a dog reflects our recognition that dogs have dignity that we ought to respect. We would be rightly outraged at some fool who turned a dog into a figure of ridicule by spray-painting graffiti on its fur. We could even say that such treatment violates the dog's *right* to dignified treatment."[51] Nussbaum

[49] Nussbaum, *Frontiers of Justice*, 326.
[50] Nussbaum, *Frontiers of Justice*, 392.
[51] Elizabeth Anderson, "Animal Rights and the Values of Nonhuman Life," *Animal Rights: Current Debates and New Directions*, eds. Cass R Sunstein and Martha C. Nussbaum (Oxford: Oxford University Press, 2004), 282.

argues that her conception of dignity can accommodate cases such as these and explain these common intuitions.

Nussbaum claims that human dignity is a kind of animal dignity, and she thinks her account can be expanded to explain the kind of dignity possessed by nonhuman animals. Importantly, it is her view that a dignified life for a particular animal is species-specific.[52] Nussbaum says of the expansion of the capabilities approach to include nonhuman animals: "The core of the approach, as we have said, is that animals are entitled to a wide range of capabilities to function, those that are most essential to a flourishing life, a life worthy of the dignity of each creature. Animals have entitlements based upon justice."[53] Expansion of her conception of dignity addresses growing concerns about justice for nonhuman animals because, on her view, the animal's dignity is associated with capabilities that must be ensured for all members of its species. Again, Nussbaum's view of dignity when it comes to animals is species-specific, and she says,

> The species norm is evaluative, as I have insisted; it does not simply read off norms from the way nature actually is. But once it we have judged that a capacity is essential for a life with human dignity, we have a very strong moral reason for promoting its flourishing and removing obstacles to it. The same attitude to natural powers that guides the approach in the case of human beings guides it in the case of other animals.[54]

Each animal has dignity in the flourishing and striving appropriate for its species; animals need to be ensured central species-specific capabilities in order to flourish. Ensuring these capabilities, as determined to be appropriate for each species of animal that Nussbaum includes (all of whom are sentient, non-stationary animals), will partly constitute a life worthy of the appropriate kind of dignity for the species.[55] Importantly, nonhuman animals like chimpanzees or dolphins are not included in Nussbaum's conception of justice for their comparisons to humans and comparable levels of functioning, but instead because of

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[52] Nussbaum, *Frontiers of Justice*, 346-66.
[53] Nussbaum, *Frontiers of Justice*, 392.
[54] Nussbaum, *Frontiers of Justice*, 347.
[55] Nussbaum, *Frontiers of Justice*, 346-52.

their own species' dignity. Nussbaum's arguments for a species-specific dignity allow a multi-faceted approach to capabilities which ensures that nonhuman animals can be included in Nussbaum's conception of justice and can flourish accordingly.

Given how Nussbaum understands human dignity, it is easy to develop her conception of dignity for nonhuman animals. For each species, we should consider its characteristic activities and the capabilities central to that species' flourishing. For guidance, she says nonhuman animals need life, bodily health and integrity, emotions, practical reason, play, and control over one's environment.[56] The central capabilities list for nonhuman animals mirrors the fundamental ideas behind the central human capabilities list, but Nussbaum allows that each species has a species norm that defines a life worthy of dignity for that particular species of animal and allows us to flesh out the particulars of her central capabilities list as appropriate for each species. The entitlements provided by the capabilities approach are "species-specific and based upon their characteristic forms of life and flourishing" meaning that "though the more concrete specification of each capability will lead ultimately to a plurality of lists, it seems the big general categories…offer good guidance."[57] Nussbaum believes that the sentient, non-stationary animal species she intends to include in her scope of dignity all require the same basic needs she has included in her central capabilities list.

It may be objected that some of these capabilities are not appropriate for all the species which Nussbaum aims to include. Nussbaum declares after her "Play" capability, "[t]his is obviously central to the lives of all sentient animals."[58] Yet, it seems apparent that one will not find hammerhead sharks playing soccer or macaws challenging one another to checkers, forcing one to ask: is play really as obviously central to the lives of nonhuman animals as Nussbaum claims? However, Nussbaum immediately goes on to explain:

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[56] Nussbaum, *Frontiers of Justice*, 393-401.
[57] Nussbaum, *Frontiers of Justice*, 392-3.
[58] Nussbaum, *Frontiers of Justice*, 400.

> It calls for many of the same policies we have already discussed: protection of adequate space, light, and sensory stimulation in living places, and above all, the presence of other species members.[59]

Though "play" as in the games in which humans engage is clearly too farfetched to be required by all sentient animals, Nussbaum's clarification that she intends for animals to not be isolated in dark, dull environments does seem to fit her goal of intuitive ideas that many already have about nonhuman animals. Ensuring that nonhuman animals can flourish in a stimulating environment seems a more reasonable claim than the capability of "play" might initially appear, and Nussbaum's basic explanation can neutralize some of the initial critics' responses. Nussbaum's other capabilities also address the same level of basic need. As Nussbaum delineates that which she deems central, she is careful to describe the central capabilities as open to interpretation according each species, thus reducing speciest concerns.

Ultimately, Nussbaum gives only an outline of each of the central capabilities for nonhuman animal and limits her scope to sentient, non-stationary beings.[60] Nussbaum seeks to provide a much broader account of justice for nonhuman animals than what would be allowed by Kantian conceptions about dignity rooted in rationality. Since dignity is a foundational aspect of her capabilities and the result of the capabilities is a life worth of species-specific dignity, including a broad scope of dignity is vital to founding Nussbaum's goals. Dignity does not need to be associated solely with human flourishing and with human goals.[61] Instead, the striving and flourishing which occurs in a multitude of ways for many different animals provide a basis for each animal's species-specific dignity. The flourishing and striving of the individual members of different species are what will need to be ensured by the species-specific central capabilities to live a life worthy of the dignity of that creature.[62] Nussbaum acknowledges that nonhuman

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[59] Nussbaum, *Frontiers of Justice*, 400.
[60] Nussbaum, "Human Dignity and Political Entitlements," 365.
[61] Nussbaum, Martha C, "Beyond 'Compassion and Humanity': Justice for Nonhuman Animals," *Animal Rights: Current Debates and New Directions*, Eds. Sunstein, Cass R. and Martha C. Nussbaum (Oxford: Oxford University Press, 2004), 307.
[62] Nussbaum, "Beyond Compassion," 312-313.

animals also need self-respect and non-humiliation as part of their flourishing, which gives nonhuman animals a dignified life.[63]

II. Kant and Dignity

As noted, Nussbaum understands her account of dignity as a rival to Kant's, but she thinks when the two views are compared, her view is superior insofar as her view can easily account for the intuition that both humans with severe mental impairments and sentient, non-stationary nonhuman animals have dignity. I will now consider Kant's conception of dignity and its implications for human beings with mental impairments and nonhuman animals. On Kant's view, dignity is a kind of value. Although Kant says that things with a price "can be replaced by something else as its *equivalent*," he claims that things with dignity have the sort of value for which there is no value equivalent.[64] He further describes dignity as "unconditional, incomparable worth."[65] For Kant, it is in virtue of possessing rationality that things have dignity. Kant argues that what is unique about rational nature is that "it sets itself an end."[66] And, he claims that rational choice is both the condition of value of all things without rational nature and itself unconditionally valuable.[67] Regarding the former, Kant says "that which constitutes the condition under which alone something can be an end in itself has not merely relative worth, that is, a price, but an inner worth, that is, dignity."[68] Importantly, rational nature is tied to Kant's notion of autonomy, the ability to

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[63] Though the concept of "self-respect" for nonhuman animals may seem counter-intuitive, Nussbaum is committed to some conception of it. When describing the central capability of "Affiliation" for nonhuman animals, she says, "In the human case, this capability has two parts: an interpersonal part (being able to live with and toward others) and a more public part, focused on self-respect and nonhumiliation. It seems to me that the same two parts are pertinent for nonhuman animals." ("Beyond Compassion," 316). She goes on to say that nonhuman animals should have "rewarding, reciprocal" relationships with humans and nonhuman animals are "entitled to world policies that grant them political rights and the legal status of dignified beings, whether they understand that status or not." ("Beyond Compassion," 316). It is not entirely clear if Nussbaum intends these claims to demonstrate "self-respect" because they do not necessarily represent a robust sense of the term. Though Nussbaum's explanation of what exactly self-respect for nonhuman animals entails is not obvious, it is clear that she intends to include it in some way in the central capabilities for nonhuman animals.

[64] Immanuel Kant, *Groundwork of the Metaphysics of Moral*, Ed. by Mary Gregor, Cambridge Texts in the History of Philosophy (Cambridge: Cambridge University Press, 1998), 4:435.

[65] Kant, *Groundwork*, 4:436.

[66] Kant, *Groundwork*, 4:437.

[67] Kant, *Groundwork*, 4:428-9.

[68] Kant, *Groundwork*, 4:435.

choose an end and to legislate oneself to work toward that end. Autonomy "which determines all worth, must for that very reason have a dignity, that is, an unconditional, incomparable worth."[69] Autonomous creatures are able to legislate ends which can be universalized. Hence, Kant says, the capacity for autonomy "is…the ground of the dignity of human nature and of every rational nature."[70]

As Christine Korsgaard notes, rational creatures are distinct from other creatures insofar as they are "the only animals whose conduct is subject to moral guidance and moral evaluation."[71] Kant says that central to the notion of a rational being is that he must "regard himself as giving the universal law through all the maxims of his will."[72] The moral law, understood as the universal law formulation of the categorical imperative, requires that one "act only in accordance with that maxim through which you can at the same time will that it become a universal law."[73] Rational beings are both the legislators of and subjects of the moral law on Kant's view. He says that the "dignity of humanity consists just in this capacity to give universal law, though with the condition of also being subject itself to this very lawgiving."[74] Importantly, those who possess rationality do not always act rationally, but a person acting immorally still has dignity.[75] Immoral people possess dignity because they have autonomy and the capacity to set ends; they are simply choosing not to act upon universalizable maxims.

A. Kant and Animality

Non-rational creatures such as human beings without the capacity for rationality and nonhuman animals do not possess dignity on Kant's view. However, as Kant and those sympathetic to his view have made clear, his theory does not imply that rational creatures can treat non-rational creatures or their own non-rational nature any way they want. Instead, Kant argues that rational beings have a duty to treat the

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[69] Kant, *Groundwork*, 4:436.
[70] Kant, *Groundwork*, 4:436
[71] Christine Korsgaard, "Fellow Creatures: Kantian Ethics and Our Duties to Animals," *The Tanner Lectures on Human Values* (2004), 87.
[72] Kant, *Groundwork*, 4:433.
[73] Kant, *Groundwork*, 4:421. Italics removed.
[74] Kant, *Groundwork*, 4:440.
[75] Immanuel Kant, *The Metaphysics of Morals*, Ed. by Mary Gregor, Cambridge Texts in the History of Philosophy (Cambridge: Cambridge University Press, 1996), 6:420.

"nonrational part of creation" well.[76] Kant gives examples of what he sees as good treatment of nonhuman animals that seem to demonstrate sensitivity and compassion for animals. When humans kill animals, they should do so "quickly (without pain)." Also, humans who use animals for work should not "strain them beyond their capacities (such as he himself must submit to)." Kant recognizes that humans rely on and use nonhuman animals for work and food and even accepts that some nonhuman animals should be treated "just as if they were members of the household," and Kant is adamant that the nonhuman animals should not be abused. He claims "agonizing physical experiments for the sake of mere speculation, when the end could also be achieved without these, are to be abhorred."[77] Rational creatures' duties with regard to animality do not arise from the value of animality, but are strictly duties to oneself, because Kant argues that mistreatment of non-rational animals inures one to suffering and makes the mistreater of animals more likely to treat rational beings badly.[78]

Again, although Kant recognizes that rational creatures have duties with regard to their animal nature and with regard to non-rational creatures, he does not recognize animality as a source of dignity. With respect to persons' own animal nature, Kant recognizes animality is a reality of human life, but he refers to it as the "crude state of Nature" from which man must pull himself up through education and morality.[79] Indeed, he says animality is not fitting for our humanity, and "morally practical reason *commands* it absolutely and makes this end [diminishing ignorance by instruction and correction of errors] his duty, so that he may be worthy of the humanity that dwells within him."[80] Kant understands human beings as rational creatures who must fight against their animality as it is opposed to their rationality: "the human being has a duty to cultivate the crude dispositions of his nature, but which the animal is first raised into a human being."[81]

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[76] Kant, *The Metaphysics of Morals*, 6:443.
[77] Kant, *The Metaphysics of Morals*, 6:443.
[78] Kant, *The Metaphysics of Morals*, 6:443.
[79] Kant, *The Metaphysics of Morals*, 6:387.
[80] Kant, *The Metaphysics of Morals*, 6:387.
[81] Kant, *The Metaphysics of Morals*, 6:392.

B. Kantians on Animal Nature

Contemporary philosophers working in the Kantian tradition face tough challenges concerning the value of animality and non-rational creatures. Many philosophers in the Kantian tradition are also sympathetic to the notion that nonhuman animals have intrinsic value. Two prominent Kantians, Allen Wood and Christine Korsgaard, present possible interpretations of Kant which address the dignity of and duties to humans with profound mental impairments as well as nonhuman animals.

Consider the view of contemporary Kantian Allen Wood. Wood supports the logocentric aspects of the Kantian tradition, meaning that "it is based on the idea that rational nature, and it alone, has absolute and unconditional value."[82] In Kant's theory, according to Wood, to respect humanity, we must respect humanity in an embodied person, which Wood calls the "personification principle."[83] However, Wood argues respecting rational nature "as an end in itself sometimes requires us to behave with respect toward nonrational beings if they bear the right relations to rational beings. Such relations…include having rational nature only potentially, or virtually, or having has it in the past, or having parts of it or necessary conditions of it."[84] In this way, Wood argues rational beings must respect rational nature in the "abstract,"[85] including the fragmentary rationality Wood credits to nonhuman animals. Wood argues that eliminating the personification principle will also eliminate Kant's division of duties between duties rational creatures have in regard to other creatures and duties to other rational creatures (or to themselves). Instead, "this rejection [of the personification principle] opens the way for us to recognize, solely on the basis of Kant's logocentric principle and without introducing any value outside that of rational nature, duties regarding beings which are not based on or derived from any duties *toward* rational beings."[86]

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[82] Allen Wood, "Kant on Duties Regarding Nonrational Nature," *Proceedings of the Aristotelian Society* 72 (1998), 189.
[83] Wood, 194-6.
[84] Wood, 197.
[85] Wood, 198.
[86] Wood, 200.

Wood notes that "once the personification principle is rejected, Kant's distinction between duties *toward* and duties *in regard to* a being ceases to be either sharp or important."[87]

By having duties to respect rationality in all its possible forms, Wood has developed a way to include respecting both humans and nonhuman animals (who would not meet Kant's capacity to set ends and a fully rational nature). Respect for fragmentary rationality is also present for Wood in the way people treat children, people with mental impairments, and even dead corpses of humans because not respecting them would show contempt for their potential, fragmentary, or previous rationality.[88] He acknowledges Kant would not agree with him, but says, "the important thing, though, is not what Kant would say, but rather what is required by a reasonable interpretation of [Kant's] basic principle that rational nature should be respected as an end in itself."[89] Wood's ideas satisfy the concern that nonhuman animals and humans with severe cognitive impairments are respected due to their own fragmentary rational nature. Wood does not claim that animality as such has dignity, but his view offers a "logocentric" explanation of why we might think many human beings with profound mental impairments and many nonhuman animals possess dignity.

Another contemporary Kantian, Christine Korsgaard, recognizes that Kantian theories need some way to address duties to those incapable of making autonomous, rational choices. If non-rational creatures are not considered to be ends-in-themselves, then it raises questions about whether it is acceptable to use non-rational creatures as mere means. However, it seems troublesome to treat children, the mentally impaired, and nonhuman animals as only tools to be used for our own ends.[90] Korsgaard's interpretation of Kant argues that children and adults with injuries, illnesses, or profound mental impairments for the most part "*are* rational beings. Some of them are, for various reasons, unable to reason *well*."[91] Howev-

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[87] Wood, 210 fn 14.
[88] Wood, 198-9.
[89] Wood, 198.
[90] Korsgaard, 81.
[91] Korsgaard, 82. Korsgaard attributes dignity to many humans who Kant could argue are not rational, and therefore, not dignified. Her broad statements about the inclusion of children, the severely mentally impaired, and those with other injuries and illnesses which effect their cognitive abilities are more sweeping than some Kantians would allow

er, she believes they are still rational beings, and other rational beings have obligations to them as such. Korsgaard, however, faces greater difficulty addressing obligations humans have with regard to nonhuman animals.

Korsgaard sees the nexus of the problem in the concept of "value." As rational creatures, people are the source of value, because value stems from legislative acts, which can only be committed by rational creatures who "matter to themselves: who experience and pursue their own good."[92] These beings who must also have rationality and autonomy to set legislative maxims are considered to be "ends-in-themselves" for both Kant and Korsgaard in the sense that they "*give* the force of law to [their] claims, by participation in moral legislation…If we have obligations concerning animals, they can only follow from laws that we legislate ourselves."[93] Ends-in-themselves can create value and moral order out the world in which they live; therefore, they can also extend the moral order to include nonhuman animals, since "laws are by their very nature are universal, according to Kant, and a universal law can extend its protection to someone who did not participate, and could not have participated, in its legislation."[94] Korsgaard argues it does not follow that rational creatures have to limit their value and moral obligations only to other rational creatures. In fact, "the decision to regard ourselves as the source of legitimate normative claims is the original act that brings the world of normative reasons and values into existence. But *what* we decide to treat as the source of legitimate normative claims is not just our autonomous nature."[95]

Also, Korsgaard recognizes that pursuit of the good is not limited solely to rational creatures. Many animals seem to have a sense of self that situates them in the world, and she says that by the notion something is "good for an animal, we mean that it is good from its point of view. Because we are animals, we have a natural good in this sense, and it is to this that our incentives are directed…But it is our natural good, in this sense, that we *confer* normative value when we value ourselves as ends-in-

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in a Kantian theory, but Korsgaard does not provide a justification in her article for her conclusion that these humans are all considered dignified in her view.

[92] Korsgaard, 108.

[93] Korsgaard, 95.

[94] Korsgaard, 96.

[95] Korsgaard, 101-2.

themselves. It is therefore our animal nature, not just our autonomous nature that we take to be an end-in-itself."[96] By noting how we can give animal nature value, Korsgaard is able draw comparisons between aspects of life valued by rational humans and also nonhuman animals. Even when doing specifically human activities which involve the combination of our rationality and our animality, for example, doing philosophy or science, "we are in a sense valuing our animal nature, for we are still conferring normative value on the kind of natural good characteristic of creatures who experience and pursue their own good."[97] Humans "construct rational order" out of the same features and "goods of life that we share with other animals."[98]

Once Korsgaard has drawn the connection between the aspects of animality valued by rational humans and nonhuman animals, she recognizes that these aspects of animality are considered to be ends-in-themselves, and consequently under direct moral obligation. In sum, Korsgaard argues that "in taking ourselves to be ends-in-ourselves we *legislate* that the natural good of a creature who matters to itself is the source of normative claims. Animal nature is an end-in-itself, because our own legislation makes it so. And that is why we have duties to other animals."[99] Ultimately, Korsgaard works within the Kantian tradition of rationality-based dignity but is able to conclude that humans do have moral obligations to nonhuman animals.

III. Differences between Kant and Nussbaum:

Both Nussbaum and Kant argue that dignity is integral to our understanding of how other creatures should be treated. Nussbaum's conception of dignity allows for the recognition of dignity in many species of animals who, she claims, are owed justice. Kant, however, claims that only rational creatures have dignity, and he thinks that we only have obligations *to* rational creatures, although he thinks our obligations to rational beings constrain how we can treat animality in persons and nonhuman animals; he

[96] Korsgaard, 104.
[97] Korsgaard, 105.
[98] Korsgaard, 105.
[99] Korsgaard, 106.

allows that nonhuman animals and non-rational humans should be treated well, given duties one has to oneself. Kantians such as Wood and Korsgaard indicate there may be direct obligation to non-rational creatures in a Kantian framework: they offer interpretations of Kantian theory that obligates rational creatures to humans who would not be considered rational for Kant and also to nonhuman animals. The differences between Kant and Nussbaum matter for issues concerning to whom justice is owed as well as what justice requires and why. For Nussbaum, nearly all humans and many nonhuman animals are dignified creatures, and they should all be ensured the species-specific central capabilities they need to live lives worthy of their species-specific dignity.

Nussbaum claims her conception of dignity and her consequent view of minimal justice is superior to Kant's (and Kantian theorists'). Since Kant claims that only beings with rationality possess dignity, Nussbaum labels herself distinctly as a "non-Kantian."[100] She stresses that Kantian dignity presents a false dichotomy by separating human nature's animality and its rationality. Instead, for her, rationality is inseparably intertwined with humans' animal nature. The Kantian "split" is untenable and unrealistic according to Nussbaum: "It is important to notice that the [Kantian] split goes wrong in both directions: it suggests, as I have said, that our rationality is independent of our vulnerable animality; and it also suggests that animality, and non-human animals, lack intelligence, are just brutish and 'dumb.'"[101] For Nussbaum, rationality-based dignity artificially divorces rationality from animality. When theorists locate dignity in rationality, they often fail to appreciate that the fact that normal human beings are not always rational, but their dignity seems cohesive throughout their lives.[102] Childhood, illness, deteriorating health, and psychological stress all can create times in the normal lives of humans in which individuals are not rational.

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[100] Nussbaum, *Frontiers of Justice*, 153, 154, 161.
[101] Nussbaum, "The Future of Feminist Liberalism," 50. Korsgaard's view may result in similar treatment of nonhuman animals to Nussbaum's conception of dignity but remains Kantian in her approach to rationality and animality at its foundation. Though Korsgaard's view may support many of the same results as Nussbaum, the basic difference in the view of dignity would still be an unacceptable difference for Nussbaum who includes nonhuman animals as dignified in their own species-specific way, and consequently, primary subjects of justice.
[102] Nussbaum, "The Future of Feminist Liberalism," 50.

Nussbaum identifies four distinct problems with the Kantian split between animality and rationality, and she believes that these four points demonstrate the superiority of her conception of dignity over Kant's. However, she does not sufficiently expound her points or defend her claims. I will critically assess each of the four problems Nussbaum believes arise from the Kantian split of rationality from animality, and I will defend Nussbaum's conception of dignity as superior in regard to humans with severe cognitive impairments and nonhuman animals.

A. Dignity and Rational Animals

First, Nussbaum says, the Kantian split between rationality and animality "ignores the fact that our dignity just is the dignity of a certain sort of animal."[103] Kant discusses rationality as if it is a capacity independent of an animal being. For Kant, "a human being's duty to himself as a moral being only (without taking his animality into consideration) consists in what is formal in the consistency of the maxims of his will with the dignity of humanity in his person."[104] Moral obligation is separate from the "subjective" impulses of nature "having to do with man's animality."[105] Though Kant acknowledges that humans are intertwined with their animality, animal nature is distinct from that which gives them dignity. However, as Nussbaum notes, rationality is a capacity of animals.[106] Indeed, rational capacity stems from the physical constitution of some animal beings. It simply seems unintelligible or, at least, otherworldly to think of rationality as distinct from the animal creatures in which it is found.

Korsgaard cites Kant's anthropological story of humans developing rationality, in which humans in the Garden of Eden gradually become self-conscious and aware of our mortality. Korsgaard mirrors Kant's language in which human rationality differentiates humans from their "fellow creatures." This

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[103] Nussbaum, *Frontiers of Justice*, 132.
[104] Kant, *The Metaphysics of Morals*, 6:420. Italics removed.
[105] Kant, *The Metaphysics of Morals*, 6:419-420.
[106] Nussbaum, *Frontiers of Justice*, 363.

fellowship points to a common starting point and shared features.[107] Korsgaard indicates that rational animals recognize in themselves things common to animal nature, such as responding to incentives and having a self-conception. For Korsgaard, our animal nature seems to be something we recognize in other animals and apply to humans, rather than an abstraction of features humanity shares with other animals that is imposed on nonhuman animals by rational humans. Of interest, again, Korsgaard recognizes that rational beings treat their animal nature as an end-in-itself: "we *confer* normative value when we value ourselves as ends-in-themselves. It is therefore our animal nature, not just our autonomous nature, that we take to be an end-in-itself."[108] Korsgaard uses that point as part of her justification for persons' obligations to animals. She claims that each rational being treats his or her own animal nature as an end because he or she understands that each animal has a self-conception and can experience "its own good and pursues it as an end of its actions to that extent matters to itself."[109]

Again, Korsgaard says that when humans speak about something as "naturally good for an animal, we mean that it is good from its point of view."[110] This leads Korsgaard to conclude that humans legislate normative claims which promote and protect this sense of natural good for the creature. Insofar as we legislate in favor of this natural good, we are obligated to nonhuman animals.[111] This is telling because Korsgaard recognizes animality has value and, consequently, is included in the scope of moral obligations. She recognizes the importance of addressing the value that animality has is tightly linked with our rationality. But, in order to include animality into a Kantian approach, Korsgaard must stretch value in ways that may conflict with other Kantians' interpretations. Furthermore, the way in which Korsgaard understands the relationship between rationality and animality is distinct from Nussbaum insofar as Korsgaard's view is concerned with the value that humans attribute to nonhuman animals and humans'

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[107] Korsgaard, 88-9. Though Kant did not draw the same conclusions as Korsgaard from this fellowship with other creatures, he did advocate good treatment of nonhuman animals as well as recognized that rational humans contained elements of animality (though these elements are not as positive for Kant as they are for Korsgaard).
[108] Korsgaard, 104.
[109] Korsgaard, 103-4. Korsgaard believes that animals demonstrate a sense of self-conception in various ways: humans demonstrate a self-consciousness stemming from their rationality, but other animals can recognize themselves in mirrors, respond when their name is called, and recognize when threats are directed towards them.
[110] Korsgaard, 104.
[111] Korsgaard, 105-6.

own animal nature. In contrast, Nussbaum's conception of human dignity begins with the claim that human dignity stems from the dignity of one type of animal. That is, she develops her view of rationality based on our experience as embodied creatures. Nussbaum does not try to artificially divorce or elevate the capacity, as we understand it, from its embodied reality.

B. The Value of Animality

This leads to Nussbaum's second point regarding the Kantian split: dignity is inherent in animality. Failing to see this "leads us to slight aspects of our own lives that have worth and distort our relation to other animals."[112] Nussbaum often cites examples to suggest the value of animality. In that spirit, few would deny that infants have dignity (even infants with severe cognitive impairments) and that, as a result, it would be wrong to treat them in certain ways. Nussbaum says:

> I believe that we need to delve deeper, redesigning the political conception of the person, bringing rational and the animal into a more intimate relation with one another, and acknowledging that there are many types of dignity in this world, including the dignity of mentally disabled children and adults, the dignity of the senile demented elderly, and the dignity of babies at the breast.[113]

Such beings do not possess the capacity for rationality, even if they previously had it or currently have the potential for it. Most people, I think, judge these beings to be dignified not because of their past or potential capacities but because of capacities they currently possess. Consider a human being who has advanced stages of Alzheimer's disease or a being who has been in an accident and lost most cognitive function.[114] In these cases, the capacity for rationality is severely compromised. We think such beings have dignity and, arguably, not simply because of their former capacities and lives these beings once enjoyed, but again, because of current features about these individuals such as their human need and abilities.

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[112] Nussbaum, "Feminist Liberalism," 50.
[113] Nussbaum, "Feminist Liberalism," 55.
[114] Nussbaum, *Frontiers of Justice,* 170.

Kantians like Wood would claim that non-rational creatures possess some fragmented rationality. This move allows for the inclusion of non-rational creatures into Kantian theory, but this move also seems problematic for two reasons. First, it arguably does not match our judgment about why certain beings have dignity. Here it is also helpful to think about judgments concerning nonhuman animals. As mentioned in the discussion regarding animal dignity, Nussbaum appeals to the Indian court case concerning circus animals. The court rules that the animals' cramped, filthy, demeaning lives were "undignified."[115] The reaction that the circus animals had their dignity violated by their living conditions is not because of the dignity these beings possess by virtue of their fragmented rationality but, rather, the judgment that these beings are dignified and suffered injustice because of their horrid living conditions and demeaning treatment.

Second, Wood's argument for fragmented rationality seems to really stretch the Kantian view. By determining other creatures to have "fragmented rationality," Wood points to the idea that those with a whole, or non-fragmented, rationality are in some sense more complete or even superior to creatures with only partial rationality. Identifying creatures as fragmented or not in their rationality speaks to Nussbaum's worry of a distorted view of the relationship between humans and nonhuman animals or other humans with severe cognitive impairments. It would be problematic for Nussbaum if those with non-fragmented rationality are considered to be higher in the scope of inter-species relations. Also, in order for Wood to appeal to fragmented rationality, he argues against what he calls the "personification principle" which says that rationality must be embodied in persons.[116] Wood says that Kant must reject this principle, but it is questionable if Kant would agree. For Kant, there will be some humans excluded from his conception of dignity, which Wood acknowledges to be unsettling for some. Wood argues, however, that "we see that a reasonable interpretation of the principle of humanity" includes many cognitively impaired humans and nonhuman animals Kant would exclude.[117] However, in order to reach this point, Wood must substantially revise Kant's view. Wood again defends his approach and again says of his in-

[115] Nussbaum, *Frontiers of Justice*, 325-327.
[116] Wood, 196.
[117] Wood, 199.

terpretation of Kant: "The important thing, though, is not what Kant would say, but rather what is required by a reasonable interpretation of his basic principle that rational nature should be respected as an end in itself."[118] Kant would agree about respecting rational nature, but how much of an interpretation would still be "reasonable" to Kant and other Kantians? Wood remains rooted in Kant's theories and his commitment to rationality based dignity, but his complicated interpretation seems to stretch the boundaries of Kant's original conception of dignity.

Once the value of animality is recognized, it has important implications for how we ought to treat human beings, and especially, nonhuman animals. Nussbaum worries the Kantian split will lead persons to have unwarranted airs and unjustifiably treat of other animals. For example, there are many humans today who are comfortable using animals as mere means rather than seeing them as fellow dignified creatures. Examples of this phenomenon are prevalent in the current food industry where many consumers are far removed from their food sources and unquestioningly consume meat which may have been raised in inhumane conditions or fed artificial additives or hormones to decrease the growth time and increase marketable portions of the animals. Many chickens are breed to have oversized breasts because the white meat is in higher demand in the market, or veal calves can be penned and fed artificial milk diets. Nussbaum's conception of dignity prompts us to recognize the value of animality. Though humans may still eat meat for food and use nonhuman animals for labor, recognizing their proper place in the scope of animal dignity will require humans to treat nonhuman animals humanely. Nussbaum argues that all dignified creatures should be ensured certain species-specific central capabilities in a minimally just society. Since she includes nearly all humans and many nonhuman animals in her scope of justice, each of these creatures is entitled to a life worthy of species appropriate dignity and, consequently, is a primary subject of justice.

Again, while Kant or Wood could claim that respect for rational nature requires treating animality in a certain way, it is important that the value of animality itself be recognized. Korsgaard also is concerned with the treatment of nonhuman animals and the obligations we have to other animals rest in the

[118] Wood, 198.

value we confer upon them. In this way, Korsgaard is still reliant upon humans to bestow value upon the nonhuman animals to which we are obligated. Even if Korsgaard suggests we treat nonhuman animals in the same way as Nussbaum and recognizes the value of animal nature, her account still seems problematic insofar as animals are not clearly primary subjects of justice but, instead, brought into the theory through human recognition of the value of animality. Also, Korsgaard's inclusion of nonhuman animals lacks the parsimony and intuitive elements that come easily to Nussbaum's expandable conception of dignity.

Furthermore, while Nussbaum's view recognizes the value of animals, it is appropriately species-specific. For example, Nussbaum sees a relevant and intuitive distinction between a nonhuman animal, for example, a chimpanzee with some language ability, and a human with cognitive and developmental impairments who will never develop language skills.[119] The language ability required for a flourishing human life is distinctly different from the language abilities that a chimpanzee may or may not develop throughout his or her flourishing chimpanzee life: "For chimpanzees, language use is a frill, constructed by human scientists; their own community does not rely on it…[For disabled humans], some access to language, preferably through one's own development, but, where that is not possible, through guardianship, is essential to a dignified life."[120] This meaningful distinction can be incorporated into Nussbaum's view because the source of dignity for each animal and a dignified life for an animal is species-specific. Hence, the human without language abilities still maintains full human dignity, and the chimpanzee has full chimpanzee dignity. Each should have the species-appropriate central capabilities. Nussbaum differentiates the flourishing expected for the species and consequent dignity through species norms, which "(duly evaluated) tell[] us what the appropriate benchmark is for judging whether a given creature has decent opportunities for flourishing."[121] Since both forms of dignity require certain capabilities, the creatures are both included as primary subjects in her scope of justice.

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[119] Nussbaum, *Frontiers of Justice*, 363-5.
[120] Nussbaum, *Frontiers of Justice*, 364.
[121] Nussbaum, *Frontiers of Justice*, 365.

C. False Sufficiency

The third concern Nussbaum raises is that emphasizing rationality over animality as the source of dignity lulls humans into falsely believing that they are self-sufficient.[122] This false belief can blind people to their own neediness, mortality, and other animal features. This blindness is problematic when it hinders people from seeing their interconnectivity and reliance on others in their political community. Nussbaum ultimately creates a political theory, and the false image people have of themselves as divided beings affects the way people interact with others. Nussbaum is concerned people will falsely view themselves as isolated individuals. Indeed, it has been an important feminist critique of liberal political philosophy that persons are not independent and self-sufficient. As Nussbaum stresses, we are all needy at the beginning of life and many of us will again be so later in life, temporarily or permanently. Furthermore, some people are always dependent on others for assistance in meeting their basic needs.[123] Historically and currently, women perform much of the work for caring for others, and as Nussbaum says, "usually without pay, and often without recognition for this work."[124] As a result of their caregiving work, women have been and continue to be disadvantaged relative to men in other spheres of life. Nussbaum's conception recognizes that dependency is a continuous feature of human life and the work of caring for dependents is central to the organization of any minimally just society.

Kant's heavy emphasis on rationality as the basis of dignity lends itself to the concept that people enter the social world already complete and autonomous, which is simply false, and it fails to recognize the dignity of the humans who will never achieve independence due to cognitive impairments. Nussbaum's conception of dignity, on the other hand, can easily accommodate the human being through all stages of her life, from infancy to old age and all different times of dependency throughout. By grounding her conception of dignity in animality, Nussbaum is able to incorporate times of development and neediness which are a reality of the human condition and communal life.

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[122] Nussbaum, "The Future of Feminist Liberalism," 50.
[123] Nussbaum, *Frontiers of Justice*, 168-9.
[124] Nussbaum, "The Future of Feminist Liberalism," 49-50.

D. Human Dependency

Finally, the fourth concern Nussbaum raises is that dividing rationality from animality leads people to wrongly believe that they are "a-temporal" because it fails to recognize times of dependency during which "our functioning is very similar to that enjoyed by the mentally impaired or physically handicapped throughout their lives."[125] For example, times in human lives such as infancy, mental decline, illness, or injury all cause changes in one's rational capacity, but according to Nussbaum, these should not impact one's dignified status. Matching these intuitions with a cohesive theory of dignity is advantageous to Nussbaum because it seamlessly accommodates the cohesion of dignity throughout one's life from infancy to old age without forcing anyone to move in and out of times of dignity.

Since Nussbaum's conception of dignity has the capacity to address the concerns she has with Kant's artificial split between animality and rationality, Nussbaum's conception of dignity offers a better starting point for theories wishing to apply to the lives which people actually live.[126] Her sensitivity to the realities of the neediness and complications of life accepts the temporality in life and appreciates humanity in its place among the other animals. Being aware of the development, illnesses, injuries, and decline that are a part of human life allows Nussbaum's conception of human dignity to remain a consistent political theory which awards dignity according to general intuitions without having to perform mental gymnastics to include most humans and many nonhuman animals and the contingencies and changes which occur naturally throughout life.

Nussbaum's conception of dignity can attend to common intuitions and concerns regarding the dignity which are seriously problematic for Kant. Because of the construction of Nussbaum's conception of dignity and its ensuing political theories, Nussbaum's theory can easily accommodate the intuitive judgments we have about the dignity of humans and nonhuman animals from the start. Kantians like Wood and Korsgaard attempt to address some of these concerns, but end up with complicated interpretations of Kant's theories. Avoiding any of the nuanced interpretations and stretching the Kantian concep-

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[125] Nussbaum, "Feminist Liberalism," 50.
[126] Nussbaum, *Frontiers of Justice*, 168-71.

tion of dignity, Nussbaum's conception of dignity is simple and consistent. Nussbaum is able to point out the four main problems she sees in Kantian dignity, and I have argued that these four problems are indeed difficult for Kant and the Kantians who follow him, and that Nussbaum's conception of dignity from animality is better able to address these four problems with a succinct and efficient theory.

IV. Conclusion

Though there are stark differences between Kant and Nussbaum, it is important to recognize that there are also valuable similarities between the two conceptions that open the door for common ground and enable further discussion between Nussbaum and those working in the Kantian tradition. Kant's and Nussbaum's conceptions point to some areas of overlap in both the constitutive features and implications of dignity. On Kant's view, autonomy is linked with practical reason and is marked as that which possesses dignity. For Nussbaum, "[human dignity] is indeed characterized, usually, by a kind of rationality, but rationality is not idealized and set in opposition to animality; it is just garden-variety practical reasoning."[127] Since rationality is a part of the human species norm, Nussbaum is also committed some degree of practical reason in a life worthy of human dignity.

Like Kant, Nussbaum regards autonomy as of central importance for justice. She says that "[i]n the human case, one way we respect autonomy is to focus on capabilities, not functioning [acting upon the capabilities], as the … goal."[128] There are many who will, for various reasons, forego acting upon the capabilities. Nussbaum cites cases like the Amish, where they could see the value in the capability to vote and will support that capability for all people but will not vote themselves.[129] It would be unjust and undermine autonomy to force individuals to function in certain ways (in the normal case).

There are other important similarities between Kant and Nussbaum regarding the implications of recognizing human dignity. Consider the Humanity Formulation of Kant's Categorical Imperative: "the human being and in general every rational being exists as an end in itself, *not merely as a means* […]; he

[127] Nussbaum, *Frontiers of Justice*, 159.
[128] Nussbaum, *Frontiers of Justice*, 375.
[129] Nussbaum, *Frontiers of Justice*, 185-6.

must in all his actions, whether directed to himself or also to other rational beings, always be regarded *at the same time as an end*."[130] These ideas linger in Nussbaum's conception of dignity; she says that human beings should not be viewed as mere means for others: "I argue, further, again relying on the intuitive idea of human dignity, that the capabilities in question should be pursued for each and every person, treating each as an end and none as a mere tool of the ends of others."[131] She reiterates her alignment with the Kantian conception of inviolable and unconditional dignity: "I have also said that the intuitive ideas of dignity and reciprocity provide excellent guidance, particularly in thinking of the way in which *each person* is an end and cannot be sacrificed to a larger social good."[132] Since dignity is valued as an end-in-itself for Nussbaum, this reflects similar ideas to Kant who says that dignity is beyond price because "each person is valuable and worthy of respect as an end."[133]

Sharing these important features of dignity with Kant further strengthens Nussbaum conception of dignity because it reinforces the intuitive nature of her conception, even among Kantians who disagree with her, and it provides a strong basis to encourage ongoing discussion which Nussbaum believes will revise and strengthen her approach.[134] Though Nussbaum's view is promising, there are some lingering concerns in her conception of dignity that need to be addressed. I cannot adequately cover each in this thesis, but I will highlight some problems for future research which I see as particularly problematic. I will first return to the previously mentioned ambiguity in Nussbaum's language regarding the role of dignity in the capabilities approach. Second, I will look at questions and implications for Nussbaum regarding conflicting capabilities of various animals. Finally, I will investigate some borderline cases of sentient, non-stationary creatures to expose the difficultly to determining which nonhuman animals are considered dignified and owed justice through the capabilities approach.

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[130] Kant, *Groundwork*, 4:428.
[131] Nussbaum, *Frontiers of Justice*, 70. There are some irreconcilable differences between Kant's and Nussbaum's conceptions of dignity, which are again highlighted by Nussbaum arguing the "intuitive" idea of dignity. Kant does not award the same weight to an "intuitive idea of dignity," but I do not make the point that they align perfectly. Instead, I argue that even in Nussbaum's official split from Kant, she is echoing some Kantian ideas, as evident from the passages where she seems to meld Kantian language and ideas into her neo-Aristotelian perspective.
[132] Nussbaum, *Frontiers of Justice*, 177.
[133] Nussbaum, *Women and Human Development*, 56.
[134] Nussbaum, *Women and Human Development*, 151-2.

A. Dignity's Role in the Theory

First, further clarification is needed with respect to dignity's exact role in Nussbaum's capabilities approach. As previously mentioned in Section I, on Nussbaum's view, dignity both seems to be independent of and inseparable from the central human capabilities. There is a question here whether Nussbaum uses a dignified existence prior to the capabilities or if the capabilities are a constitutive element in human dignity. On one hand, Nussbaum's language indicates that dignity is foundational, prior to the capabilities, and that providing the central capabilities shows respect for dignity.[135] Nussbaum says, "The capabilities approach begins from a political conception of the human being, and of a life worthy of the dignity of a human being."[136] Since the capabilities approach begins with conception of human dignity, recognizing that dignity gives rise to the central capabilities, and consequently, a life worthy of the dignity the human already possesses. Indicating the foundational role of dignity in forming the capabilities, she says, "the political principles I give [the central human capabilities] give shape and content to the abstract idea of dignity."[137] If the capabilities flesh out the abstract idea of dignity, then dignity must independent from the capabilities. This recognition of human dignity at the root of the capabilities seems clear when Nussbaum says, "I…have used the approach to provide the philosophical underpinning for an account of core human entitlements that should be respected and implemented by the governments of all nations, as a bare minimum of what respect for human dignity requires."[138] More explicitly, Nussbaum shows dignity to be independent of the capabilities when she says, "We should bear in mind that 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. For that reason, it should also have all the capabilities relevant to that species, either individually or through guardianship."[139] The language Nussbaum uses seems to indicate that human dignity is independent of holding any capabilities. Dignity is prior to the capabilities because respect for it spurs the principles at the foundation of the capabilities approach.

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[135] Nussbaum, *Frontiers of Justice*, 44, 70, 78.
[136] Nussbaum, *Frontiers of Justice*, 180.
[137] Nussbaum, *Frontiers of Justice*, 75.
[138] Nussbaum, *Frontiers of Justice*, 70.
[139] Nussbaum *Frontiers of Justice*, 347.

Nussbaum's insistence that dignity must be functioning whereas other capabilities only need to be available also indicates that dignity is prior to the capabilities.[140] Nussbaum claims that "if we place the accent firmly on capability rather than functioning, it is a not implausible reconstruction of their thinking to ascribe to them the thought that a dignified life for a human being requires these *capabilities*—which include, of course, the right not to use them."[141] By differentiating functioning dignity from the capabilities, Nussbaum indicates that she not only thinks that dignity is separable from the capabilities, but that it is also prior to them, since having functioning dignity is necessary to preserving autonomy to choose which capabilities function in one's life.

On the other hand, Nussbaum also uses language at times that points to dignity (in some way) being dependent on or inseparable from the central human capabilities. In a direct contradiction to the previous indications that dignity is independent of the capabilities, Nussbaum says, "Dignity is not defined prior to and independently of the capabilities, but in a way intertwined with them and their definition."[142] Dignity is partially constituted by the central capabilities and that having the capabilities results in a life worthy of human dignity. Nussbaum says, "It is also argued that dignity is not a value independent of the capabilities, but that the articulation of the political principles involving capability are (partial) articulations of the notion of a life with human dignity."[143] The "partial articulation" and the instrumental ways in which Nussbaum talks about the capabilities being related to her conception of human dignity are hinted at, and it is not clear in which ways and how partial the articulations of dignity are. What is clear is that Nussbaum does not want dignity to increase with each capability one obtains,[144] but instead dignity is somehow intertwined with the capabilities, but not fully resulting from the capabilities. For Nussbaum, dignity is non-aggregative, so that having more of the capabilities cannot give one more dignity.[145] This

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[140] I provide a more in-depth discussion of this topic of compulsory functioning of dignity and why Nussbaum endorses it in Section I, part B.
[141] Nussbaum, *Frontiers of Justice*, 184-5.
[142] Nussbaum, *Frontiers of Justice*, 162.
[143] Nussbaum, *Frontiers of Justice*, 7.
[144] Nussbaum, *Frontiers of Justice*, 344-5.
[145] Nussbaum, *Women and Human Development*, 159 and *Frontiers of Justice*, 80-1.

sentiment points to Nussbaum's belief that dignity cannot come *from* stockpiling different capabilities. She also repeatedly says that having the capabilities is necessary for a "life worthy of human dignity."

Moreover, Nussbaum adds that humans are worthy of human dignity whether or not they have the capabilities, but it remains unclear what role dignity plays in Nussbaum's theory when she provides "an approach that focuses on *human capabilities*, that is, what people are actually able to do and to be, in a way informed by an intuitive idea of the dignity of the human being. I identify a list of *central human capabilities*, arguing that all of them are implicitly in the idea of a life worthy of human dignity."[146] Here, Nussbaum says that the capabilities are "informed by" dignity while simultaneously saying that the capabilities are already "implicit" inside of the concept of dignity. Nussbaum is ambiguous whether she is referencing two different senses of dignity or if dignity plays more than one role in her approach.

In this confusing set-up, it is obvious to the reader that human dignity is powerful and important, but its exact role in the capabilities approach is not articulated. So in essence, a reading of Nussbaum's numerous comments about dignity can look like they are incompatible—that dignity precedes the capabilities in some way while partly resulting from them. In order to avoid this confusion, Nussbaum could claim that being a dignified human and having a life worthy of human dignity are separate claims, but it is far from clear what Nussbaum has in mind. The confusion remains with respect to the role of "dignity" in Nussbaum's approach. The problem rests in her language and may be clarified with further discussion.

B. Conflicting Capabilities

A second concern regarding Nussbaum's capabilities approach rests in her brevity regarding conflicting capabilities or what to do when there is a conflict with respect to the provision of capabilities (within or among species). Nussbaum argues for multiple dignities and recognizes differences among all the sentient, non-stationary animals which she includes in her approach:

> Because the capabilities approach finds ethical significance in the unfolding and flourishing of basic (innate) capabilities—those that are evaluated as both good and central—it

[146] Nussbaum, *Frontiers of Justice*, 70.

> will also find harm in the thwarting or blighting of those capabilities. More complex forms of life have more and more complex (good) capabilities to be blighted, so they can suffer more and different types of harm…Level of life is relevant not because it gives different species differential worth per se, but because the type and degree of harm a creature can suffer varies with its form of life.[147]

Nussbaum argues that more complex animals can suffer greater harms, and therefore harming them is considered morally worse than less complex animals, but it is not clear how, or even if, this ranking of complexity (however it would be performed) is intended to guide a decision making process when capabilities conflict.

Since many creatures have dignity and the provision of the central capabilities for some creatures may conflict with the provision of the central capabilities for other creatures, there needs to be a way to adjudicate claims. Nussbaum eliminates the option to adjudicate justice in terms of a creature's utility because various forms of utilitarianism do not support the same goals as the capabilities approach, and some are even in conflict with her basic principles: "consequentialism is in tension with liberal respect for plurality of comprehensive conceptions of good. Sum-ranking treats some as means to the ends of others. Hedonism and preference Utilitarianism efface the heterogeneity and distinctness of the good [and] ignore good that do not reside in sentience."[148] Nussbaum stresses that human dignity is the dignity of one type of animal and the utility of that animal (whether human or not) should not be weighed in the considerations of justice. Instead, dignified animals are all owed at least the minimal justice of their species-specific central capabilities, so adjudicating between conflicting claims for minimal justice remains unclear.

Nussbaum acknowledges, "The world we live in contains persistent and often tragic conflicts between the well-being of human beings and the well-being of animals."[149] She goes on make concessions that favor human capabilities, such as allowing for the painless killing of animals for meat until we can

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[147] Nussbaum, *Frontiers of Justice*, 361.
[148] Nussbaum, *Frontiers of Justice*, 345-6.
[149] Nussbaum, *Frontiers of Justice*, 402.

ensure that an all-vegetarian diet does not harm children's health.[150] Nussbaum also mentions concerns about paying for healthcare for all animals may force a reduction in the level of healthcare for humans and animal medical research,[151] but says that each nation "needs to consider [these questions of conflicting capabilities] for itself when setting the threshold of all the major capabilities. We have not yet even begun to deliberate about such questions, and I believe that it is premature right now to say what the precise result of such deliberations would be."[152] To maintain a practical approach, Nussbaum acknowledges that there will be some harm to animals, but that we should focus on smaller, simpler animals, because the harm to them will be less,[153] and that we should attempt to "cut back on the abuse of animals."[154] Though Nussbaum hints at the reality of conflicting capabilities, she appears to endorse favoring (to some extent) human capabilities when they directly conflict with other nonhuman animals' capabilities, but she provides no mechanism to make these decisions. For example, she favors children's health over a vegetarian diet and medical research for humans over the capabilities of the animals used in that research.[155] Nussbaum admits that there is work to be done on the issue of conflicting capabilities, and her cursory glance at the complicated reality of conflicting capabilities leaves both advocates and critics of her view wondering how to decide which capabilities to promote and which harms are "lesser" for less complex beings. This omission is glaring because Nussbaum argues that she offers a superior approach to justice for cognitively impaired humans and nonhuman animals, but adjudicating between conflicts of goods and needs in a world that competes for limited resources is an important feature of any conception of justice.

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[150] Nussbaum, *Frontiers of Justice*, 402-3.
[151] Nussbaum, again, appears to favor human capabilities. She says, "But much important research with major consequences for the life and health of human beings and other animals will inflict disease, pain, and death on at least some animals, even under the best circumstances. We should admit, then, that there will be some ineliminable residue of tragedy in the relationships between humans and animals. Research that should be allowed to promote human health and safety will continue to inflict the risk of disease, pain and premature death on animals. As a matter of ideal entitlement theory, this research is morally bad. As a matter of current implementation, I do not favor stopping all such research immediately." *Frontiers of Justice*, 404.
[152] Nussbaum, *Frontiers of Justice*, 403.
[153] Nussbaum, *Frontiers of Justice*, 404.
[154] Nussbaum, *Frontiers of Justice*, 405.
[155] Nussbaum, *Frontiers of Justice*, 404.

C. Animal Dignity

A third complication in Nussbaum's conception of dignity needing further development is determining which animals have dignity and what exactly is owed, as a matter of minimal justice, to certain animals (putting aside species conflicts). Nussbaum admits that each species has its own appropriate dignity, and this is important because dignified creatures are owed justice. Nussbaum limits the discussion to sentient, non-stationary animals[156] and allows that some animals are included and some are not. On the fringes those decisions seem to make sense: coral and sponges are out while parrots and humpback whales are in. She discounts mosquitoes because they do not feel pain.[157] Nussbaum vaguely points to what animals she determines to be included in her theory: "dynamic and not static, that seek expression in a characteristic form of life,"[158] but some grey areas remain. How mobile does a creature have to be in order to be non-stationary? Also, many creatures have a nervous system and experience sensation, but how advanced does this experience have to be for Nussbaum to consider them to have "complex forms of sentience"[159] in her account?

For example, slugs have a nervous system and can experience sensation, respond to stimuli, and have pain receptors, so would they be considered sentient?[160] They move, however slowly, so they would also be considered non-stationary. According to Nussbaum's criteria, slugs exhibit the features required for nonhuman animals to have dignity and could be owed the appropriate slug central capabilities and consequent justice. Though maliciousness to slugs may be distasteful, I am not convinced that slugs are owed justice. This intuition is evident when the slug is found eating through plants. There does not seem to be cries of injustice against those who kill slugs that are destroying a human's plants. In the case of crops, one could argue that the plants are needed for food for more complex animals and humans, and so

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[156] Nussbaum, "Human Dignity and Political Entitlements," 365.
[157] Nussbaum, *Frontiers of Justice*, 361.
[158] Nussbaum, "Human Dignity and Political Entitlements," 365.
[159] Nussbaum, "Human Dignity and Political Entitlements," 365.
[160] Eric Kandel won the 2000 Nobel Prize in Physiology or Medicine for his work in studying memory. Much of his research was centered around *Aplysia*, a type of sea slug. This reiterates that slugs not only have a nervous system and respond to stimuli, but also can perform the more complex task of basic learning. Further work on the nervous system of mollusks is currently being conducted by Paul Katz in association with the Neuroscience Institute at Georgia State University.

the slugs may be sacrificed. However, there are many slugs which destroy garden flowers or lawns that have no potential to be human sustenance, but there is still no outcry that people are morally wrong by killing these pesky slugs. Since Nussbaum believes that her theory matches intuitions people have, it would appear people would not owe the slugs justice, though they are sentient and non-stationary.

With examples such as slugs, it becomes clear that Nussbaum must define more carefully what nonhuman animals she wishes to include in her conception of animal dignity and consequent justice. If she includes slugs, it does not seem to match people's intuitions. Also, how would one enforce justice for creatures like slugs? If any remotely sentient, moving creature is dignified and included as a primary subject of justice, the scope of justice could be expansive and overly burdensome. The broadness of the theory would diminish the applicability and efficiency of Nussbaum's approach, which has been a major source of her superiority to Kant in my previous discussion.

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APPENDICES

Appendix A: The Central Human Capabilities:

(as given by Martha Nussbaum on *Frontiers of Justice*, pages 76-8)

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*. Being able to have good health, inducing reproductive health; to be adequately nourished; to have adequate shelter.
3. *Bodily Integrity*. Being able to move freely from place to place; to be secure against violent assault; including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
4. *Senses, Imagination, and Thought*. Being able to use the senses, to imagine, think and reason – and to do these things in a "truly human" way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing works and events of one's own choice, religious, literary, musical, and so forth. Being able to use one's own mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences and to avoid nonbeneficial pain.
5. *Emotions*. Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.)

6. *Practical Reason*. Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance.)
7. *Affiliation*.
    A. Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting the institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)
    B. Having the social bases of self-respect and nonhumiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of nondiscrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.
8. *Other Species*. Being able to live with concern for an in relation to animals, plants, and the world of nature.
9. *Play*. Being able to laugh, to play to enjoy recreational activities.
10. *Control over One's Environment*.
    A. *Political*. Being able to participate effectively in political choices that govern one's life; having the right of political participation, protections of free speech and association.
    B. *Material*. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.