

# On Nussbaum's Theory of Justice and Animal Capabilities: A Confucian Evaluation and Response

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## ABSTRACT:

Employing Amartya Sen's capabilities approach to justice, Martha C. Nussbaum gives a critique of Rawls's theory of justice as well as some critical comments on Peter Singer's theory of animal welfare and Tom Regan's theory of animal rights. Nussbaum establishes the claim that capabilities, at least for those important ones for an animal to retain a sense of dignity of life, are the basic entitlements of animals not to be violated without good reasons. She refutes the traditional distinction of positive and negative duties towards others including other species and argues that human beings have the responsibility to provide protection for the wellbeing of animals. She develops a new theory of justice for animals in terms of capabilities as flourishing and makes up a list of capabilities for a just treatment of animal as a life worthy of dignity. Nussbaum's approach comes very close to Confucianism. This paper will give a critical evaluation and comparison of the two approaches to justice.

In this paper I espouse one of the basic moral principles in Confucian ethics as a way to treating others and animals so as to let their inborn talents manifest to the utmost. This Confucian principle is derived from Confucius idea of *ren* and has both moral and ontological implications. The talents

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include both natural and moral talents. For animals, natural talents come very close to Nussbaum's idea of capabilities. The principle works as a Confucian principle of justice for human society. It is extended here to encompass the basic needs of animals as well as some possibilities of moral or ethical relationship for some higher animals. Some critical observations of Nussbaum's emphasis on the political aspect of justice of animal capabilities are drawn. In contrast to Nussbaum's employment of compassion in support of her thesis, a justification of the human-animal relation is offered in terms of the kind of trans-species empathy implied in the heart/mind of *ren*. Finally, a number of critical observations in human-animal relation are drawn.

**Keywords:** Justice, animal, capability, Nussbaum, Confucianism

# 論納斯邦之公義論與動物能力： 儒家之評價與回應

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## 摘要：

納斯邦採用沈恩的能力進路之公義論批判羅爾斯的公義論，而且進而批評辛格之動物福利論與雷根之動物權利論。納斯邦宣稱某些對動物保持一種具有尊嚴的生命之能力是動物擁有一些不可被侵犯的基本權利的基礎。納斯邦反對傳統對他人或其他物種的生命有所謂積極與消極義務的區分，而且論證人類對動物的幸福有加以保護的義務。他依此公義論，以生命之繁衍能力為主，列出一組保護動物具有尊嚴生命的能力名單。本文對於這兩種公義之進路進行一批判的評估。

本文引用儒家之各盡其性分之道德原則作為對待其他人和動物的基本倫理要求，即讓每一人和一物都能充份發揮所稟有的天賦才能。本文說明各盡其性分的原理衍生自孔子之仁，而且說明何以仁具有道德的和存有論的意涵。本文以各盡其性分原則為人類社會的公義原則。這些

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才能包括自然的與道德的能力。動物方面以自然能力為主。本文在此延申此原則去涵蓋動物之需求，以及容許某些高等動物具有一定的道德或倫理關係。本文並對納斯邦所強調的，動物能力之政治面相作一批判的審察。同時，相反於納斯邦以同情共感去支持他的論題，本文以儒家之仁或仁心所具有的感通來證立人類與動物關係之方式。本文並對人類與動物的關係提出若干批判的審察。

**關鍵詞：**公義、動物、能力、納斯邦、儒家

In the opening of her treatise on the justice for nonhuman animals, Nussbaum presents the Indian court's addressing the treatment of circus animals as robbing them their deserted dignified existence and comments as follows:

*Dignified existence would seem at least to include the following: adequate opportunities for nutrition and physical activity; freedom from pain, squalor, and cruelty; freedom to act in ways that are characteristic of the species (rather than to be confined and, as here, made to perform silly and degrading stunts); freedom from fear and opportunities for rewarding interactions with other creatures of the same species, and of different species; a chance to enjoy the light and air tranquility. The fact that human acts in ways that deny animals a dignified existence appears to be an issue of justice, and an urgent one, although we shall have to say more to those who would deny this. -- there seems to be no good reason why existing mechanisms of basic justice, entitlement, and law cannot be extended across the species barrier, as the Indian court boldly does.<sup>1</sup>*

Nussbaum is here setting herself a tremendous job to establish nonhuman animals with a dignified existence, of animal dignity.<sup>2</sup> For it gives animals some sort of moral status as equal to human being. It is a daring and difficult task to make good. From such a conception of animals, Nussbaum extends our common conception of justice within human society and links it to the

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<sup>1</sup> Martha Nussbaum, *Frontiers of Justice* (Cambridge, M.A.: The Belknap Press of Harvard University Press, 2006), p. 326.

<sup>2</sup> *Ibid.*, p. 327.

issue of justice. In this endeavor, she extends Amartya Sen's approach of capability into the reflection of our duties to animals.

## 1. Nussbaum's Capability Approach to Animal Rights

In developing Sen's idea of capability into a full-blown theory of justice, Martha Nussbaum pushes a new wave of discussion on the issues of animal rights and makes some important contributions to the human-animal relation in terms of justice. She attacks vigorously the two main streams of excluding animal from justice and animal welfare theories. Though she regards John Rawls has improved much on Kant with accepting direct moral duties towards animals, she complains Rawls's exclusion of animals from the issues of justice when Rawls said,<sup>3</sup>

*Certainly it is wrong to be cruel to animals and the destruction of a whole species can be a great evil. The capacity for feelings of pleasure and pain and for the forms of life which animals are capable clearly imposes duties of compassion and humanity in their case. I shall not attempt to explain these considered beliefs. They are outside the scope of the theory of justice, and it does not seem possible to extend the contract doctrine so as to include them in a natural way. A correct conception of our relations to animals and to nature would seem to depend upon a theory of the natural order and our place in it.*<sup>4</sup>

Nussbaum complains that Rawls's duties of compassion and humanity are vague and most important in that he does not place it squarely within the

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<sup>3</sup> Ibid., p. 331ff.

<sup>4</sup> John Rawls, *A Theory of Justice*, Revised edition (Cambridge, M.A.: The Belknap Press of Harvard University Press, 2006), p. 448.

realm of justice. She criticizes Rawls in failing to include animals in the world of justice because they lack the capacity for a conception of good and a capacity for a sense of justice.<sup>5</sup> Animals are agents seeking a flourishing existence. They have certain capabilities and thus have certain entitlements which are important for their survival and flourishing. Infringement of such entitlements is tantamount to treat them unfairly. On the other hand, Nussbaum also complains that utilitarians, such as Peter Singer, though with good success in the promotion of the welfare of animals, have also great problems in relying on preferential utilities of animals and inter-species comparisons of utilities or preferences, without adequate acknowledgement of the richness and difference in different types of life forms. Some damage to the flourishing of a species is not registered as pain. Thus, utilitarianism comes short of protecting ultimately the life of animals from killing for the benefits of others and without proper recognition of the complexity of different forms of life.<sup>6</sup>

Though Nussbaum does not make a direct comment on another important figure and theory in animal rights, namely Tom Regan's, into discussion, she may feel somewhat closer with the latter than with the other two. Nussbaum does make a brief comment on Regan's theory latter, where she says:

*Tom Regan, who defends a right-based view of animal entitlement, refuses to admit differences of intrinsic value within the group of animals he considers, which includes all mammals who have reached the age of one year. All these, he holds, have intrinsic value, and intrinsic value is not a matter of degree. Nonetheless, he, too, gives conscious awareness a large place in his account of intrinsic*

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<sup>5</sup> Nussbaum, op. cit., p. 331.

<sup>6</sup> Nussbaum, op. cit., pp. 338-346.

*value; his argument that all mammals who have reached one year have it is a large part of the support he provides for the claim that they do all have intrinsic value.*<sup>7</sup>

Nussbaum would agree that at least some animals have the right to life and violation of such rights of those animals, especially mammals over one year old, would be an infringement of justice. However, it is also obvious that what Nussbaum regards as most important for the respect of animals is not that these animals have certain level of consciousness, but that they have capabilities, not limited to consciousness or rationality, with all sorts of complexity, especially those of emotional expressions. Though not using the language of intrinsic value, for Nussbaum, these diverse capabilities are what make up their flourishing state and need to be considered morally and their violation is unfair and unjust to them. Hence, Nussbaum is making an option other than the main streams of ethics and animal theories, which takes up another long tradition in western philosophy, namely the Aristotelian ethics and sentimentalism, to develop her own theory of justice to animals.

Following Aristotle's seeing animals as something that arouses our wonder and study, Nussbaum argues that animals have something good in themselves. This leads us to accept that animals are entitled to pursue these goods and as agents seeking a flourishing existence.<sup>8</sup> Nussbaum points out that there are variations in the capabilities of the rich forms of different species and capabilities approach is apt to base our treatment of animals with due considerations of such difference. Hence, Nussbaum regards the approach of capability could make animals as subjects protected by justice and could take into consideration the complex life forms:

*So, I believe that the capabilities approach is well placed, intuitively, to go beyond both contractarian and Utilitarian views. It*

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<sup>7</sup> Nussbaum, op. cit., p. 359.

<sup>8</sup> Nussbaum, op. cit., p. 337.

*goes beyond the contractarian view in its starting point, a basic wonder at living beings, and a wish for their flourishing, and for a world in which creatures of many types flourish. It goes beyond the intuitive starting point of Utilitarianism because it takes an interest not just in pleasure and pain, but in complex forms of life and functioning. It wants to see each thing flourish as the sort of thing it is.*<sup>9</sup>

Now, when it comes to the building of a capabilities list for animals, Nussbaum first makes some methodological consideration. She declares that the list will be tentative and always subjects to further revision upon new data or discovery about the flourishing problem of animals. She regards Rawls's concept of reflective equilibrium as part of her method of building up the list. What is most important is her "emotional approach" in tackling the problem of animal capabilities as animals are hardly said to be rational but more recognized as at least with rich emotional capabilities. Further, as we are not animals, there is always a doubt about how we could capture the true or right list of capabilities of animals and of different species. Nussbaum introduces her distinctive method in her conception of different emotions and explains how certain type of emotion could give us a better grasp of the capabilities of animals.

In fact, Nussbaum has another project to rewrite ethics along the line of moral sentimentalism and replaces the role of reason by emotion. She reverses the order of reason and emotion in morality and proposes that emotions have intelligence and do contain judgments.<sup>10</sup> In her theory of

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<sup>9</sup> Nussbaum, *op. cit.*, p. 349.

<sup>10</sup> Nussbaum had written extensive on emotions and refigured them into ethics. The most comprehensive treatise is Martha Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge: Cambridge University Press, 2001).

emotion, Nussbaum makes certain important distinctions between such notions as compassion, sympathy, pity and empathy. Since these notions have been used quite differently by different philosophers over time, Nussbaum makes her own delineations and in a sense redefines the notions for her own construction. Among these, the most important notion is compassion, and Nussbaum says,

*To put it simply, compassion is a painful emotion occasioned by the awareness of another person's undeserved misfortune.*<sup>11</sup>

Thus compassion designates not only that we have certain emotion but of certain special kind of emotion, that is, it is felt as a painful emotion not because one is physically hurt but just seeing that others are undeservedly hurt. It has a limited sense in that it only includes something that the other or others being hurt undeservedly. Nussbaum tries to delineate it from other different kinds of emotion such as when somebody is punished deservedly for some wrongful acts. However, we would say, there are similar emotional alarms even when we see somebody is punished seriously though deservedly, say at the moment when the murderer's head is chopped down, we seem to have similar strong instantaneous feeling initially pointing to the direction that it should not happen. Or, we shall feel even stronger when some innocent person, say a toddler, is about to be hurt seriously, for instance, when a car is coming very fast and going to knock down the toddler. Such emotional state or alarm should also be included as compassion in Nussbaum's usage.<sup>12</sup> Under the notion of compassion, there are notions

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<sup>11</sup> Ibid., p. 301.

<sup>12</sup> This is the kind of moral feeling or rather, moral consciousness that Confucians talk about with the moral function of the moral heart/mind, or the unbearable mind of suffering of others in Mencius writing. Cf. Shui Chuen Lee, "On Relational Autonomy: From Feminist Critique to a Confucian Model for Clinical Practice," in Shui Chuen Lee (ed). *The Family, Medical Decision-Making, and Biotechnology:*

sometimes used historically indistinctively with compassion such as pity, sympathy and empathy. Nussbaum takes empathy as “imaginative reconstruction of another person’s experience, without any particular evaluation of that experience”,<sup>13</sup> and regards it as more or less morally neutral, hence, for Nussbaum, it is quite different from her notion of compassion. On the other hand, sympathy comes very close to compassion,

*If there is any difference between “sympathy” and “compassion” in contemporary usage, it is perhaps that “compassion” seems more intense and suggests a greater degree of suffering, both on the part of the afflicted person and on the part of the person having the emotion.*<sup>14</sup>

Thus, the two notions seem to be on the same continuum with only difference in degree. What is most important for our discussion is that Nussbaum argues that compassion has a cognitive dimension:

*The first cognitive requirement of compassion is a belief or appraisal that the suffering is serious rather than trivial. The second is the belief that the person does not deserve the suffering. The third is the belief that the possibilities of the person who experiences the emotion are similar to those of the sufferer.*<sup>15</sup>

Such belief or appraisal is evaluative and is made by the onlooker who has the compassion towards what is happening to the sufferer. Citing the

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*Critical Reflections on Asian Moral Perspectives* (Dordrecht: Springer, Kluwer Academic Publishers, 2007), pp. 83-93. Further comparison will be made later.

<sup>13</sup> Nussbaum (2001), op. cit., pp. 301-302.

<sup>14</sup> Nussbaum (2001), op. cit., p. 302.

<sup>15</sup> Nussbaum (2001), op. cit., p. 306.

supports of Aristotle, through Adam Smith and recent similar study of American research in such kind of emotion, Nussbaum argues that the cognitive elements in compassion are quite unanimous across space and time. Undoubtedly, it could also be said to have corroboration with Chinese experience throughout Chinese history.<sup>16</sup> Nussbaum finally sums up the three cognitive elements of compassion as follows:

*Compassion, then, has three cognitive elements: the judgment of size (a serious bad event has befallen someone); the judgment of **nondesert** (this person did not bring the suffering on himself or herself); and the **eudaimonistic judgment** (this person, or creature, is a significant element in my scheme of goals and projects, an end whose good is to be promoted). The Aristotelian **judgment of similar possibilities** is an epistemological aid to forming the **eudaimonistic judgment** – not necessary, but usually very important.<sup>17</sup>*

The third element points to a rather specific part of compassion in relation to the underserved suffering. It has the effect that is obviously and strongly in opposing the flourishing of the sufferer. For instance, the sufferer is being killed. Hence, employing Aristotelian terminology, it has shortened what is supposed to be the full development of the sufferer's happiness and flourishing. Hence, for Nussbaum, it means a great harm to the sufferer in his or her *eudaimonistic* end. And, for Nussbaum, such undeserved suffering appeals to our sense of injustice<sup>18</sup> where

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<sup>16</sup> For instance, Mencius famous example of our internal moral response upon the seeing of a baby at the brink of a deep well (*Mencius*, 2A:6) is widely held by Chinese people as a paradigm case.

<sup>17</sup> Nussbaum (2001), op. cit., p. 321.

<sup>18</sup> Nussbaum (2001), op. cit., p. 312.

*Compassion requires, then, a notion of responsibility and blame.*<sup>19</sup>

By compassion, we feel and judge that somebody who produces the underserved suffering is responsible and that is not just any wrong but wrongful of a special kind. Thus Nussbaum drives home the problem of justice in cases of mistreatment of animals.

When it comes to the actual building of her theory, Nussbaum employs the notion of imagination and sympathy. Imagination is an idea comes from Aristotle and Nussbaum thinks not only it offers something that Rawls's original position needs but also that it is something that actually goes along with his thought experiment behind the veil of ignorance. More importantly, imagination could release us from our personal bound and species blindness and most helpful to release us from anthropocentric way of thinking in relation to animal affairs. In addition to these considerations, Nussbaum lays the greatest importance on her notion of sympathy, which we have elaborated much before. It is the core idea of moral evaluation of the animal case. Coupled with imagination, this is the basic method of Nussbaum's capability approach:

*So: the capabilities approach uses sympathetic imagination, despite its fallibility, to extend and refine our moral judgments in this area. It also uses theoretical insights about dignity to correct, refine, and extend both judgments and imaginations.*<sup>20</sup>

Hence, Nussbaum has all the reasons that these considerations support her use of capabilities approach and could be expected a better approach than other theories of the field;

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<sup>19</sup> Nussbaum (2001), op. cit., p. 314.

<sup>20</sup> Nussbaum (2006), op. cit., p. 355.

*Although such a method can be used in conjunction with theories of many different types, I believe that this complex holistic method, with its inclusion of narrative and imagination, does ultimately support the choice of the capabilities approach over other theories in the area of animal entitlement.*<sup>21</sup>

Lastly, Nussbaum considers another basic methodological issue. Though critical to Peter Singer's preferential utilitarianism, Tom Regan's subject-of-a-life approach as well as James Rachels's more inclusive form, Nussbaum practically accepts their view of "moral individualism," that is all moral relevance lies in the capabilities of the individual. The basic idea is that the individual animal should be counted rather than the idea of an abstract species. However, what counts as capabilities of an individual relies on the species norm which this individual belongs. So these capabilities are what this individual is capable of but not individuals of other species. A human child or a Downs syndrome child has different capabilities other than an adult chimpanzee though they may be of equivalent mental state at some point. Hence, Nussbaum claims that

*Species norm is evaluative, a very strong moral reason for promoting its flourishing and removing obstacles to it.*<sup>22</sup>

Furthermore, Nussbaum does not hesitate to emphasize that this evaluation is not only evaluative, but also ethically evaluative:

*But we must begin by evaluating the innate powers of human beings, asking which ones are the good ones, and the ones that are central to the notion of a decently flourishing human life, a life with human dignity. Thus not only evaluation but also ethical evaluation are put*

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<sup>21</sup> Nussbaum (2006), op. cit., p. 349.

<sup>22</sup> Nussbaum (2006), op. cit., p. 347.

*into the approach from the start. Many things that are found in human life are not on the capabilities list....The conception of flourishing is thoroughly evaluative and ethical; it holds that the frustration of certain tendencies is not only compatible with flourishing, but actually required by it.*<sup>23</sup>

The talk of human being here is in complete accordance with animal entitlement. The capability list is a short list, so to say. So Nussbaum would not admit all biological functions as the capabilities that serve the flourishing of human and animal life. There are positive as well as negative capabilities or bad capabilities. The latter are those that really destructive to the animals themselves or their own species members, or infringing unfairly to the flourishing of other species.

We could now go further to consider Nussbaum's list of animal capabilities. Such functions have nothing to do with their flourishing and thus not counted in Nussbaum's list. Hence, the capabilities list is not only evaluative in regards to the individual's wellbeing and flourishing, but also an ethical evaluative list in that immoral kind of functioning is excluded.

Finally, we come to Nussbaum's list. To sum up again, by capabilities, Nussbaum means a list of functions that relates to the flourishing of an animal. Capabilities are those biological functions that are beneficial to the flourishing of the animals and those that are harmful to self and other living things or negative capabilities would be ruled out. Thus, Nussbaum offers the following list of ten major animal capabilities, which includes life, bodily health, bodily integrity, employment of senses, imagination and thought, emotions, practical reason, affiliation, association with other species, play and control over one's environment.<sup>24</sup>

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<sup>23</sup> Nussbaum (2006), op. cit., p. 366.

<sup>24</sup> Nussbaum (2006), op. cit., pp. 393-401.

## 2. Compassion and Justice: A Comparison with Confucian Idea

In her careful and detailed analysis of the notion of compassion, Nussbaum does give us some very productive ideas of this important notion. Her most significant contribution is to espouse its cognitive function so as to justify its role in our ethical thinking. It is to her credit that our morality is somehow starting with compassion and that it is not something purely subjective or anthropocentric. Nussbaum extends it to our treatment of animals and shows clearly that we could transcend our anthropocentric limitation by requesting a fair treatment of other species. Our compassion would not hesitate to accuse us if our deeds fail to accord with the flourishing of other species. Confucianism does admit what Nussbaum has been exposing what belongs to this notion, however, Confucianism has also developed a deep and rich theory of a comparative notion which bears importantly to the life of Chinese people for its long history up to now. There are many significant sayings in Confucianism in this area. I shall elaborate further in the following this Confucian notion in order to get a better comparison.

When she starts to raise compassion as her core idea of ethical thinking, Nussbaum has noticed that this notion is also central to many Asian cultures.<sup>25</sup> I would add that it is truly a central notion in Chinese culture, especially in Confucianism and starts early from Confucius and Mencius on. For Confucius, his basic idea of *ren* (a close English translation is “benevolence”), or the moral consciousness of our heart/mind, which is the common expression of our feeling and sharing with the joy or grief of our fellows, especially our intimate family members, is something what Nussbaum has been talking about with the notion of compassion. Mencius described similar kind of response or alarm that we have when facing the tragic scene of a toddler about to fall into a deep well to kill itself. The closer the relationship we are with the sufferer, the stronger this kind of response

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<sup>25</sup> Nussbaum (2001), op. cit., p. 301.

could be, however, it is not limited in any special personal relationship. Mencius has been already using a child as an example without any contingent relation to the onlooker. Mencius has in fact said that we show the same kind of compassion towards animals, like a cow showing a look of fear and innocence when being sent to sacrifice. It is even referred to a greedy emperor whose main goal is to defeat all other powers and unify the whole world under his rule. Hence, compassion in Confucian understanding is something not limited to special personal relation, not to human being only, but to all things, thus it is a very general and universal concept. It is not confined to our intimate family members or friends as it was usually understood. Furthermore, this response towards the sufferings of others have nothing to do with our own personal projects except what Nussbaum regards as personal project is something that related to our own moral self-image or ideal. It is something to do with morality which has important meaning towards our self-evaluation and image. It is so to say to have important bearing upon our vocation as a moral agent. We regard ourselves as seriously immoral without acting out our moral response towards such internal moral calling. Furthermore, it is basically other-regarding. We feel deeply concerned with the suffering that the other is facing and it implies not only that it should not happen but also that we have a feeling of an internal and autonomous command to relieve the suffering if possible. It is thus a moral judgment. For Confucians, it is in fact the origin of morality. What our compassion opposes is morally wrong. Such kind of moral response of compassion also means that what is happening to the other is something that is deeply harmful to the wellbeing or flourishing of the sufferer. By itself, it does not make the distinction whether the suffering is deserved or not. It is not that we have no distinction of moral or immoral, it is the initial spontaneous response that comes right from our heart/mind: any living thing being hurt has a due impact to our heart/mind and it could not but send back such direct strong natural response. We would certainly estimate whether the

sufferer is really deserved it and upon further reflection and estimation, we may come to the conclusion that the sufferer, because of his or her guilt, does deserve the punishment. We shall then settle the case and return back to our common calm state of mind.

Now, what it thinks most important with our comparison is that Nussbaum raises with the notion of compassion the idea of justice. It is really one of her most significant contribution to the talk of capabilities. For Confucian, the manifestation of our moral heart/mind is to develop to the full our moral mandate, that is, to be a moral person. We have this principle of developing to the utmost of our moral mandate towards ourselves, towards others and towards all things under Heaven. This is the principle written in one of the classics of the *Four Books*:

*Only those who are the utmost sincere could extend to the utmost his or her **hsing** as a human. One who could extend to the utmost one's own **hsing**, could extend to the utmost the others' **hsing**, and one who could extend to the utmost the others' **hsing**, one could extend the **hsing** of everything. One who could extend the **hsing** of everything, one could participate in the nourishing process of Heaven and Earth. One who participates in the nourishing process of Heaven and Earth forms a trinity with Heaven and Earth.<sup>26</sup>*

By “*hsing*” is meant what we are born with. It signifies something that Nussbaum called capabilities. Confucian realizes that there are two kinds of capabilities, one is the practical reason or moral capacity and the other is natural capacity. The former is assumed to belong only to human beings and

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<sup>26</sup> Chapter 22 of *The Doctrine of the Middle Way*. 《中庸》第 22 章：「唯天下至誠，為能盡其性；能盡其性，則能盡人之性；能盡人之性，則能盡物之性；能盡物之性，則可以贊天地之化育；可以贊天地之化育，則可以與天地參矣。」  
Translation by the author.

the latter is what is in common with all other species. Moral capabilities are our moral self-awareness, our capability to act according to moral principles, our concerns about the wellbeing of others, of other species and the whole universe under Heaven. In short, it encompasses what a human being should try to achieve as much as possible through our moral practice. It is the origin of our internal moral command. Since it is extended to signify the inborn capabilities of other living things other than human beings, this moral principle requests us to support and help manifest the capabilities of animals, as well as plants, environment and everything. I named it the principle of utmost extension of each one's *hsing feng* (or moral mandate).<sup>27</sup> Being a moral person, we have the duty not only to be a moral person ourselves, but also have the duty to help others to manifest to the utmost their mandate or capabilities, and in order to achieve this we have to develop to the utmost the capabilities of all things under Heaven, including animals. It would be unfair and thus unjust to others and other species if we could not treat them in full respect of their inborn capabilities. Hence, helping to make manifest to the full the capabilities of animals becomes a moral duty for us. Here Confucianism comes very close to Nussbaum:

*We certainly should not deny that compassion is very important in thinking correctly about our duties to animals. Compassion overlaps with the sense of justice, and a full allegiance to justice*

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<sup>27</sup> Cf. my *Confucian Bioethics* (Taipei: Legion Magazine Publisher, 1999), pp. 63-66. A more detailed exposition of this principle and the idea of justice, utilizing Sen's idea of capability, please referred to my paper, "Justice and Equality in Health Care: A Confucian Critique," presented in Feb.11-15, 2007 in the Symposiums on "Research and Education in Applied ethics in global and cultural settings," organized by Research Group of Ethics, Faculty of Letters, Hokkaido University, Sapporo, Japan.

*requires compassion for beings who suffer wrongfully, just as it requires anger at the offenders who inflict wrongful suffering. But compassion by itself is too indeterminate to capture our sense of what is wrong with the treatment of animals. An adequate response involves compassion of a special sort, compassion that focuses on wrongful action and sees the animal as an agent and an end.*<sup>28</sup>

Here what Nussbaum regards compassion in general is not quite up to her request that it is something to do with justice. In the case of animal, Nussbaum urges us to treat them as agents and as ends in themselves. What Nussbaum means, of course, is not to treat animals as beings with human dignity, but with certain kind of dignified existence, which is defined by the list of species capabilities. The same could be said of treating animals as ends, that is, treating animals as an agent acting with an end to have a life with full flourishing.

### **3. The Continuum of Natural Endowments: Between Wellbeing and Justice**

Though Nussbaum gives so brilliant an exposition of the capabilities approach and provides some well-argued solution to most human-animal conflict of interest situations, she does not give us some very definite conclusion upon our treatment of animals as our sources of food. She offers a very high sounding ideal for treating animal as a comparative moral status of dignity or dignified existence, though may not be as high as equivalent to human kind of dignity. It is a different type of dignity and has all to do with the capabilities and flourishing of animals. Hence, though not the same type of dignity of humankind, it is no doubt that animals have the basic entitlement for life. Taking their life is the final termination of all their

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<sup>28</sup> Nussbaum (2001), op. cit., pp. 337-338.

prospect of flourishing. It has the implication that no animal life should be taken without good moral reasons. Killing animals for food seems principally ruled out. However, Nussbaum does not support vegetarianism. It becomes a difficult testing case for the consistence of her theory.

After the long reflection of the justice to animals, Nussbaum draws up her list of capabilities for animals with life as the first capability on the list. She gives a fairly long explanations and arguments of the different ways we are treating animals with respect to their cardinal capacity of the life of sentient animals. Nussbaum writes:

*With sentient animals, things are different. All these animals have a secure entitlement against gratuitous killing for sport. Killing for luxury items such as fur falls in this category, and should be banned. So, too, should all cruel practices and painful killings in the process of raising animals for food. On the other hand, intelligently respectful paternalism supports euthanasia for elderly (and young) animals in irreversible pain. In the middle, as we saw, are the very difficult cases, involving painless killing, whether for food or to control populations. It seems wise to focus initially on banning all forms of cruelty to living animals and then moving gradually toward a consensus against killing at least the more complexly sentient animals for food. One of the most useful steps we can take would be to insist on clear labeling of all meat as to the conditions in which the animals were raised. Practices vary widely, and consumers lack adequate information on which to base ethically responsible choices. Demivegetarians who press this search for information may advance the goals of public policy at least as well*

*as vegetarians.*<sup>29</sup>

In the problem of killing animal for food, it seems that Nussbaum finally falls back on the principle of prudence. She recognizes it as some sort of ineliminability of conflicts between human beings and animals in the real world and says,

*The world we live in contains persistent and often tragic conflicts between the well-being of human beings and the well-being of animals. Some bad treatment of animals can be eliminated without serious losses in human well-being: such is the case with the use of animals for fur, and the brutal and confining treatment of animals for food. The use of animals for food in general is a much more difficult case, since nobody really knows what the impact on the world environment would be of a total switch to vegetarian sources of protein, or the extent to which such a diet could be made compatible with the health of all the world's children. In this case, it appears that the best solution might be to focus initially on good treatment during life and painless killing, setting the threshold there, at first, where it is clearly compatible with securing all the human capabilities, and not very clearly in violation of any major animal capability, depending on how we understand the harm of a painless death for various types of animals. Even that threshold is utopian at present, but it seems to be realistically utopian.*<sup>30</sup>

This basic conflict between wellbeing of human beings and wellbeing of animals seems truly ineliminable. Later, Nussbaum also takes the use of

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<sup>29</sup> Nussbaum (2006), op. cit., pp. 393-394.

<sup>30</sup> Nussbaum (2001), op. cit., p. 403.

animals in experiments as similar kind of ineliminable conflict of interest between human well-being and protection of animal capabilities. Nussbaum takes pain to elaborate the conflict and comes up with a partial and prudent solution. Though it will not satisfy all people, it is still the most powerful and best statement of the present world situation.

In comparison, Confucianism will take a more positive statement in this issue. The principle Confucian takes is a principle of differentiation with gradation of love. It is a specific principle guiding our conduct when we could not fulfill all responsibilities all at one time and when their fulfillment may cause conflict. Confucianism will take the circle of responsibility starting from the most inner circle of the family, where we are guided by ethical intimate relationship and then extend it outward to other human being with less stringency where we are guided by the principle of *ren*; the further step is to deal with all things including living things and animals, where Confucian endows living things with love. Thus, Wang Yang Ming proclaims that we have to bear the pain of the unbearable heart/mind when we have to kill some animals in order to serve filial piety to our parents. Our heart/mind makes the final decision and it has the final say in moral matters.

Confucian has long known that it is a moral conflict for human being as a moral agent. As a natural living thing, human being could not but rely upon other species to provide our living materials on the one hand, but on the other hand human being as a moral agent could not exemplify oneself from the immoral implications in killing animals for food. It is an ineliminable dilemma for human being as a natural and a moral agent. It is specifically human. However, if it is some kind of ineliminable conflict for human being, it may be construed as something the solution of it is not within the power of human being. For as a human being we could not be made as something not a dependent being needed be fed with organic foods, nor not a being with morality, thus the moral solution is something beyond our power and could be said not a true responsibility for us. When thing

happening beyond our reach and possibility to make good, sometimes Confucianism offers the prudential principle not to overstep the limitation of nature and try to follow our natural capabilities in accordance with natural law. As a kind of being that naturally feed on vegetables and animal proteins, according to Mencius advice, our best strategy is to live a simple life so as to cultivate to the best our moral heart/mind.

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