Martha Nussbaum on social contract accounts of social justice

She argues

1. If a theory of justice implies that moral duties to the severely disabled, to nonhuman animals, and to people who are outsiders not included in one’s own national political community are problematical or marginal cases of justice, the theory is thereby discredited.

2. The social contract theories of Locke, Kant, and Rawls imply that moral duties to the severely disabled, to nonhuman animals, and to people who are outsiders not included in one’s own national political community are problematical or marginal cases of justice.

3. So, the social contract theories of Locke, Kant and Rawls are thereby discredited.

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Concerning John Rawls’s theory she also argues,

1. Rawls holds that the concept of justice applies only when the circumstances of justice, as described by Hume, obtain.

2. The circumstances of justice include “objective circumstances which make human cooperation both possible and necessary.” These include the facts that many humans “coexist together at the same time on a definite geographical territory” and that these people “are roughly similar in physical and mental powers, or at any rate, their capacities are comparable so that no one among them can dominate the rest.” (Quotes from Rawls, *A Theory of Justice*, pp. 109-110.)

3. So, the concept of justice does not apply when strong, healthy, normal people face disabled people, and perhaps does not apply when people with advanced military technology face people who lack such technology. In these circumstances, if the strong dominate and bully the weak, this is not injustice.

4. If 3 is morally unacceptable, then Rawls is wrong to hold that the concept of justice applies only when the circumstances of justice obtain.

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The Humean objective circumstances of justice also include moderate scarcity. Nature is not so bountiful that social cooperation is superfluous, and natural circumstances “are not so harsh that fruitful ventures must inevitably break down.” (Rawls, *TJ*, p. 110.) Cooperation can provide gains for all.

The Humean circumstances of justice besides the objective circumstances described above also include subjective circumstances. These include that individuals have their own plans of life and do not automatically take an interests in the interests of other people. Each then prefers more rather than less of the goods that social cooperation makes possible. Individuals advance conflicting claims to the division of social
advantages. The motivation for joining together at all in cooperative schemes is mutual advantage.

Nussbaum notes that there is tension between this Humean idea that justice is based on mutual advantage and the Kantian idea, also strongly present in Rawls’s thought, that each individual has a dignity that demands respect come what may, and that each person is an “end in itself” that may not be used merely as a means for the advancement of the purposes of others. Following Brian Barry, Nussbaum says in effect that there are two opposed standpoints, that of Hume and Kant, at war inside Rawls’s theory. Think of the fact that from the Humean standpoint, justice does not apply in situations of great scarcity so that cooperation is not advantageous to all. Suppose the *Titanic* is sinking and there are not enough boats and life preservers for all. According to the Humean idea of the circumstances of justice, the idea is out of place here. (It’s every man for himself, or every individual for himself or herself.) According to other conceptions, principles of fairness and justice clearly apply here (maybe we should hold a lottery and give everyone an equal chance of being saved from drowning, maybe we should respect private property and honor the contractual arrangements), whether or not we expect people in these desperate circumstances all to adhere to what morality requires.

Nussbaum adds that the Kantian idea is problematic from her standpoint, because according to Kant, the basis of human dignity is the human individual’s possession of rational agency capacity (or in the case of newborns, the possession of potential for rational agency capacity). But some humans are severely cognitively disabled, and nonhuman animals lack rational agency capacity, yet Nussbaum strongly is of the opinion that each living sentient being has equal dignity and rights to equal consideration.

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According to Nussbaum, the social contract idea is that justice is the outcome of an agreement among persons. This idea can be interpreted in various ways; the social contract tradition is heterogeneous. She tends to focus on Rawls, who she regards as working out the most promising version of the theory. Even Rawls’s version is shown inadequate when we confront it with three unsolved problems of justice: (1) what do we owe to the disabled and impaired among us?, (2) what are the global principles of justice that hold across nations and nationalities?, and (3) what do we owe to nonhuman animals? The Humean circumstances of justice would have it that justice does not regulate interaction between those not roughly equal in strength and capacity. But then the human impaired and nonhuman animals are left out in the cold. Moreover, if the purpose of social cooperation is mutual advantage, there does not seem to be a basis for cooperation with those with whom cooperation would not be profitable as compared to exploitation. The social contract tradition also tends to be identified with reliance on thin motivational assumptions. The parties making the social contract are (in Rawls at any rate) not assumed to take an interest in others’ interest. Rawls distinguishes the motivation of those in the hypothetical situation who make the social contract and the people in ongoing societies who are to abide by it, and who are assumed to have a sense of justice. But there is a worry that the strategy of eschewing reliance on motives of
benevolence and sociality will render the social contract theory unduly reliant on self-interested motivation to shape the idea of what we morally owe to one another.

Nussbaum proposes a fresh start. Let’s start directly with the idea of the dignity of each individual and what is required to have a life of dignity. For humans, this yields the idea that justice at a minimum requires that we secure for each and every individual the capabilities to function at a threshold level in every way that is required for a decent human existence. She contrasts this approach with the approach of utilitarianism, that takes desire satisfaction to be the relevant measure of people’s condition for moral principles.