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Who is the 'Who' of Freedom, Equality, and Independence? Martha Nussbaum on the Connection between Disability and Justice

ABSTRACT: *Martha Nussbaum criticizes John Rawls's theory of justice, arguing that it is responsible for excluding people with disabilities from the political community. In particular, she points out that Rawls's theory is ultimately a political theory of the "good", but this good is also inaccessible to people with disabilities, who are not free, equal, and independent. Nussbaum thus proposes her capabilities approach, which should be understood in terms of a minimum threshold of social rights to be recognized for everyone. However, one issue seems to remain unresolved, specifically whether she views people with disabilities as individuals in their own right or as social constructs dependent on her own approach.*

KEYWORDS: *Disability, Justice, Nussbaum.*

1. Disability

The American philosopher Martha C. Nussbaum, a highly recognized figure in contemporary philosophy and an extremely prolific contributor to scientific research, has also explored the connection between belonging to a society and the corresponding enjoyment of certain rights. In particular, and this critical analysis is the focus of our consideration here, she has highlighted the profoundly impactful disparities that permeate our historical realities, notably the inequitable treatment faced by certain categories of people, especially women and individuals with disabilities. The inextricable link between personal freedom and the level of dignity that must be afforded has undoubtedly occupied much of Nussbaum's research. However, her work should be understood as a concrete application of political theory aimed at addressing three emerging issues:

1. disability;
2. multiculturalism; and
3. gender difference.

From these initial observations, it is clear that Nussbaum's effort to reflect on social philosophy, specifically her critique of the disparities society imposes in relation to the diverse needs or potential of individuals, is commendable – even when such disparities are not the direct result of intentional choices. Here, however, I

intend to focus exclusively on her analysis concerning the exclusion of individuals with disabilities from the list of political subjects for whom society must implement measures to ensure their dignity as human beings. In my modest view, this issue holds theoretical significance in terms of establishing a criterion by which to assess the effectiveness of political frameworks designed to account for the relationships among members of a social community within the political sphere.

Nevertheless, before delving into the specifics of this issue, it is important to clarify certain assumptions I consider crucial regarding disability. Individuals with disabilities undoubtedly face objective obstacles of various kinds that negatively interfere with the execution of personal functions. These obstacles are significant enough to visibly and profoundly hinder their ability to perform such functions. The failure of individuals with disabilities to meet certain functional standards often leads others to view them as ‘abnormal’ and to categorize them within the broader group of so-called non-normative individuals, that is, those whose abilities fall below a commonly accepted threshold, thereby labeled as ‘normal.’ The interference caused by physical impairment, as well as broader disadvantages not necessarily physical in nature – such as socio-cultural factors – fundamentally undermines the potential for personal fulfillment for those affected. In other words, disability profoundly impacts either personal autonomy, cognitive abilities, or independence in human relationships. Therefore, disability can be seen as a multi-dimensional obstacle to the various levels of freedom possible for the individual affected.

The history of modern law can be seen as a long journey of rights, specifically as a progressive expansion of both the list of its beneficiaries and the opportunities for positive realization and action. However, this historical trend is not without criticism, especially when it reverses the structural relationship between individuals and subjective rights. As Pintore asserts, rights tend to become “uno strumento *insaziabile*, divoratore della democrazia, dello spazio politico e, alla fin dei conti, della stessa autonomia morale da cui li facciamo scaturire”¹. If, as Bobbio claims, we live in the age of rights, we must also recognize that the scope of rights beneficiaries is expanding, thus manifesting the social aspect of belonging to a citizenship². Now, isn’t it correct to assert that individuals with disabilities are also equal members of this same citizenship? And failing to do so, isn’t it an injustice against them?

The lack of autonomy or active opportunities has led modern societies to establish relationships of care, primarily consisting of the provision of support to individuals with disabilities. However, this is certainly not enough. For Nussbaum, the point is not to provide support to individuals with disabilities simply to reduce the overall injustice they face. Rather, it would be better to reformulate our theories of justice to take into account the existential condition of individuals with disabilities

1 Pintore 2001, 179. In English: *An insatiable device, devouring democracy, the political domain, and, ultimately, the very moral autonomy that constitutes their source.*

2 Zolo 1999, 4.

and, perhaps most importantly, to provide adequate responses³. The treatment to be applied is therefore so significant that it influences our very conception of social justice. Ensuring justice undoubtedly places a social burden on the entire community, and this is perhaps one of the main reasons that prevent the guarantee of fair treatment. Yet, as Dworkin has taught us, rights are not (always) taken seriously. If we do not consider the term 'right' in its original significance – namely, as a claim to be fulfilled by some individuals towards others who, in turn, are obliged to fulfill it – then the disconnect between common sentiment and the language of rights, between public morality and legal morality, between natural social practices and legal intentions becomes evident. Only if we do not take rights with the utmost seriousness can we end up viewing them as privileges that public finances can no longer afford, especially in the negative sense of waste that the current crisis can no longer tolerate.

2. Vulnerability

Disability is a concrete dimension, a manifestation of the same human condition that challenges all our political and economic theories, fundamentally questioning our deepest convictions, our most radical personal beliefs, even when its reality reminds us of our shared vulnerability as mortal beings⁴. This is true for them as well, as they are bearers of rights regardless of what this may cost economically. According to Nussbaum, the issue of disability and the associated justice owed to individuals with disabilities should push us to rethink our political model in its entirety; it should challenge the very structure of our current social organization; it should lead us to critically examine the very values of the political society in which we live. Why should this happen? The answer is as simple as it is radical: all social contract theorists, and thus those who think about relationships in terms of costs and benefits among members of the political society, have always characterized the individual who enters into this agreement as non-disabled, that is, as an able-bodied person. In other words, social contract theory, to varying degrees, conceives of the subjects that constitute the political community as free, equal, and independent. In this way, social contract theorists deny citizenship to all those who, for various reasons or due to their disability, cannot act in the same way as those who are free, equal, and independent⁵. The nature of political discrimination and thus social exclusion is immediately evident, as the parties to the contract

3 Nussbaum 2012, 27-28.

4 Proof of this is that when encountering a person with a disability, there is often an immediate rejection tied to what the disability itself signifies to us. Nussbaum 2013, 119: “questi handicap ci ricordano la nostra stessa vulnerabilità”. Therefore, the feeling of disgust is directed at a series of conceptual objects considered ‘contaminating’ because they remind everyone of “nostra mortalità e vulnerabilità animale”. In English: *these handicaps remind us of our own vulnerability.* Therefore, the feeling of disgust is directed at a series of conceptual objects considered ‘contaminating’ because they remind everyone of “our mortality and animal vulnerability.

5 Nussbaum 2007, 104.

are the very individuals for whom the principles of the political community are drafted⁶. Consequently, if individuals with disabilities cannot enter as equals with other contractors, as equals among equals, as political subjects equal to all other members of the political society, they cannot make any claims, cannot assert any rights, nor can they make any specific demands. Their exclusion thus appears as radical as it is critique-worthy.

On closer examination, this is a double exclusion: first from the general list of contract participants, and then from the beneficiaries of the contract itself. This exclusion, both political and social, is perhaps the most glaring symbol of the social stigma that generally obscures humanity⁷. This is because, in general, the presence of significant disabilities leads to viewing the individuals who bear them daily as 'abnormal'⁸. And this is a 'classic' problem, I would dare say, for disability in general.

In the case of the contractarian model, however, there is perhaps another consideration that influences the choice of exclusion: the correlation between work performance and social remuneration. In short, since a disabled person is generally seen as less productive, the entire economic burden of meeting their needs or claims would fall on the productive community. Hence, the simplest route is the exclusion of unproductive individuals from the catalog of free, equal, and independent subjects.

3. Marginalization and Exclusion

Marginalization, along with its most extreme form, namely exclusion from moments and places of social interaction, is, for Nussbaum, an indication of the failure of the chosen theoretical model: people with disabilities exist; they are not singular anomalies of Nature. Just as we cannot pretend they do not exist, it is equally important to accept that human finitude also encompasses cases of physiological functioning below the threshold commonly considered standard. This is where Nussbaum's project takes shape, specifically aiming to critique the entire Western liberal tradition, and particularly the contractarian model, from Locke and Hume to the so-called neocontractualism, with Rawls being the most prominent.

4. Critique of the Social Contract

According to Nussbaum, men enter into a contract, that is, they decide to renounce the private use of force and the possibility of seizing others' goods,

6 Nussbaum 2007, 84.

7 Nussbaum 2013, 353.

8 Nussbaum 2013, 355.

in exchange for peace, security, and with the prospect of mutual benefit⁹. The idea behind any contractarian formulation is thus that a political community is formed at an ideal moment, understood as a transcendence of the state of nature, involving the exchange of natural claims for social benefits. Specifically, men agree to relinquish their natural freedom in the name of a mutual benefit that would otherwise be unattainable. For classical authors, there are certain goods that are unavailable for consumption during the natural state, and it is with these in mind that they decide to leave it, accessing other forms of social organization. The contractarian model, although perfect in its abstract description, remains nonetheless a precise fiction that liberal authors construct to justify the civil state and, specifically, its desirability over the state of nature. However, this fiction, like all other political fictions, is a narrative that advances a specific horizon of meaning for political actions as well as for the value of individuals within the social space. In other words, all contractarian conceptions justify a model of political society founded on a set of fundamental political principles¹⁰. The contractarian conception, however, employs a procedural ideal by which it derives a set of political principles, underpinning a certain type of political society, from the list of fundamental needs of a circumscribed set of subjects. This fiction therefore imposes the rights of a few men, an elite composed of free, equal, and independent men, as universal values.

The same procedural idea of political society, as Nozick points out¹¹, is present in Rawls, although according to Nussbaum, the discussion is more complex regarding the possibilities of a theory of a just political society¹². The starting point, however, remains the same: how to ensure individuals those rights that the state of nature does not allow? Nozick also recognizes the same problem, commenting on Locke's discourse as follows: in the state of nature, an individual may lack the power to secure their own rights and may be unable to hold a stronger adversary accountable or obtain redress for violations, thereby being deprived of the very capabilities essential for a dignified life¹³.

Regarding Rawlsian theory, Nussbaum identifies three different critical points. For the present purposes, however, I will focus on only one, which is related to disability and the role that those who suffer from it assume in political society. The author observes that, for all classical theorists of the contractarian model of political society, the contracting parties are roughly equal in terms of capabilities and capable of engaging in productive economic activity¹⁴. Disabled individuals are excluded from the group of "productive" individuals and, consequently, are excluded from political society. In other words, disabled individuals are excluded from the group of those who choose the fundamental political principles precisely

9 Nussbaum 2007, 30.

10 Nussbaum 2007, 30.

11 Nozick 2008, 45.

12 Nussbaum 2007, 32.

13 Nozick 2008, 45.

14 Nussbaum 2007, 35.

because they are not free, equal, and independent. Classical theorists do not consider the possibility of an active role for disabled people among those who establish the moral principles underlying a just society.

5. Lack of Representation

Therefore, modern liberalism contemplates the possibility of a group of prominent individuals who are the actual decision-makers regarding the fundamental principles for society. Since disabled individuals are not part of this elite of prominent individuals tasked with formulating the fundamental values of a political society, the latter does not provide rights for disabled individuals. Not having representation among those who formulate the basic principles of the future political society results, consequently, in not being considered as potential beneficiaries of those same fundamental political principles in the future society. The problem, in the case of people with disabilities, is therefore twofold: not being part of the club of white, free, autonomous men who formulate the fundamental principles on which the future political society must be based, and not being considered as potential beneficiaries of those same fundamental political principles. One could also say that it is the same exclusion operating in two different and connected moments: in the moment of codifying the basic principles of political society and in the moment of enjoying those same principles. As configured, the link between the exit from the state of nature and the creation of a political society excludes disabled people from both the codification of fundamental political values and the related enjoyment of rights. For Nussbaum, the problem, on a theoretical level, lies in the initial condition that, in no case, can a disabled person fulfill: being free, equal, and independent. Generally, a disabled person does not appear free from their personal condition of need, whether physical, moral, or cognitive. Similarly, they cannot, consequently, be equal to all others, as they start from an objective condition of disadvantage, difficulty, and handicap. Finally, how can they be independent if they need the help and solidarity of others even for their daily needs? From every point of view, a disabled person in no way can be productive, as is generally the case for any other human being. No disabled person is free from a constant condition of need and difficulty. Moreover, no disabled person can be equal, in social performances or productive capacities, to their peers, nor can they be independent, as, unlike their peers, they cannot determine themselves based on their own strength alone. This is the problem; it is precisely this model that is the source of the present difficulties; this is where the root of the “contractarian evil” lies: formulating a private model for the foundation of the State, wrongly assuming that all men are free, equal, and independent. This is not the case, and it follows that the contract model, by virtue of which private individuals in an equal position negotiate what to give up in terms of personal freedom and what to gain in terms of social advantages, is the formal sanction that recognizes as valid and ensures even politically the substantial difference that exists in the state of nature concerning the different distribution of personal strength and the natural capaci-

ties to relate to others. If the central moral idea in the contractarian tradition is *mutual advantage*¹⁵, the initial exclusion of disabled people results in their future exclusion from the list of individuals who can enjoy those same political principles. Indeed, not being part of the original parties to the social contract means that disabled individuals do not have citizenship equality¹⁶. In Rawls' political theory, which expands and updates the classical social contract theory, political society is understood in terms of a cooperative venture for mutual advantage¹⁷, where the principles of justice are deduced following a hypothetical procedure of contract¹⁸. Consequently, the problem becomes explaining why the parties decide to abandon the state of nature to obtain mutual benefits through social cooperation. The parties, in other words, seek mutual advantage through cooperation in society. Rawls' idea is that rational individuals are capable of choosing between cooperation and non-cooperation for *mutual advantage*¹⁹, that is, they are capable of understanding that cooperation is always preferable to non-cooperation, and therefore, ultimately, that political society itself is preferable to the state of nature because it is more advantageous. In other words, the parties do not have to decide whether an existing society, the "natural" one, or a future society, the "political" one, is preferable, but only to recognize the reasonableness of certain principles and the absence of principles and choose, ultimately, the former. It is indeed rationally preferable to have social cooperation, i.e., the presence of some fundamental political principles, rather than living in the arbitrariness of their absence or the rule of the strongest, as generally configured in the state of nature.

It is clear that the idea of an original position, as imagined by the entire modern tradition of contractarianism, including Rawls himself, is a (political) fiction introduced primarily to highlight the optimality of a different social constitution from the existing one. In other words, the imaginary social contract serves to explain how a different type of society, based on other fundamental principles, could be possible. The normative claim is explicit and accounts for the very meaning of the proposal, including its legal implications.

However, precisely because of the idealized nature of the contractual model, it does not validate the optimality of the proposed procedural model, as it leads to discrimination against certain individuals, namely those who, for various reasons, do not fall within the group of constituents, i.e., those who are not free, equal, and independent, particularly those who do not align with the prototype of the Western modern consciousness²⁰.

15 Nussbaum 2007, 37.

16 Nussbaum 2007, 38.

17 Nussbaum 2007, 77.

18 Faralli 2006, 359.

19 Nussbaum 2007, 78.

20 Dworkin 2010, 69: "la famosa posizione originaria di John Rawls [...] immagina un gruppo di uomini e di donne che si uniscono per stipulare un contratto sociale [...] uomini e donne con gusti normali, talenti, ambizioni e convinzioni, ma ciascuna di esse è temporaneamente all'oscuro di tali caratteristiche della propria personalità, e deve accordarsi su un contratto prima di tornare ad avere questa consapevolezza". In English: *The famous original position of John Rawls [...] imagines*

Although originally developed in political theory, Rawls' theory of justice, despite its evident limitations, has had a profound influence in the field of legal philosophy, contributing, in its own way, to challenging one of the main foundations of legal positivism, namely the idea that there could be a rational discourse about deontological contents.

Regarding the present topic, Rawls' theory, while being an advancement over the classical model of contractarianism, does not solve the problem of social justice, especially concerning the treatment of disabled individuals. Even Rawls considers disabled individuals as marginal subjects in the overall group of political subjects and ends up postponing any consideration of them to an unspecified future time.

This leads Nussbaum to assert that contractualist theories must rely on some conception of rationality in the contractual process, and all assume that the contracting parties belong to the same social group as the citizens for whom the principles have been formulated²¹. Despite rationality being a local exception and not a general condition of humanity²², the consequence is clear and linear: no theory of this kind can fully include persons with severe mental impairments as individuals for whom, in the first instance, the principles were originally designed.

While acknowledging the value of modern contractarian theories, particularly regarding their conceptions of justice, Nussbaum feels compelled to point out that they are unable to adequately address the problem of social justice, a difficulty that arises directly from the exclusion of disabled individuals from enjoying the fundamental political principles of a society²³. Even Rawls, who advocates for an ideal procedural concept of justice realized through fair reciprocal competition, ends up naturally excluding disabled subjects, who, in his view, cannot compete like others.

To the prototype of "Western personality," i.e., the bourgeois man of the Enlightenment tradition, namely the free, equal, and independent subject who produces a list of fundamental political principles corresponding generally to his needs and/or partial interests, Nussbaum replaces a list of capabilities to be understood as political principles for a liberal pluralist society²⁴. She establishes a minimum threshold of capabilities and envisions the goal of society as to elevating citizens above this threshold of capabilities, ensuring that each individual can exercise the

a group of men and women coming together to establish a social contract [...] men and women with ordinary preferences, talents, ambitions, and beliefs, but each of them is temporarily unaware of these characteristics of their own personality and must agree on a contract before regaining this awareness.

21 Nussbaum 2007, 84.

22 Elster 2005, 85. Nussbaum 2007, 84.

23 Faralli 2006, 358: "scopo di tale opera [*A Theory of Justice*] è infatti quello di individuare quali fra i tanti assetti sociali che si possono perseguire siano quelli giusti, cioè quelli che ciascuno sceglierebbe se potesse essere messo in grado di effettuare una scelta assolutamente razionale, al di là dei propri interessi ed egoismi". In English: *The purpose of this work [A Theory of Justice] is, in fact, to determine which among the many possible social arrangements are the just ones – that is, those that each person would choose if they were able to make an absolutely rational choice, beyond their own interests and self-centeredness.*

24 Nussbaum 2007, 87.

essential functions necessary for a life of dignity and flourishing²⁵. In other words, Nussbaum does not conceive a general and comprehensive model of social justice, but rather a functional corrective that can improve the current overall level of justice. She does not specify how justice would address inequalities below the minimum threshold, but she identifies what she believes are the essential levels for a human life to be considered dignified²⁶.

Thus, the capabilities approach indicates a fundamental core of social rights²⁷ guaranteed by the recognition and promotion of central human capabilities. Nussbaum lists the following central capabilities:

1. Life (the ability to live a normal human life in terms of duration);
2. Health (the ability to enjoy good health, be adequately nourished, and have adequate housing);
3. Physical integrity (the ability to move freely from place to place and be protected from physical and moral aggression by others);
4. Imagination (the ability to use one's senses and enjoy the faculties of imagination, reasoning, and judgment);
5. Emotions (the ability to experience attachment to things and people as well as to oneself; the ability to enjoy adequate protection from anxieties, fears, and traumatic events);
6. Practical reason (the ability to develop an adequate conception of what is good and to engage in critical reflection on how to develop one's future life plan);
7. Affiliation (the ability to live with and for others, recognizing and refining the shared humanity, and having the necessary social bases for self-respect and avoiding humiliation);
8. Relation to other species (the ability to develop adequate relationships with non-human living beings, showing interest and caring for them);
9. Play (the ability to enjoy adequate recreational activities);
10. Control over one's environment (the ability to effectively participate in political choices, have real opportunities to find work, and be productive on par with others).

Two fundamental ideas expressed by this list of human capabilities, in my opinion, are: a) *adequacy*; and b) *development*. Nussbaum, in other words, emphasizes what she considers to be the basic criterion for evaluating the quality of a lifestyle, namely ensuring that everyone, according to their actual needs, has an adequate condition of existence that matches their concrete personal existential conditions.

Similarly, adequacy pushes for the implementation of all those activities or initiatives that can sustain an acceptable development of human personality. The "capability" should not be seen as a pale meritocratic idea, which would rigidly constrain different possibilities for individuals, but as something that al-

25 Nussbaum 2007, 88.

26 Nussbaum 2007, 92.

27 Nussbaum 2007, 92.

lows a suitable transformation of different needs into corresponding functions. The list of capabilities (1) – (9) therefore describes what should be understood as a general and median horizon of personal development, always in function of needs calibrated to individual persons. And it is always about minimum conditions of human life: any positioning below even one of these capabilities indicates social injustice and/or insufficient respect for the essential levels of a minimally decent human life.

The idea behind this list, although neither exhaustive nor complete, as it can be integrated with other capabilities, is that a life lacking even one of these central capabilities is not considered a life of human dignity, meaning it would not meet the very needs of human personality and its dignity as such. In other words, the capabilities approach conceives each person as an end in themselves²⁸ and not as a means for collective well-being. Therefore, what matters to a theory of justice is the quality of people's lives. All rights should be guaranteed to people as central requirements of justice. Ultimately, however, Nussbaum adds that it is still the task of any public institution to ensure that all citizens are placed in the conditions to exceed the threshold of all ten capabilities.

Regarding the initial theme, and specifically the critical consideration of modern liberalism, which does not adequately consider the needs and rights of disabled people, it should be noted that the capabilities approach does not assume that people must be free, equal, and independent. Therefore, it is undoubtedly correct to say that it allows for using a political conception of the person that more closely reflects real life²⁹. On the other hand, this approach starts from a conception of the person as a social animal, whose dignity does not stem from an idealized rationality, and thus a more adequate conception of the full and equal citizenship of persons with physical and mental disabilities, as well as of those who care for them³⁰.

The flaw, if we can call it that, of Rawls' theory of justice is, fundamentally, relying on a presumptive notion of normality³¹. Consequently, Rawls cannot explain why justice, rather than charity, should be owed to all those who fall below the median of normality³². This reveals the true nature of the original fiction of the social contract. Indeed, the promised and promoted is intimately connected with the idea that the initial group of contracting parties should be restricted to those who possess 'normal' productive capabilities³³.

To include disabled people within the normal range of social functioning governed by the principle of social cooperation for mutual benefit, Rawls would need

28 Nussbaum 2012, 41.

29 Nussbaum 2007, 104.

30 Nussbaum 2007, 116.

31 Sen 2010, 26. The Rawlsian assumption that, under a hypothetical condition of initial equality, one could reach the unanimous agreement on a single system guided by two principles of justice. These latter for Faralli, 2006, 359 are each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

32 Nussbaum 2007, 138.

33 Nussbaum 2007, 138.

to reconceptualize the rationality of the parties to encompass concern for third parties³⁴. To be able to cooperate, disabled people need to be regarded as worthy citizens, entitled to property rights, employment, and so forth, rather than as mere objects of ownership³⁵.

The curious paradox of theories of social justice not based on the capabilities approach is to consider disabled people as means rather than ends of the same social cooperation.

Clearly, and contrary to what happens otherwise, it is necessary to “ground” the list of central human capabilities in the network of the concrete needs of individual disabled people, each with their own personal needs.

Nussbaum proposes to make the political society more just by changing the usual perspective, specifically by considering disabled people as political subjects of social cooperation, rather than as mere objects of political cooperation among social subjects. Indeed, the goal of social cooperation is not to obtain an advantage, but rather to promote the dignity and well-being of all citizens³⁶.

If the living conditions of disabled people and those who care for them are objectively more difficult than others, a decent society structures the public sphere, public education, and other pertinent areas of public policy so as to support these needs and ensure their full inclusion, granting those who are able the entire range of capabilities on our list, while providing individuals with disabilities as many of these capabilities as possible, in the most comprehensive manner achievable.³⁷

In conclusion, in my view, Nussbaum redefines the notion of justice to align it with the concrete conditions of life. In this way, her approach provides a partial account of fundamental social justice³⁸ and argues that a world in which individuals enjoy all the capabilities enumerated on the list constitutes a just and decent society, at least at a minimally acceptable level³⁹.

The theory of social justice is, from every point of view, therefore, a particular theory of good formulated in terms of fundamental human rights⁴⁰. Only one question remains unanswered regarding the actual impact of the capabilities approach

34 Nussbaum 2007, 142.

35 Nussbaum 2007, 186.

36 Nussbaum 2007, 220. Sen 2010, 241. Unlike perspectives that focus on utility and resources, the capabilities approach measures individual advantage in terms of a person's ability to do the things that, for one reason or another, they value. In this way, the general focus shifts to the actual freedom to do or be what one personally believes is “worth doing or being”.

37 Nussbaum 2007, 241-242.

38 Nussbaum 2007, 294.

39 Nussbaum 2007, 294.

40 Nussbaum 2007, 294. It seems, however, that there is a sort of disconnection in this regard between political philosophy, for which the citizenship of disabled people has very specific consequences concerning the just treatment they should receive, and legal philosophy, for which citizenship, on the other hand, is distinguished between nominal and substantial. Consequently, in the latter case, fundamental rights are only those subjective rights that belong to human beings either because they hold the status of persons or because they possess the capacity to act. Ferrajoli 2001, 5. From this perspective, then, it seems that people with disabilities are once again being denied the opportunity to be fully recognized as political subjects.

on increasing equity in society, specifically the following: Are disabled people free subjects or are they a distorting effect of the limitation of general freedom? The answer to this question is not neutral; indeed, if one answers affirmatively to the first question, a theory of social justice must take on the material burden of ensuring effective enjoyment of rights also for disabled people; otherwise, if one answers affirmatively to the second question, the entire capabilities approach collapses on itself, revealing its secondary nature concerning the personal identity of subjects. In other words, what Nussbaum does not address is whether she considers disabled people as individuals in themselves or as social constructs dependent on her own political theory. Certainly, capabilities are possibilities of existence, but are they truly universal? Or do they concern subjects constructed by a specific political theory?

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