

law, Sands peppers his book with a healthy dose of his own war stories, for example, his personal experience acting as *amicus curiae* in the Pinochet trial and as negotiator on behalf of the Alliance of Small Island States. In my view, a non-international lawyer will find this book a good introduction to international law and an international lawyer (or aspiring international lawyers) will find that Sands' personal accounts provide a nice biographical peek into the life of a leading international law professional.

reviewed by JEREMY LEONG

Frontiers of Justice: Disability, Nationality, Species Membership (The Tanner Lectures on Human Values) BY MARTHA C. NUSSBAUM [Cambridge, Massachusetts: Harvard University Press, 2006, xv + 487 pp. Hardcover: US\$35.00]

In this book which began as the Tanner Lectures in Human Values, Professor Martha Nussbaum's approach is that theories of social justice, while necessarily abstract to enable them to reach beyond the political conflicts of their time, must also be responsive to the real and changing dilemmas of the day, capable of addressing the world and its present problems. With this in mind, Nussbaum embarks on an ambitious project — tackling three urgent, and unsolved, problems of social justice neglected by the contractarian theories — (i) the problem of doing justice to people with mental and physical disabilities; (ii) the scope of extending justice beyond the nation state to all citizens of the world, and how it is possible to realize a world that is just as a whole; and (iii) the scope of elevating the issue of the treatment of non-human animals, from its usual ethical boundary, to the notions of social justice.

The significant contribution of this well-argued, closely-arranged book lies not in its criticism of John Rawls' ground-breaking work, nor does it lie in its attempt to apply old, well-established contractarian theories in new ways. Instead, what truly matters is the direction it takes to a possible reshaping of the theoretical structures themselves — through a conception of the dignity of the human being, and of a life that is worthy of that dignity, from an outcome-oriented theory that starts with an intuitive grasp of a particular content as having a necessary connection to a life worthy of human dignity - by providing the philosophical underpinning for an account of core human

entitlements that should be respected and implemented by all governments as a bare minimum of what respect for human dignity requires.

Rawls' work has probably made the most powerful case for the superiority of the social contract theory over the many other versions of utilitarianism in expressing our considered judgments about justice, and through his rigorous and complete pursuit, of the implications of the idea of social contract. The idea of a social contract — in which rational people get together for mutual advantage, deciding to leave the state of nature and the broad socio-political framework to govern themselves by law — has had enormous political and legal influence historically. For over 30 years, the work of Rawls has provided the dominant framework for liberal theories of justice, and is generally regarded as one of the most distinguished theories in the Western tradition of liberal political philosophy.

It is thus a difficult endeavour to make any marked critique as well as substantial improvement over his work from within the framework of liberal political philosophy. Nussbaum is successful in doing precisely that — going beyond merely being critical of the idea of social contract, she sets out, in well-arranged arguments, how her capabilities approach can do a better job.

A substantial portion of the book is devoted to showing that even Rawls' theory, which suggests a contract among approximate equals for mutual advantage, is not without its limitations, which Rawls himself acknowledged in *Political Liberalism* (New York: Columbia University Press, 1996). The success of this book lies in its ability to prove, in a convincing manner, why Rawls' theory cannot address some of the most important questions of social justice posed by unequal parties, and the political problems of our contemporary world.

The book also demonstrates, through the use of many cogent examples, that the three issues raised are not merely academic. One such example is the staggering differences between rich and poor nations in terms of mortality, education, health and food, all of which are areas critical and central to basic chances of human survival.

Even if the capabilities approach laid down in the book should not be entirely convincing that it can become "the object of an overlapping consensus among people who otherwise have very different comprehensive conceptions of the good", and even if the threshold level of each capability mentioned is disagreeable to some, the book should still contribute to the triggering of more systematic thoughts into: (i) the

profound tension in the Rawlsian dual allegiance to classical social contract doctrine and the core ideas of Kantian moral philosophy (that no person should be used as a mere means of the ends of others); and (ii) these doctrines of social contract that have deep and widespread influence in the political life of our contemporary world, in particular, about what the goal of international politics should be, and what a political doctrine on basic entitlements means in practice.

The book is divided into two broad sections. In the first section, Nussbaum analyzes in a technical fashion why the revised social contract work of Rawls in *A Theory of Justice* (Cambridge: Harvard University Press, 1999) is an inadequate basis for thinking about justice towards the disabled, foreigners and animals. This is followed by a number of lengthy, but mostly persuasive, essays, presented in a relatively non-technical manner and laced with cogent examples, establishing why her capabilities approach should be another member of the family of liberal conceptions. The broad framework of the second part of the book thus serves to add to the advancement of the Rawlsian school of thought.

Nussbaum rightly points out that no social contract doctrine includes people with severe and atypical mental and physical impairments. No social contract doctrine has been successful in imagining them as participants in the choice of political principles. On this issue, she is generally successful in laying out a convincing theoretical structure. Nussbaum is also convincing in setting out the defectiveness of the logic of a contract for mutual advantage, which suggests that "one would not include in the first place agents whose contribution to overall social well-being is likely to be dramatically lower than that of others".

Her discussion of international justice is subtle, with its various issues handled with much sensibility, in particular, the close relationship between the capabilities approach and the institutional and constitutional design. As all major Western theories of social justice begin with the nation-state as their basic unit, it is inevitable that, in tackling this issue, new theoretical structures are required.

Nussbaum effectively balances two competing thoughts. As our world remains one comprising separate nation-states, with each state being the primary agency in securing the welfare of its inhabitants, the moral importance of state sovereignty has to be recognized. The political system in every country should do its

best to secure 'many or even most of the human capabilities up to some reasonable threshold level', and in the process, should not sacrifice the weaker and poorer members of the community. She puts up convincing arguments suggesting why capabilities should be the chosen measure. The crude measure of GNP per capita does not take distribution into account. Neither does it take cognizance of other factors which are not well correlated with economic advantage, but which nonetheless affects quality of life, such as health, education, political and religious liberty, and gender and racial justice. She thus rightly includes in her capabilities list many of the entitlements stressed in the human rights movement: first-generation rights of political and civil liberties and second generation rights of economic and social nature. The capabilities approach thus insists on (i) the necessity of affirmative material and institutional support, beyond mere failure to impede, and (ii) the idea of 'human development', instead of the idea of development as purely comprising of economic growth. Nussbaum contribution in this area is in adding further clarity to the language of rights — the equal dignity of human beings that demands recognition.

On the other hand, the main structure of the global economic environment has to be designed in such a way so as to be fair to poorer and developing countries, by the removal of structural features of the world system that stand between people and decent life opportunities. The cultivation of a forceful global public sphere becomes important. She therefore argues that care for the weaker members of society, such as the ill, the elderly and the disabled, should be a prominent focus of the world community. As the essence of the capabilities approach is recognizing the securing of rights as an affirmative task, Nussbaum also sets out in some detail the interdependency of liberties and economic arrangements. She argues that multinational corporations have responsibilities for promoting human capabilities in the region in which they operate. Her arguments in this part are generally convincing by adopting a broad conception of an international 'overlapping consensus' — one that places the pursuit of the central human capabilities as goals for every nation as well as the international society.

A balance has to be struck, and Nussbaum's theory achieves a proper balance in handling these two competing thoughts.

Lastly, there is no doubt that bringing the issue of the treatment of non-human animals from the ethical level into the realms of social

justice requires theoretical changes. It is also undeniable that a contract for mutual advantage does not illuminate our duties to non-human animals – either through the Kantian notion that we have no direct moral duties to animals or the Rawlsian notion that they are duties of compassion, rather than that of justice. Nussbaum highlights the work of natural law theorists such as Hugo Grotius as well as the interesting Kerala High Court case in 1999, *Nair v. Union of India* [2001] A.I.R. 2337 (S.C.), on the entitlement, recognition and protection of the rights of animals.

However, this part of the book proves to be the least clear of her exposition on the three issues. Nussbaum seems unsure what our duties actually are in reconciling animals and their predators. She talks vaguely of ‘trusteeship’ in various places without making quite clear what that ‘trusteeship’ actually implies in practice. It is not clear how, and why, the many duties which are grounded directly in the needs of the beings are then elevated to being a matter of justice.

Nussbaum makes it clear in various parts of the book that she has the greatest respect for the work of Rawls. However, in other parts, it appears that such deference prevented her from setting out her capabilities approach in a more forceful manner. Although Nussbaum sets out to show that the capabilities approach is one species of the human rights approach and that the language of capabilities should be superior to the bare language of human rights, she is not quite successful in setting out a convincing flow of arguments due to her deferential disposition.

Nonetheless, this book is still a significant challenge, albeit from within liberalism, to the dominant framework of Rawls. It lays out in clear terms what is possible in the pursuit of a future of greater justice for all.

reviewed by TEY TSUN HANG

Identity and Violence: The Illusion of Destiny (Issues of Our Time) BY AMARTYA SEN. [New York & London: W W Norton & Company, 2006. xx + 215 pp. Hardcover: US\$24.95]

Nobel Prize-winner Amartya Sen proposes in this impassioned book that the brutalities in the world are driven as much by confusion in, and the exploitation of, the illusion of cultural identity or religious affiliation. Conflict and violence, in places such as Kosovo, Bosnia, Rwanda, Timor Leste, Sudan, Israel and the

Palestine, Sen argues, are sustained by the illusion of a unique identity, “fomented by the imposition of singular and belligerent identities on gullible people, championed by proficient artisans of terror”.

Sen’s real target is not group loyalty *per se*, but the political and religious leaders who ruthlessly manipulate identity claims for their own political and religious ends. It is very much an indictment of the ways in which these “proficient artisans of terror”, through suitable instigation of the use of sexual, racial, religious and other forms of identity and turning it into a hardened sense of identity or affiliation, foment inter-group strife and conflict.

Sen suggests that each person is a composite of many affiliations, and that identities can be both a source of pride and joy, as well as a generator of confidence and strength. Since human allegiances involving class, gender, profession, language, science, morals and politics are real and essential to people’s lives, and frequently overlap with one another, it is impossible to successfully bundle them into smooth boxes with a single label.

Sen himself is a walking example, “at the same time, an Asian, an Indian citizen, a Bengali with Bangladeshi ancestry, an American or British resident, an economist, a dabbler in philosophy, an author, a Sankritist, a strong believer in secularism and democracy, a man, a feminist, a heterosexual, a defender of gay and lesbian rights, with a nonreligious lifestyle, from a Hindu background, a non-Brahmin, and a non-believer in afterlife...” Neither is it possible to pigeonhole him academically and professionally. A Nobel economics laureate, and probably the world’s most distinguished analyst of the welfare of the poor, he is equally deft in political philosophy. Although a firm believer in free market economy, he has been pointing out for decades the problem of inequality in the world.

Ideologies of hate typically categorise people into communities based on a single dimension that overrides other multi-faceted affinities. To Sen, such singularising of identity, or coercive labelling of affiliation, is a first dangerous step towards discrimination and inter-group strife and conflict, “a crucial component of the ‘martial art’ of fomenting sectarian confrontation”. Sen points out how sectarian hatreds, in places such as Kosovo, Bosnia, Rwanda, Timor Leste, Sudan, Israel and the Palestine, are ignited or exacerbated by illusions of unique and choiceless identities. When people acquire a strong and exclusive sense of belonging to a group,