

Becca Smith

PHIL 008 – Recitation 208

December 15, 2021

### The Demise of Social Contract Theory

In this paper, I will explain Martha Nussbaum's most significant objection to social contract theory, which suggests it is not a sufficient way to describe our moral obligations. I then will discuss the idea of "utilitarianism for animals, Kantianism for people" and how it can be used in response to Nussbaum's objection. I will end by describing why this response does not work and how Martha Nussbaum's objection ultimately succeeds in showing the incompetence of social contract theory.

Nussbaum objects to social contract theory by describing how its rationality requirement is exclusive.<sup>1</sup> The basis for the social contract is that it is a two-way contract. That is, a moral patient (one who requires moral treatment) is equated to a moral agent (one who has moral obligations to others). This means only those who can be held morally accountable for their actions are deserving of moral status and therefore moral treatment. Kant and Rawls both use rationality as a reason that humans deserve justice and fairness in the social contract, since rational beings are the only ones that can be moral agents. However, as Nussbaum addresses, this excludes animals as well as some humans. Nussbaum's argument is presented as followed:

1. If social contract theory uses moral agency as a requisite for moral patiency, it will exclude some humans.
2. If social contract theory excludes some humans, it fails as a moral theory.

---

<sup>1</sup> Martha Nussbaum, "Beyond Compassion and Humanity."

3. Therefore, if social contract theory uses moral agency as a requisite for moral patiency, it fails as a moral theory.

4. Social contract theory uses moral agency as a requisite for moral patiency.

C. Social contract theory fails as a moral theory.

I will explain Nussbaum's premises to show how she reaches her conclusion. In premise 1, Nussbaum claims that a theory requiring moral agency for moral patiency excludes some humans. The moral agency requirement is equivalent to a rationality requirement, because only rational beings with a conception of the good can be said to have moral duties.<sup>2</sup> However, not all people can be said to have this capacity for reason. Severely disabled individuals lack this rationality, and we therefore would not hold them to the moral duties of rational beings. Social contract theory is based on the idea of mutual advantage, in that a party needs to contribute in order to receive something. If young children and severely disabled individuals lack rationality, then according to social contract theory, they are not considered moral agents, and we therefore do not have any moral duties towards them.

Premise 2 is based on the idea that the exclusion of certain people is enough to invalidate a theory. As Nussbaum explains, the exclusion of some humans is problematic, because we intuitively should have moral duties towards every person. It is unjust to exclude the disabled from having the same moral status as any other human, as we would consider mistreatment of the disabled just as morally impermissible as mistreating anyone else. According to Nussbaum, this problem of exclusion in moral contract theory is enough to completely dismiss the theory, since a theory fails if there is such a significant exception.<sup>3</sup> Especially if a moral ideology does

---

<sup>2</sup> Martha Nussbaum, "Beyond Compassion and Humanity," 335

<sup>3</sup> Martha Nussbaum, "Beyond Compassion and Humanity," 335

not give moral status to all humans, it seems that there is something wrong with the moral ideology.

Premise 3 logically follows from the first two, from hypothetical syllogism.

In premise 4, Nussbaum asserts that social contract theory requires moral agency for moral patiency. That is, it is only those who can actively participate in moral obligations that deserve to be considered with moral status. Social contract theory, at least in Hobbes' version starts with the idea of mutual advantage, in that a party should rationally want to partake in the social contract due to their potential benefit. By giving in to this two-way contract, each party can benefit by getting something in return.<sup>4</sup> Even in Rawls' liberalism, there is the same moral agency requirement, just in a slightly different form. Rawls says the principles of justice would be rationally chosen by agents if they were behind a "veil of ignorance", meaning they are unaware of their social status, race, and other biasing factors.<sup>5</sup> The motivation for this is that these rational beings should choose the principles that would benefit them in the worst-case scenario, which justifies provisions for the worst off in society, namely welfare. Once again, in order to participate in this "veil of ignorance" thought experiment, there is a rationality requirement, which is the same as a conception of the good and therefore moral obligations. According to Rawls' theory, only those who choose the rational principles behind the veil of ignorance are considered part of the social contract, excluding the disabled just like Hobbes' version of social contract theory. Nussbaum's main issue with social contract theory is the very fact that those without rationality or the ability to be moral agents have no place in the social contract and therefore do not have moral status, which is a necessary aspect of this kind of theory.

---

<sup>4</sup> Thomas Hobbes, *Leviathan or The Matter, Forme and Power of a Commonwealth Ecclesiasticall and Civil*.

<sup>5</sup> John Rawls, *A Theory of Justice*.

In response to Nussbaum's objection, there is a possible response that proponents of social contract theory can provide, which is the idea of "utilitarianism for non-rational humans or animals, Kantianism for other people."<sup>6</sup> The argument can be written as followed:

1. If nonhuman animals and humans lacking the capabilities for rationality cannot partake in the social contract, then it is sufficient to treat them using utilitarian principles.
2. Nonhuman animals and humans lacking the capabilities for rationality cannot partake in the social contract.
- C. It is sufficient to treat nonhuman animals and humans lacking the capabilities for rationality using utilitarian principles.

Premise 2 is conceived from Nussbaum's argument that social contract theory requires moral agency or rationality, and therefore excludes nonrational beings. I will focus on explaining the justification for premise 1, which is proving the sufficiency of utilitarianism for nonrational beings. If people do not have the capabilities for rationality and are limited to feelings of pleasure and pain, then utility in the form of pleasure is all they need to have fulfilling lives. It is not worth using efforts to guarantee a higher moral status for beings that do not even have conceptions of the good to understand what a moral status would mean. Using utilitarianism would morally require many accommodations for the disabled that give them the most comfortable lives possible. While this theory may sound cruel or dehumanizing, in reality, it will justify any provisions that improve the lives of the severely disabled, so it would be sufficient in its implementation.

---

<sup>6</sup> Lucius Caviola et al., "Utilitarianism for Animals, Kantianism for People? Harming Animals and Humans for the Greater Good."

I ultimately disagree with this response to Nussbaum, because it suggests two categories of being: one for rational humans, and the other for nonrational humans and nonhuman animals. As this latter category is considered with utilitarianism, it suggests that each nonrational being's pleasure and pain is considered with the same value. Within the scope of nonhuman animals, utilitarianism could be rational, because it is reasonable to limit our duties towards animals as harming them as small of an amount as possible. However, if we consider utilitarianism within this broader second category, that is with nonrational humans also, we encounter a dilemma. This is because it suggests that an animal's pleasure and pain should be valued with the same weight as a person's. It is even possible that this animal may have more mental or physical capabilities than a severely disabled human, yet people would and should consider the life of any human with greater priority. As shown, this is not because of any mental or physical capabilities, because those of the human can be less than those of the animal, and we would still prioritize the human. The only justification for this is that there is some sense of value or dignity that comes with being human, that gives us moral status over animals. Social contract theory only requires rationality, which not only excludes some humans, but seems to neglect some innate value we give to humans over all other beings, justifying every person's desert of moral status.

To conclude, Nussbaum is correct in her assertion that due to its exclusivity, social contract theory is invalid as a cohesive moral theory. While the idea of "utilitarianism for nonrational beings, Kantianism for other people" is a good attempt at salvaging social contract theory, this division becomes problematic because it fails to consider anything morally particular about humans. I want to end by noting that even if social contract theory cannot accurately count as the basis for morality, there are still useful ideas society can and should take from its ideologies. The justifications for the welfare state, reparations for slavery, minimizing relative concessions in

agreements, and other principles of justice are important to consider and can have valuable implications in society, as long as we recognize that social contract theory is not sufficient as a comprehensive moral theory.

#### Works Cited

John Rawls. *A Theory of Justice*, 1971.

Lucius Caviola, Guy Kahane, Jim Everett, Elliot Teperman, Julian Savulescu, and Nadria Faber.

“Utilitarianism for Animals, Kantianism for People? Harming Animals and Humans for the Greater Good,” September 2020.

Martha Nussbaum. “Beyond Compassion and Humanity,” *Frontiers of justice: disability, nationality, species membership*, 2006.

Thomas Hobbes. *Leviathan or The Matter; Forme and Power of a Commonwealth Ecclesiasticall and Civil*, 1651.