

MARTHA NUSSBAUM AND THE RISE OF RAUNCH CULTURE: IMPLICATIONS OF
THE CAPABILITIES APPROACH IN THE UNITED STATES

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ABSTRACT

MELISSA R. PETERMAN: Martha Nussbaum and the Rise of Raunch Culture: Implications of the Capabilities Approach in the United States
(Under the direction of Susan Bickford, Ph.D.)

This paper explores the effects of and also the limits to Martha C. Nussbaum's capabilities approach within the United States. Quite often in Nussbaum's work, her universal theory of justice is analyzed only within the context of developing nations, leaving readers to assume that persons living in the Third World are far more oppressed than those living in the West. By examining the capabilities approach, specifically the bodily integrity capability, within a Western context I aim to reveal (1) the corresponding inequalities existing in the U.S.; (2) which highlight Nussbaum's colonialist viewpoint; (3) in order to demonstrate that if issues of injustice are at the heart of Nussbaum's theory, creating hierarchies of oppression present a number of problematics when devising strategies to eradicate inequality.

TABLE OF CONTENTS

LIST OF FIGURES.....	v
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Chapter

I.	INTRODUCTION.....	1
II.	THE CAPABILITIES APPROACH.....	4
	Function versus Capability.....	6
	Societal Norms and Individual Preferences.....	7
	Individualism, Overlapping Consensus and Choice.....	8
	Democratic Process.....	9
III.	BODILY INTEGRITY AS APPLIED TO THE U.S.....	11
	Third Wave Oppression: The Old Objectification in a Pornier New Body.....	13
	Choice, Autonomy, and Alternatives.....	21
	Autonomous Nonautonomy.....	24
	Nussbaum, Cosmetic Surgery and Pornography: Conditions for State Interference.....	31
IV.	IMPLICATIONS OF THE CAPABILITIES APPROACH IN THE US.....	46
	A Not-So Millian Harm Principle.....	46
	Cosmetic Surgery: A Permanent Stamp of Inferiority.....	48
	Pornography: Blushing versus Bleeding.....	50

Beyond Nussbaum.....	52
V. CONCLUSION.....	59
BIBLIOGRAPHY.....	62

LIST OF FIGURES

Figure

1. Eight Reasons to ban Female Genital Mutilation.....31

CHAPTER 1

INTRODUCTION

Sati, dowry murder, widow immolation, female genital mutilation, veiling, arranged marriages: each of these practices is familiar in the West as those inhuman and oppressive traditions that exist in those *other* countries. In the minds of many Westerners, their countries are too advanced, and believe in freedom and equality so much, that the very thought of women being murdered for money (for example) in their countries is unfathomable. Quite often, then, Westerners look upon women in foreign countries as being considerably more oppressed than women in the West are.

In her book *Feminism Without Borders: Decolonizing Theory, Practicing Solidarity* (2006), Chandra Mohanty has pointed to the ways in which the above perspective can be a colonialist move, in that it creates a stereotypical Third World woman at the same time it creates a liberated Western woman. Generalizations made within this framework assume,

“a homogenous notion of the oppression of women as a group... which, in turn, produces the image of an ‘average Third World woman.’ This average Third World woman leads an essentially truncated life based on her feminine gender (read: sexually constrained) and her being ‘Third World’ (read: ignorant, poor, uneducated, tradition-bound, domestic, family-oriented, victimized, etc.). This, I suggest, is in contrast to the (implicit) self representation of Western women as educated, as modern, as having control over their own bodies and sexualities and the freedom to make their own decisions” (22).

If scholars, particularly Western feminists, aim to avoid essentializing groups of people, in this case women, and at the same time take seriously claims of oppression, it is important to

avoid replicating what Mohanty calls the colonialist viewpoint; instead of deducing oppression from a universal category “women,” we must relate “historical forms of oppression” to women (116). If not, we will see the assumption that there is a universal sexual difference between men and women mapped onto the Third World, privileging the West as free (read: male) while subordinating the Third World as oppressed (read: female). This move not only homogenizes all Third World women but also empties them of agency.

Many feminist scholars, following in the footsteps of Mohanty, attempt to theorize without invoking this imperialist framework in order to account for the oppressions occurring in the developing world without viewing Third World women as simply passive or suffering from false consciousness. Martha Nussbaum, a Western feminist who has written extensively on women living in developing nations, suggests a theory of justice based on universalism that she believes falls outside the boundaries of Western colonialism. Yet in much of Nussbaum’s writing she works rigorously to apply her universal theory of justice to Third World countries, but does very little to apply her theory to Western countries. In fact, as I hope to show, much of her work aims to demonstrate the ways in which Western women do not experience the same levels of oppression that women in countries like India, Egypt, or Saudi Arabia do. So, while Nussbaum argues that her theory reinstates women’s agency universally, in the Third World context she tends to remove it completely, while overstating it for Western women: this is a move Mohanty would label as colonialist. To avoid this position, Mohanty would urge feminist scholars not only to examine the situation of Third World women but also ourselves as a way to understand oppression and to devise means by which we may fight against it.

Nevertheless, as a result of these conflicting viewpoints regarding the status of oppression in Western countries, my aim in this paper will be to re-examine a Western state (the United States) in light of Nussbaum's theory of justice, the capabilities approach. By focusing on Nussbaum's capability of bodily integrity, specifically the importance of sexual satisfaction, I aim to show how the approach allows us to see the extent to which the U.S. does not honor women's bodily integrity and thus cannot claim to be a just state. Also, I intend to demonstrate the inconsistencies within Nussbaum's analysis that lend themselves toward claims of Western imperialism. Lastly, I would like to show how the effects of incorporating this single part of this one capability would be immense and more far-reaching than the "open-ended and humble" effects Nussbaum conveys (Nussbaum 2000: 77). I do this by first elaborating further Nussbaum's theory of capability. Then in the third chapter I examine the inequalities of bodily integrity in the U.S., particularly cosmetic surgery and pornography. Both are practices whose continuous increase is associated with a form of oppression that has been rearticulated as "raunch culture". Within this chapter, I will also discuss the conditions for and type of action required by the recognition of this oppression. In chapter four, I will argue that the implications of the adoption of the capabilities approach would necessitate both the banning of medically unnecessary forms of cosmetic surgery and the reinstatement of the antipornography ordinance proposed by Catharine MacKinnon and Andrea Dworkin. Lastly, I will make a case for the way in which these implications move beyond Nussbaum's analysis and stand in direct contradiction to her assertion that Western women do not suffer to the same extent as Third World women.

CHAPTER 2

THE CAPABILITIES APPROACH

“Capabilities are features of individuals and of their environments that make human accomplishments possible” (Hausman 2001: 599).

Acknowledging the existence of harmful practices is important, but that act alone is not enough in efforts to create a just state. In order to achieve this goal, we need a foundation from which to evaluate the current injustices occurring in a particular state, a basis that is persuasive while also providing for agency and action. Nussbaum, in much of her work, aims to do just that. She wants to perfect John Rawls’s notion of political liberalism in such a way as to allow for the creation of a theory that is “strongly universalist, committed to cross-cultural norms of justice, equality, and rights, and at the same time sensitive to local particularity, and to the many ways in which circumstances shape not only options but also beliefs and preferences” (Nussbaum 2000: 7). By enhancing Amartya Sen’s theory of capability, Nussbaum, in some ways, is able to achieve those theoretical goals.¹ The approach provides a list of ten capabilities that should serve as the core for constitutional principles and human rights in any and all nations because, for Nussbaum, it is the only way respect for human dignity can be secured.

With the capabilities approach, scholars and political actors have a concrete list of universal capabilities with which they can judge and alter the goings-on within their own

¹ According to Nussbaum, although Rawls’s liberalism, which includes a list of basic goods, does “enable us to criticize persistent inequalities” while also providing the means to critique the notion that preferences are natural and not influenced by social structures and practices, it is limited in that it measures well-being in terms of things rather than capacities or capabilities (Nussbaum 1999: 34).

state as well as other states existing in the world. At the heart of the capabilities approach is the idea that societies are complex and cultures are not monolithic, so there is no risk that judging any aspect of them (and finding that particular practice to be unjust given “rich and full information”) will render that culture and its members nonexistent (Nussbaum 1999: 47). In actuality, it is far more dangerous to allow for certain practices that have negative and devastating impacts to continue to exist simply for the sake of culture. Nussbaum is right to argue, “cultures are not museum pieces to be preserved at all costs”; they are living things that effect real people (37). By designing a universal theory of justice, Nussbaum seeks to avoid the position of cultural relativism; she wants to maintain both the integrity and multiplicity of cultures without sacrificing human lives, both figuratively and literally.

Although Nussbaum believes that she has found a way to step outside of the Western imperialist framework while also moving away from cultural relativism, on closer examination of the capabilities approach one could conclude that she is not so far removed from these taboo notions. For instance, even though Nussbaum advocates the capabilities approach as a universal theory, rarely does she apply it (in the same way that she applies it to nations such as India) to Western liberal democracies.² This raises the question, how universal is the capabilities approach? To do a universal theory justice then, it seems only fair that Nussbaum apply her theory to a Western country in order to determine how successful her approach is at establishing whether a state is truly just. For the purposes of this paper, I intend to do exactly that.

Even though the focus of much of Nussbaum’s work is on the status of women, she often ignores the subjugation of Western women in her writing. I believe this omission can

² In *Frontiers of Justice*, Nussbaum better accounts for injustices within Western countries, specifically the United States. However, in this book she deals with issues like disability and animal rights, not gender.

be attributed to the idea that, for Nussbaum, women living in those countries simply do not have it that bad, an unexpected consideration given the extensive amount of work done on the oppression of women in the U.S. (Collins 2000; Fraser 1997; Bordo 1993; Frye 1983). But given the chapter on “American Women” in her book *Sex and Social Justice*, it is difficult to imagine that Nussbaum thinks otherwise. In response to an argument made by Christina Hoff Sommers, Nussbaum devotes this chapter to determining whether American women have something “to *complain* of” (emphasis added) (Nussbaum 1999: 153). It is precisely this language of complaint that I take issue with and which serves as an indicator that Nussbaum believes Western women’s experiences of inequality to be not as strong as those of other women in the world (133).³ Declaring that American women have something to complain about (which Nussbaum says they do) seems entirely different and certainly not as powerful as stating that American women have a serious claim about being treated unjustly (which Nussbaum says Indian women have).⁴ Before moving on to a discussion of the inequalities existing in the U.S. that the capabilities approach brings to light, it is important to first explain in further detail the specific attributes of the theory.

Function versus Capability

In establishing the capabilities approach, it is important to first ask, who counts as human? Nussbaum adopts an Aristotelian view of human functioning in order to illustrate “the functions without which (meaning without the availability of which) we would regard a life as not, or not fully, human” (39). Unlike Sen’s theory of capability, Nussbaum provides a

³ I recognize that the language of complaint is Sommers’, but given that in this chapter Nussbaum decides to “rephrase the questions” posed by Sommers and does not put them in terms of justice, it can be assumed that Nussbaum finds that aspect of Sommers’ assertion to be correct (Nussbaum 1999: 133).

⁴ My argument here is not that since American women are treated unjustly we cannot then address the issues that women across the globe face, but rather that we need to do both.

set of ten specific capabilities without which, she argues, a state cannot hope to ensure respect for human dignity. Those ten are: (1) life, (2) bodily health, (3) bodily integrity, (4) sense, imagination and thought, (5) emotions, (6) practical reason, (7) affiliation, (8) relations with other species, (9) play, and (10) political and material control over one's environment (Nussbaum 2006: 76-78). What is important to note about the role of the capabilities is that it is not the state's job to guarantee the actual functioning of these particular capabilities, only their social basis (for example access to health care in order to ensure the social basis of the bodily health capability). Citizens must be left free to determine their own course after that. In doing so, citizens are provided with the ability to choose the functionings that best reflect their political and cultural identities. For example, "the person who has normal opportunities for sexual satisfaction can always choose a life of celibacy, and we say nothing against this. What we do speak against, for example, is the practice of female genital mutilation, which deprives individuals of the opportunity to choose sexual functioning" (Nussbaum 1999: 44). However, if the state does not provide a threshold level for any one of these capabilities they cannot claim to be a just state, as the capabilities are a package deal.

Societal Norms and Individual Preferences

Another aspect of the capabilities approach is its emphasis on the deconstruction of oppressive, harmful societal norms and the further probing of individual preferences. The underlying concern here for Nussbaum is the issue of autonomy and choice. Hence Nussbaum wants to ask, how far-reaching and/or constraining are social norms? By pointing to women who "choose" to undergo *sati*, for example, Nussbaum concludes that the effects of harmful norms are quite vast. She believes that the only possible explanation for why women undergo these procedures or take part in these sorts of practices is that they have

internalized their society's misogynistic customs. This is an area of particular importance to the capabilities approach because it "enables us to focus directly on the obstacles to self-realization imposed by traditional norms and values and thus to justify special political action to remedy the unequal situation," thereby allowing women to truly choose their own norms. (Nussbaum 1999: 46)

In terms of preferences, they are only a good indicator of well-being once political institutions and norms have been established that support equality and justice. Otherwise, preferences only indicate the ways in which marginalized individuals and groups have adapted their preferences to reflect those of the dominant group, and that adaptation is neither free nor equal. As mentioned earlier, Nussbaum acknowledges the importance of accounting for the ways in which "*individuals* and their *preferences* are formed by social forces" and also that "*individuals' options* are constrained by social norms" (Chambers 2004: 2). The most critical component of this argument though is the emphasis on critique; we cannot merely take preferences at face value. We must evaluate the circumstances that have contributed to the formation of a person's preferences. Our ability to understand the ways in which norms and preferences are socially constructed, most often in unjust ways, allows policymakers to propose suitable solutions by clearly articulating the particular oppression and its effects.

Individualism, Overlapping Consensus and Choice

The capabilities approach differs from some other theories of justice and political traditions given its focus on the individual. As is standard for liberal theories, the capabilities approach insists "on the separateness of one life from another, and the equal importance of each life, seen on its own terms rather than as part of a larger organic or corporate whole"

(Nussbaum 1999: 10). By ordering the capabilities approach in such a way, Nussbaum hopes to gain and provide a justificatory basis for looking at individuals as ends in themselves, not as shaped by or part of a “herd”. However, Nussbaum is faced with the problem of considerable disagreement amongst citizens in regard to differing views of human life (Nussbaum 2000: 76). In order to address this issue, she adopts Rawls’s idea of an “overlapping consensus”.⁵ By emphasizing capability as the political goal and not functioning, citizens with competing conceptions of the good are not only provided with more available options from which to interpret and choose, but they are also given the freedom to not choose a particular function. It is not the level of functioning present in a society that indicates how free the people are, but “the capability set itself that defines the full scope of effective freedom” (Dowding 2006: 323).

Democratic Process

As a political liberal, it is clear to Nussbaum that imposing the capabilities approach on a society is out of the question, regardless of the worth she believes it to have (imposing it on a government could be just as disastrous as the unjust practices that require the capabilities approach in the first place). She says, then, that the approach must be adopted through democratic process (Nussbaum 2000: 104). In many ways, the notion of force is antithetical to Nussbaum’s vision of the capabilities approach which is why she argues that it should be used to provide “political principles that can underlie national constitutions; [meaning] that practical implementation must remain, to a large extent, the job of citizens of each nation” (105). This is the only way to maintain the integrity of the state while also

⁵ “In such a consensus, the reasonable doctrines endorse the political conception, each from its own point of view. Social unity is based on consensus on the political conception; and stability is possible when the doctrines making up the consensus are affirmed by society’s politically active citizens and the requirements of justice are not too much in conflict with citizens’ essential interests as formed and encouraged by their social arrangements” (Rawls 2005: 134).

ensuring the lives of its citizens. I will begin from this position. This paper is not intended to be a critique of whether or not the capabilities approach should be adopted. The capabilities approach has in fact been criticized for a number of reasons. For example, some insist that it relies upon “an untheorized and an ahistorical liberal state,” (Feldman and Gellert 2003) and there are critical assessments regarding the list of capabilities itself, in addition to criticisms regarding her language choices (why does she assume that there is such a thing as “‘the human’ apart from any culture or ideology,”) (Harpham 2002: 74). However, I instead would like to play out the radical logic of the capabilities approach that Nussbaum does not see. Therefore, I begin from the assumption that the approach has already been democratically instituted, and thus I am looking at its effects.

CHAPTER 3

BODILY INTEGRITY AS APPLIED TO THE U.S.⁶

“Bodily Integrity. Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction” (Nussbaum 2006: 76).

The capability of bodily integrity is crucial to the creation of a just society and respect for human dignity. If nations did not secure their citizens from violent assault, did not create spaces that allowed citizens the ability to move freely, did not cultivate opportunities for sexual pleasure, and did not allow for choice in matters of reproduction, the world would be a pretty scary place. Citizens would live in fear of being attacked, they would have difficulty physically exiting and entering many of the most commonplace locations like work and school, they would be targets of surgical procedures that limit their ability to experience pleasure, and their choice to protect their own lives and health when deciding to have children would be put at risk (if it didn’t become obsolete altogether). The truth is though that the world *is* in fact a pretty scary place given that I have just described the everyday lives of women living in the U.S.; this reality alone is justification enough for the importance of the bodily integrity capability. Without securing control for individuals over something as fundamental as their own bodies, it is difficult to conceive of them as full citizens, or for that matter, human beings; if in a society, people are not given the opportunity to decide (on a

⁶ As noted earlier, the capabilities are all quite interconnected and thus you cannot satisfy one without the others, nor can a state be considered fully just without fulfilling each capability. However, for the purposes of this paper it is important to show the wide range of effects that would occur even if just one capability were adopted.

basis of equality and through just institutions) what is best for their bodies, how can they be expected to exercise their general rights as citizens? The capabilities approach attempts to reinstate this control, for women in particular, by evaluating the existing structures of inequality in a given state.

In the case of the U.S., as mentioned above, the application of the capabilities approach to those structures of unequal power not only highlights the existing oppressions, but also aims to provide a framework from which those working for social justice can better name their oppressions and strategize ways to eradicate them. In what follows, I more specifically confront examples of unequal power structures operating in the U.S. that the bodily integrity capability draws attention to. For example, currently, under the guise of women's liberation, the U.S. is seeing high increases in the number of cosmetic surgeries as well as a rise in consumption of products like *Playboy* by women and young girls. The argument made by supporters of this phenomenon is often that women are now so free that they too can take part in the objectification of other women. Popular culture in the U.S. at present is aiming to resurrect "every stereotype of female sexuality that feminism [has] endeavored to banish [as if it were] *good* for women"; an aim that is problematic for the creation of a just society as it allows for a nonfeminist view of women to masquerade as the full realization of feminist aspirations (Levy 2005: 4). Given that the bodily integrity capability entails that the state must provide the social basis for the opportunity to choose sexual satisfaction, applying it to the U.S. emphasizes the ways in which the above developments hinder women's (and men's) ability to achieve healthy and egalitarian sexual pleasure due to harmful social norms and practices.

Third Wave Oppression: The Old Objectification in a Pornier New Body

To analyze contemporary ‘body politics’, some feminist theorists have turned to Foucault’s concept of discipline and how discipline relates, in particular, to the body. To better illustrate how one might conceive of the nature of a disciplinary society, Foucault draws upon Jeremy Bentham’s model of the ideal prison called the Panopticon. The Panopticon is structured so that “at the periphery... [exists] a circular structure; at the center, a tower with wide windows that opens onto the inner side of the ring. The structure on the periphery is divided into cells, each with two windows, one facing the windows of the tower, the other facing the outside, allowing an effect of backlighting to make any figure visible within the cell” (I draw this summary from Bartky 1990: 64). A supervisor is placed in the center tower and the prisoners reside alone in each of the cells, yet they are fully visible to all. The constant visibility creates a self-disciplining power that creeps from the body into the mind, thus, in effect, compelling each inmate to become their own jailer. Foucault believes that we can see this very structure operating within society, clearly discernible in places like schools, hospitals, factories, and so on.

Sandra Bartky adopts this concept of the disciplined body and argues that although Foucault may be correct in asserting that we live in a disciplinary society, he is incorrect to assume that all bodies are disciplined similarly. The bodies of women and men are situated differently in relation to modern institutions of disciplinary power and “to overlook the forms of subjection that engender the feminine body is to perpetuate the silence and powerlessness of those upon whom these disciplines have been imposed” (65). In order to demonstrate the variations between the modern patriarchal construction and discipline of femininity with that of masculinity, Bartky reflects on three categories (size and shape, motility, and

ornamentation) of practices that create a feminized body designed to please and excite while the masculine body is constructed to be pleased and excited.

Dieting and exercise to reshape the body (and oftentimes the face in particular) are two practices that have routinely plagued the minds and bodies of women (men as well, although not to the same degree).⁷ It is often the case that women feel compelled to learn to control their appetites, recontour their flawed bodies, and rein in their emotions so as not to “subvert the disciplinary project of bodily perfection” (Bartky 1990: 67). The obvious constrained movement of many women also seems to draw attention to a disciplinary practice unique to female bodies. By simply observing the motility of women who surround us on a daily basis it becomes clear that most women operate as though they were bound by an invisible force field. For example, on the bus to campus each day, it is not out of the ordinary to see young women sitting with their hands folded in their lap, ankles crossed while the male student next to them is sprawled out with his arms across the back of the seat, legs stretched out as if lounging in the privacy of his own home. For a woman to oppose the norm of constricted, graceful, as well as even a modest erotic movement is to be labeled “loose”, a term that stands not only to describe her movements but also her morals. Lastly, in addition to the regulation of female size, shape, and motility, it is custom that female bodies be ornamented as well. This adornment ranges from the removal of body hair (either by razor, waxing, plucking, or electrolysis) to the daily conditioning of the skin (with multi-step facial cleansers or make-up) in order to reduce the signs of “wear and tear” on the body. Many argue that it is ornamentation that makes individuals unique, but in the case of femininity all

⁷ According to the National Eating Disorders Association, between 5 and 10 million Americans suffer from an eating disorder, a number that only continues to rise (National Association of Eating Disorders 2002). Of that number, “only an estimated 5 to 15 percent of people with anorexia or bulimia and an estimated 35 percent of those with binge eating disorder are male” (National Institute of Mental Health 2007).

we see is the endless reiteration of one style of beauty, not an individual's ability to creatively express themselves (although many women would argue that they are and this is the crux of Bartky's argument: women have come to view those practices which aim to unequally discipline their bodies as their own choice).

Ultimately, what Bartky is describing is the reality that femininity is a "set-up"; it is impossible to attain its promises. The daily reminders to women (through advertisements, the male gaze, the judgment of other females, and so on) only serve to imbed in individuals the self-policing power of patriarchy in order to suggest that the bodies of women are deficient and thus in need of help that can be sold to them by the cosmetics industry, a gym membership, or Jenny Craig. "The woman who checks her make-up half a dozen times a day..., who worries that the wind or rain may spoil her hairdo,... or who, feeling fat, monitors everything she eats, has become, just as surely as the inmate of Panopticon, a self-policing subject, a self committed to a relentless self-surveillance..., a form of obedience to patriarchy" (Bartky 1990: 80). What is unfortunately made apparent then is, as stated by Catharine MacKinnon, that "all women live in sexual objectification the way fish live in water" (MacKinnon 1989: 149), a statement that Nussbaum interprets as meaning, "presumably, not only that objectification surrounds women but also that they have become such that they desire their very nourishment and sustenance from it" (Nussbaum 1999: 214). Even though Bartky was describing the situation of women in the 1980s, her theory depicting the internalization of oppression that is then inverted into the assumption of freedom, can be seen functioning in today's popular culture as well.

How and why is it that more often than not, Americans are more familiar with Britney Spears's pulsating body than perhaps their own sexual desires, that the leaking of Paris

Hilton's sex tape only seemed to bolster her star power, or that women are increasingly looking to sex workers as the symbols of a liberated female sexuality? Ariel Levy, in her book entitled *Female Chauvinist Pigs: Women and the Rise of Raunch Culture*, provides a theory that attempts to make sense of these occurrences. Levy describes what she calls raunch culture in terms of three events she sees taking place within U.S. popular culture: "(1) an essentially pornographic view of female sexuality has moved from the margins to the cultural mainstream; (2) women talk about this – and about participating in it – as liberating; (3) even though it is all about performance, rather than about one's own sexual satisfaction or pleasure" (Bickford and Harrigan 2007). Here we can apply Bartky's analysis to further identify what Levy sees transpiring in our raunchy culture.

The U.S. has become a mad world of objectification as women's bodies are continuously bought and sold. None of this is necessarily new to American popular culture though. What is new is its increased support by women, not only as consumers of products like *Playboy*, but also as objectifiers.⁸ Female chauvinist pigs, "women who make sex objects of other women and ourselves", have joined forces with the ever-so famous male chauvinist pigs, "men who [regard] women as pieces of meat", in order to enlighten us all about our frigid, prudish, fully clothed sexualities (Levy 2005: 3). Raunch culture is becoming the 'litmus test' of female sexual expression as it is growing to be a widely accepted idea that feminism has already been realized, with programs like *Girls Gone Wild* (a series of DVDs showcasing footage taken of young women flashing their buttocks, genitals, and breasts at

⁸ Although demographic statistics for the number of women who subscribe to *Playboy* are not available, Christie Hefner, chairman and CEO of Playboy Enterprises caters to this audience. She says, " 'A lot of women read the magazine,'... 'We know they read it because we get letters from them.' And this was proof she said, that the 'post-sexual revolution, post-women's movement generation that is now out there in their late twenties and early thirties – and then it continues with the generation behind them, too – has just a more grownup, comfortable, *natural* attitude about sex and sexiness that is more in line with where guys were a couple generations before" (Levy 2005: 39).

locations like Mardi Gras, spring break trips or college parties) and *The Man Show* (a program on *Comedy Central* which ends every taping with a segment called “Girls on Trampolines”) evidence of its realization. But why have Jenna Jameson (an icon in the adult film world who also has moved into the mainstream with her best selling book *How to Make Love Like a Pornstar*), cardio striptease classes, reality TV stars, and so on become emblematic of a healthy sexuality, when in fact it is the jobs of the aforementioned pop icons (meaning they are paid for what they do) to fake, not feel, sexual pleasure? It is not always the case that imitating an imitation is empowering, liberating, or even subversive. This is precisely what Levy intends to show as she breaks down the components of raunch culture. Throughout the course of her book, Levy inadvertently employs Bartky’s three categories to illustrate the ways in which raunch culture serves to constrict sexuality in general by regulating female motility, ornamentation, and size and shape in order to produce a practiced, subjected and inferior body.

Raunch culture inscribes a second-rate status on the bodies of both women and young girls. While the ideal size and shape of female bodies changes through the eras, it is always intended to be for the enjoyment of the male. So despite the fact that in the 1990s women’s bodies were to resemble the slender bodies of adolescent males, as pornographic images have moved into the mainstream, femininity has come to mirror the aura of porn stars and strippers, those seemingly plastic bodies which have “big orb boobs and long legs with fuck-me pumps”, who for all intents and purposes resemble live Barbie dolls (Levy 2005: 187).⁹ Images of these body-types, that used to only be found in magazines like *Penthouse*, bombard us on a daily basis; one cannot enter the toy store without seeing not only dolls

⁹ “Barbie dolls were themselves modeled after blonde German sex dolls called Bild Lilli.” (Levy 2005: 187)

(Barbie and Bratz) but also young girls mimicking this ideal. By stepping inside the UNC Student Stores bookstore one will find, nestled next to seemingly harmless publications, magazines like *Playboy*, *Maxim*, and *FHM* or posters depicting the ideal woman (which is simply a photo of a woman's breasts wherein the nipples have been replaced with beer taps). Television is not immune to this imagery with the introduction of shows like *The Swan*, "a reality series launched on Fox in 2004 in which average-looking women were surgically, cosmetically, and sartorially redone to look average in a shinier, pornier new way" (Levy 2005: 23). This new norm of femininity is completely unachievable, no woman or young girl can naturally meet this standard of beauty, but that does not mean that they will not and have not tried. It is no wonder then that in the U.S. the number of women suffering from eating disorders continues to rise as do the number of cosmetic surgeries conducted each year.

Not only are teenagers and women alike physically altering their bodies so that they resemble those of women they see in magazines, on television, and in their everyday lives, but they are also performing this body type in new ways. In combination with the rise in plastic surgery, there has also been a rise in a new form of "exercise" called cardio striptease. Many of the country's most popular gyms now offer, for their female clientele, classes that help them to tone their muscles while also regaining an air of sexiness by teaching them to emulate strippers. Workout sessions are attended by women who are often encouraged to attend the class wearing nothing but their bra and a thong, as though what one were wearing while exercising makes the slightest difference in terms of weight loss. Jeff Costa, a cardio striptease instructor at the Los Angeles Crunch gym, proclaims that "stripping equals sex!" and can be thought of as an empowering experience, so empowering that mothers sometimes bring their teenage daughters as part of a newfound rite of passage ritual. What is puzzling

about this development is that women are now looking for sexual empowerment from people whose job it is “to *fake* arousal” (Levy 2005: 20). Additionally, although in some ways this new form of feminine motility can be viewed as though it were allowing women the freedom to be looser in their movements, the cost in doing so remains the same. Women and young girls, in attempts to be like porn stars and strippers, are not looked at as liberated beings free to express a fluidity of sexuality types, but rather as objects who have finally realized their sexual role (roles that men have understood for decades).

In terms of ornamentation, similarly to the bodies described by Bartky, female bodies today must be “soft, supple, hairless, smooth”, ageless, and thoughtless (Bartky 1990: 69). Many women go to great lengths (for example Botox) to mask or eliminate “problem areas” and the appearance of fine lines and wrinkles. There is also a new array of adornments to dress the feminine body ranging from the belly button piercing to the midriff and the barely there miniskirt capped off by a glimpse of a thong peeking out above the pant line. This is not to say that it is antifeminist to wear a miniskirt, but it is antifeminist to say that sexual liberation requires that you do so. Raunch culture tells women that not embracing the *Girls Gone Wild* mentality can only mean that you are uncomfortable with your sexuality, meaning that sexuality can only entail the adoption of this exhibitionist standard of beauty. Ultimately this points to the fact that raunch culture is not about exploring the possibilities of sexuality but to continuously repeat “one particular – and particularly commercial – shorthand for sexiness” (Levy 2005: 30).

The self-policing, disciplinary power that Foucault describes and Bartky rearticulates is again reshaped by Levy. Levy argues that because women have surveilled themselves for so long, and are still marginalized, they are now looking for new ways to gain acceptance

within the male-dominated society while also maintaining an idea of liberation. For that reason, we are now witnessing the rise of a new coping mechanism, what Levy calls the female chauvinist pig. To illustrate generally what she means by this term, Levy turns to Harriet Beecher Stowe's "Uncle Tom's Cabin" to demonstrate the ways in which subordinate groups embrace inequalities in order to be accepted by the dominant group. According to this logic, female chauvinist pigs can either act "like a cartoon man – who drools over strippers, [and] says things like 'check out that ass,' – or [act] like a cartoon woman, who has big cartoon breasts, wears little cartoon outfits, and can only express her sexuality by spinning around a pole" (Levy 2005: 107). In the end then, raunch culture is a spectator's sport; female bodies are the object of the game, misogyny is the rule, and the imagined males are the players. Consequently, women must perform either of these roles not because they in fact experience personal pleasure in doing so but because to be accepted in society one must gain an appreciation for those things admired by the dominant group. Most importantly, we must learn to not call this what it is, assimilation, but rather view it as liberatory. However, even though "it can be fun to feel exceptional – to be the loophole woman,... to be an honorary man[,]... if you are the exception that proves the rule, and the rule is that women are inferior, you haven't made any progress" (117).

As these pornographic images and disciplinary practices continue to make their way into the mainstream, we will go on seeing women become dissatisfied with their bodies and engage in more and more harmful practices.¹⁰ Feminism has consistently advocated for women's ability and opportunity to achieve sexual pleasure, an option that is not secured by the popularization of pornography as it has also led to the increased popularity in cosmetic

¹⁰ For example in the U.S., between 1992 and 2004 breast augmentations, a risky surgery, increased more than 700 percent; twice that if you count each breast (Levy 2005: 22).

surgery, electrolysis, and Brazilian bikini waxes, just to name a few. These procedures do not promote pleasure for women.¹¹ These representations tell women that their bodies are defective, and that they need to alter them so that they will be presentable to their male counterparts and hence better able to perform the role of female, regardless of how painful and pleasureless the process may be. In this situation, the capabilities approach can be used to provide a foundation for understanding what the feminist goal of healthy sexual control entails as well as how and why the U.S. does not accomplish this. However, before discussing the issue of healthy sexual expression, there are a number of dilemmas within Nussbaum's work that must be addressed. In the following sections, I will attempt to expand upon and reconcile Nussbaum's notions of preference, choice, and autonomy as indicators of a just state.

Choice, Autonomy, and Alternatives

“Many women in our own society rarely, if at all, experience sexual enjoyment. We are also aware that many features of our society turn women against their own bodies and encourage them to suppress their sexuality. The high frequency of rapes or attempted rapes, childhood sexual abuse, the battering of women, and exposure to pornography limits women's sexual expression and enjoyment. Bodily self-hatred, encouraged by the introduction of unrealizable standards of beauty -- teenage models, Barbie dolls, or even children's fairy tales -- fosters frustration and feelings of inadequacy” (Tamir 1996).

The type of objectification paraded as liberation by raunch culture is contributing to the problem of deeper internalization of oppressive norms for women and men. What is problematic about this, of course, is that we then have greater difficulty recognizing the unequal conditions under which we operate as sexualized, rather than sexual, beings. It

¹¹ I do not presume to have a theory of what constitutes pleasure, but do acknowledge the fact that some women may in fact gain satisfaction from engaging in these bodily practices. But this does not diminish the possibility that their feelings of empowerment could be a result of an internalization of harmful norms, of an acceptance of the terms of dominance and submission as natural and normal.

should strike people as odd that we look to persons who perform arousal as role models for how to achieve sexual satisfaction in our own lives. An important question to ask here then is, if faking sexual satisfaction is liberating, whom in fact are we liberating ourselves from? Could it be that women see partaking in these bouts of exhibitionism as liberation from their parents? From a society that thinks they should be quiet and meek virgins? Could this be a liberating act from themselves? Although each of these questions may help to explain why females engage in these types of behavior, there is no reason to think that these acts are subversive; there is an important distinction between liberation and rebelliousness.

Raymond Williams's widely read article, "Base and Superstructure in Marxist Theory", makes an important distinction between actions that present an alternative to the dominant culture and those that actively oppose it (Williams 1997). Alternative actions let us imagine a space outside of the dominant social reality but they may not necessarily resist it. While preferring, to some degree, oppositional forms of action since they directly contest the dominant social reality, Williams argues that they must be linked with an alternative vision as well in order to disarticulate the dominant reality and rearticulate a new image. I believe this framework can help us improve our grasp of the difference between rebelliousness and liberation. Though supporting the notion of heterosexual promiscuity as a way to reclaim women's sexuality through the consumption, by women, of products like *Hustler* may present an alternative to the prevailing cultural norm that women are uptight prudes, it in no way opposes this idea because it does not challenge the heart of the problem, women's subordination to men. In order to combat this vision of sexuality, we must deconstruct the current reality and replace it with one that is both alternative and oppositional. It is evident that the feminist movement has struggled to provide clarity in determining this difference

between sexual objectification and liberation. The capabilities approach, however, can help us assess where the line for sexual repression and healthy sexual expression is.

Preferences and choice are crucial components of the capabilities approach. Preferences are not an immutable force, they are not innate, they are not natural, they are not even universal. Therefore, as previously stated, Nussbaum argues that because preferences are socially constructed and choices are often made under conditions of inequality, neither can serve as a good indicator of well-being, unless political institutions and norms have been established to support equality, freedom and hence justice.¹² Therefore, by probing the conditions under which actions such as cosmetic surgery occur and industries like pornography operate (“even when women appear to be satisfied with such customs”), it can be said that although women are not, in effect, acting freely, they are acting with knowledge of the situation (Nussbaum 2000: 42). This removes the stigma that women are cultural dopes, mindlessly following the social norms. However, the important point for Nussbaum is reinstating women as *autonomous* agents, an argument developed by Clare Chambers which is explored further in the next section.

Autonomous Nonautonomy

In her article, “Are Breast Implants Better than Female Genital Mutilation: Autonomy, Gender Equality, and Nussbaum’s Political Liberalism,” Chambers develops an argument that attempts to show the ways in which Nussbaum’s commitment to gender equality is incompatible with her political liberalism given the way in which she conceives of autonomy. Within the article, Chambers develops an argument that there exist three different types of

¹² “The prevalence of a practice, and the fact that even today many women endorse and perpetuate it, should not be taken as the final word, given that there are also many women... who struggle against [these practices], and given that those who do perpetuate it may do so in background conditions of intimidation and economic and political inequality” (Nussbaum 1999: 122).

autonomy: negative freedom, first-order autonomy, and second-order autonomy. For the purposes of her theory, she finds only the two orders of autonomy to be crucial in gaining an understanding of Nussbaum's political liberalism. According to Chambers, a person "is second-order autonomous if one actively and willingly chooses one's way of life free from compulsion or influence which would obscure that choice... First-order autonomy applies to one's attitude to the rules and norms which are part of a way of life... One is autonomous [in this sense] if one is governed by rules that one sets for oneself or endorses for oneself" (Chambers 2004: 8). The important distinction to be made here is that second-order autonomy involves the notion that individuals be free to choose the kind of life they want to live, whereas first-order autonomy concedes that a person can be autonomous and still follow the rules set by society so long as they are rules that the person has questioned and subsequently decided would be good to follow. First-order autonomy relies upon individuals's attitudes toward the rules, not whether they were able to choose their life plan free from influence.

In order to further illustrate the differences between the two levels of autonomy, Chambers provides four scenarios to demonstrate the combinations of these orders which political liberals, like Nussbaum, would favor. The first scenario is of someone who is both first and second-order autonomous; they chose their way of life free from compulsion and endorse its conventions. For example, one could argue that Socrates was both first and second-order autonomous. He chose to be a philosopher and endorsed the critical thinking and questioning involved in such a choice. Scenario number two describes a person who may not have chosen their way of life free from pressure, but is nevertheless autonomous given that they approve of the rules in which they live. An example might entail being compelled to

attend a particular school but once there, valuing the challenges faced. In the third scenario we see a person who has chosen their way of life but does not support the conditions of that life. For instance, one could imagine that many women and men choose to enter the military but do not approve of all of the rules involved in doing so (e.g. not speaking negatively about a sitting President). Lastly, scenario four describes a nonautonomous life which was not autonomously chosen; the person was denied both first and second-order autonomy. A possible case in point could be individuals living under a fundamentalist regime like the Taliban. For political liberals then, it is certainly the case that they will support the first scenario and deny the fourth. However, it is situations two and three which are of interest here.

Chambers argues, and I agree, that political liberals, Nussbaum in particular, will prefer scenario three to scenario two and thus second-order autonomy to first. In general, liberals are interested in protecting freedom of choice even if that freedom is used to choose things that would be harmful to the individual. Indeed, Nussbaum argues that the aim of the capabilities approach is to protect and promote “spheres of choice in a way that shows respect for people’s desires, even their mistaken desires, so long as these involve no harm to others” (Nussbaum 2000: 161). Her point that we must guard the spaces in which people can exercise freedom and choose their own life plans according to their own devices illustrates Chambers’s position that Nussbaum prioritizes second over first-order autonomy. Although Nussbaum may appear to be interested in whether individuals endorse the rules guiding their choices, ultimately she is concerned with matters of choice alone. The important point to be made here is not that Chambers doubts the existence of choice but rather the existence of free and equal choices.

Chambers asserts, then, that for Nussbaum, “the crucial normative issue is not what kind of life a person lives in a first-order sense, but whether it has been chosen autonomously in a second-order sense. If it has, then the absence of first-order autonomy is no cause for (political) concern” (Chambers 2004: 8). While Nussbaum does not explicitly make this distinction between the orders of autonomy, evidence of this privileging of second-order autonomy can be found in a number of places throughout her work. For example, when Nussbaum looks at American women she sees the existence of choice, so much so that she argues that disordered eating “in response to culturally constructed images of beauty is a matter of choice, however seductive the persuasion” (Nussbaum 1999: 123). For Nussbaum, as long as food is available for an individual to consume, anorexia is a choice. Nussbaum dismisses the harmful and unequal social norms which condition this choice as simply being seductive persuasion. Her argument here seems to directly contradict her theory of adaptive preferences. As noted in chapter two, the notion of adaptive preferences admits that oppressed groups often “adapt their preferences to [reflect] a social position that [consequently] affords them few options” so as to incur some benefit accorded to them by the dominant group (Superson 2005: 110). Of course, deformed desires are not a necessary result of unjust social conditions, but this does not undermine the fact that the force of injustice is strong. Additionally, Nussbaum writes, responding to concerns about the extent to which the state can intervene in issues of gender equality, that so long as equality is secured in the public political culture, “in general, individuals and groups may choose to view and treat one another in all sorts of hierarchical ways without legal interference” (Nussbaum 1999: 21). From this statement we can clearly see that what is at issue for Nussbaum is not whether individuals support the hierarchies Nussbaum believes may exist, but whether individuals are

able to choose to view others hierarchically or plan to live hierarchically, free from state influence. For Nussbaum, the state's sole responsibility is to ensure an individual's ability to choose; her arguments regarding unjust social conditions appear to be pushed aside when issues of state intervention, choice, and the determinants of justice are brought forth. It seems, then, that the expansion of choice is the condition of justice for Nussbaum and not the transformation of unequal social formations.

Many liberals contend, in response to accusations like those of Chambers, that they do not prioritize the orders of autonomy because they do not separate them in the first place. Implicit in any choice for liberals then is the idea that the individual endorses the rules involved in their choice, otherwise they would choose differently. This is a reasonable argument to make, but there is a tension to be found here as it does not represent the reality in which we live (this line of argumentation can lend itself, in effect, to the idea that some people suffer false-consciousness and are passive dupes of power, an argument Nussbaum claims she is avoiding). If we conflate first and second-order autonomy, meaning to be second-order autonomous is to have first-order autonomy, then scenario three is eliminated from the picture thus denying the possibility of the existence of "uncoerced... nonautonomous lives" (Chambers 2004: 13). This is a move that Nussbaum cannot make given that she argues for people's ability to autonomously choose nonautonomous lives. For instance, it is possible to imagine that a woman might "choose" to have a face-lift in order to stay competitive in the workforce, thereby making a second-order selection to do without her first-order autonomy, a choice, given the conditions under which it was made, that seems neither free nor equal. Yet it is this type of choice that Nussbaum endorses based on her prioritization of second-order autonomy which entails that we must respect a person's choice

as a condition of justice (Nussbaum 1999: 123). Therefore, Nussbaum's adherence to the notion that adaptive preferences are an inappropriate guide for justice, appear to be at odds with this ranking of autonomy.

As previously stated, Nussbaum strongly supports the idea that oftentimes oppressive forces in fact comprise people's preferences and, to a certain extent, advocates state intervention to eliminate those domineering norms that, for her, stand as obstacles to the creation of a truly just state. However, her adherence to political liberalism "leads her to be wary of state intervention, and thus to prioritize individuals' ability to adhere to even those preferences which she has shown to be socially constructed and thus imperfect guides to justice" (Chambers 2004: 14). So although Nussbaum argues that the capabilities approach is a universal theory that does not use the choices of individuals to gauge the justness of a particular society, she seems to abandon this idea in important areas of injustice in the U.S. context (for example, disordered eating). Given this contradiction, I believe it can be shown that while alert to adaptive preferences in the Third World context, in Western countries Nussbaum is inattentive to this problem. Her theory of adaptive preferences should make us question her conclusion that women in the U.S. are making just choices. Nussbaum needs to take more seriously, then, her claim that the conditions under which preferences are formed and choices made should become the main focus of justice and not solely the choices themselves. "We must ask, 'was the social influence which encouraged the individual to make that choice, and is the choice itself, compatible with justice?'" (Chambers 2004: 15). By asking and answering this question we can begin to see that "no one is marched off for electrolysis at the end of a rifle", nor is anyone making thoughtless, uninformed decisions about the bodily practices one chooses to engage in (Bartky 1990: 75). Nevertheless, millions

of women are going under the knife each year and are becoming target audiences and consumers of various types of pornography, the effects of which create a disciplined female body. Therefore, women “must be understood as aspects of a far larger discipline, an oppressive and *inegalitarian* system of sexual subordination” (emphasis added) (Bartky 1990: 75). As a result, equality must become the salient condition of justice and not autonomy because, “if individuals are subject to influence which threatens their equality then it is a requirement of justice that that influence be limited where possible” (Chambers 2004: 15). Consequently, given that we acknowledge our preferences as being socially constructed, Nussbaum’s position of political liberal non-intervention in the name of second-order autonomy must be abandoned. “If preferences can be socially formed, then autonomy cannot require state non-interference on the basis that individuals must be left to make their own choices free from influence” (14).

In the U.S., as previously mentioned, it is often argued that women in fact choose to partake in these oppressive practices that limit their opportunities for sexual satisfaction thus making the action not a question of justice but preference, something that the individual must deal with on their own. Nussbaum, indeed, also makes this argument in the case of American injustices. Even though she argues for the banning of female genital mutilation (FGM) (an immense political action given that she considers the effects of the capabilities approach to be humble and since she believes in state nonintervention in circumstances dealing with adults) she does not apply this same logic to practices like cosmetic surgery or pornography based on her privileging of second-order autonomy (women are free to choose whether to engage with either practice). However, Nussbaum cannot reach the conclusions that she wants as her own argument limits what she is able to attain. If we simply protect second-

order autonomy then Nussbaum cannot argue for the banning of consensual forms of FGM. It is possible to think of FGM as being part of a way of life (for example marriage), the banning of which would go against Nussbaum's assertion that nonautonomous lives, although morally questionable, are legitimate as long as they are autonomously chosen in a second-order sense. One could imagine that an adult woman, even after learning about the harms involved with the procedure, might still choose to undergo FGM and Nussbaum could say nothing against this. However, if she were to more strongly incorporate the importance of equality as a component of justice and reprioritize her notion of autonomy, meaning that choice *and* the conditions of choice must be compatible with justice in all instances in which the capabilities approach is adopted, the justification for the elimination of harmful practices would become more clear.¹³

Nussbaum believes that banning FGM is required in order to attain gender equality, meaning that, in this instance, second-order autonomy must succumb to equality. However, Nussbaum cannot make this concession in the situation of FGM alone if what is important is securing equality; it must apply to all practices which prevent the realization of equality. Nussbaum provides eight reasons why FGM should effectively be banned given the capabilities approach. I believe this rationale can and should be used as a framework to evaluate, understand, and organize to change the very practices Nussbaum believes the capabilities approach should not apply to, cosmetic surgery and pornography. In the next section, I will explore these practices as two specific aspects of the rise of raunch culture in the U.S., and will show how the capabilities approach can help us to gain a better

¹³ Political liberalism typically allows for state interference only in order to increase options by providing education, jobs, and so on; it does not tend to advocate bans as a legitimate form of state intervention.

understanding for their existence, effects, and the reasons why we should work toward their abolition.

Nussbaum, Cosmetic Surgery and Pornography: Conditions for State Interference

Figure 1. EIGHT REASONS TO BAN FEMALE GENITAL MUTILATION (FGM)

1. Female genital mutilation is carried out by force...
2. Female genital mutilation is irreversible...
3. Female genital mutilation is usually performed in conditions that in and of themselves are dangerous and unsanitary, conditions to which no child should be exposed...
4. Female genital mutilation is linked to extensive and in some cases lifelong health problems, even death...
5. Female genital mutilation is usually performed on children far too young to consent even were consent solicited.
6. Illiteracy is an impediment to independence, other impediments are supplied by economic dependency and lack of employment opportunities. These facts suggest limits to the notions of consent and choice... to these limits we may add those imposed by political powerlessness, malnutrition, and intimidation.
7. Female genital mutilation means the irreversible loss of the capability for a type of sexual functioning that many women value highly, usually at an age when they are far too young to know what value it has or does not have in their own life...
8. Female genital mutilation is unambiguously linked to customs of male domination... Sex relations constructed by the practice are relations in which intercourse becomes a vehicle for one-sided male pleasure rather than for mutuality of pleasure (Nussbaum 1999: 123-124).

COSMETIC SURGERY. In 2006 nearly 5.5 million females had some form of cosmetic surgery, over 200,000 of which were young persons ages 13 to 19.¹⁴ The President of the American Society of Plastic Surgeons (ASPS), Roxanne Guy, MD, was quite pleased by these staggering statistics. In response to the 7% increase in the number of cosmetic surgery procedures from 2005 to 2006, Dr. Guy states,

¹⁴ Nearly 11 million Americans had plastic surgery in 2006. Around 5 million of these procedures were done for medical reasons (American Society of Plastic Surgeons 2007).

“Cosmetic plastic surgery is a good barometer of the local and national economy... the increase in cosmetic plastic surgery procedures mirrors the strong economy, low unemployment levels, and high consumer confidence of 2006” (American Society of Plastic Surgeons 2007).

What Dr. Guy fails to mention is what else the increased number of cosmetic surgeries is a good barometer for: the number of women who *hate* their bodies. But in fact then, isn't this number an underestimate given how costly cosmetic surgery is? One could imagine that if it were more affordable, more women would have it. Nevertheless, we can safely say that nearly 6 million American women, and counting, “reduce themselves to ‘potential women’ and choose to participate in anatomizing and fetishizing their bodies as they buy ‘contoured bodies’ [and] ‘restored youth,’” not in an attempt to be beautiful but to become ordinary (Morgan 1994: 240).

Given that the dignity of women is so important to Nussbaum, it is surprising to me that she has such faith in the treatment of women in the United States. Even though she finds it coercive to operate under conditions that are oppressive and that deform our preferences, thus pointing to the ways in which we don't always freely choose particular practices, she seems rather dismissive when discussing American gender inequalities. While she describes and judges the conditions under which women in overseas countries must operate, she does not extend this same logic when discussing American women, instead, as mentioned in the previous section, opting to judge individual choices, no matter how “seductive the persuasion”¹⁵ (Nussbaum 1999: 123). Are we to be convinced then that, for Nussbaum, women who undergo cosmetic surgery in fact *freely* choose the procedure? Can we honestly

¹⁵ Here, Nussbaum is comparing FGM to dieting in the U.S., arguing that dieting, although terrible, does not require the same sorts of regulations as FGM does “however seductive the persuasion”. She writes about limited autonomy and social pressure in this paragraph, but still contends that women in America choose these practices.

say that they are not operating under oppressive norms that everyday tell them that they are not worthy of the name woman? I imagine not. However, even though Nussbaum may in fact find cosmetic surgery to be appalling and might object to women undergoing it (I suspect she would, although she never writes about plastic surgery), she would not argue for its prohibition as she would view it as a rights violation. I do not see, then, how Nussbaum's account of why FGM should be outlawed can stand up to her own scrutiny if that same claim is not extended to cosmetic surgery.

First, the condition of force. Nussbaum prioritizes physical force over social pressure as a condition for state interference.¹⁶ But what makes physical force any worse than intense social pressure given that the results are the same? In other words, since "limited sexual enjoyment is the issue,... the particular nature of the harm [should not] matter so much" (Tamir 1996). Certainly, what makes physical force more straightforward than social pressure is that the perpetrator is easier to identify. However, what makes social pressure just as dangerous and violent as physical force is that, "the disciplinary [force] that inscribes femininity in the female body is everywhere and it is nowhere; the disciplinarian is everyone and yet no one in particular"; human beings are affected by this invisible yet ever-present force on a daily basis (Bartky 1990: 74). Simply limiting the definition of force to that of the physical nature obscures the fact that force appears in many different guises. For example, if there were not an element of force present in ideals of beauty, in 2006 cosmetic surgery patients would not have been 90% female and only 10% male. However, for Nussbaum practices like dieting are ultimately a matter of choice, not force (Nussbaum 1999: 123).

¹⁶ This is not to say that distinctions cannot be drawn conceptually between the two types of force, physical and social, but in attempts to combat oppression I find it unhelpful to privilege physical force over social pressure as that which requires state intervention.

What Nussbaum fails to recognize in the American situation (although she acknowledges it in most others), is that the coercion involved in matters of cosmetic surgery “is camouflaged by the language of choice, fulfillment, and liberation” (Morgan 1994: 250). Women who undergo cosmetic surgery are not choosing to creatively express themselves by adopting a new look. They are conforming to the standards of conventional beauty (read: white Barbie doll) that they drown in on a daily basis (I doubt that many women, for example, have gone to a plastic surgeon in order to make their noses more “Jewish” or “African”). “One cannot have *any* body that one wants – for not every body will do” (Bordo 1993: 250). As cosmetic surgery continues to rise in popularity and its recipients continue to masquerade as agents of “natural” beauty, more and more women will be coerced into “choosing” plastic surgery.

Second, cosmetic surgery is often irreversible. Once the fat is sucked out the doctors cannot put it back, once the skin around your face has been removed it cannot be replaced, once the doctor tightens the vaginal canal with a laser, it cannot be loosened. Also, cosmetic surgery is not a onetime fix, it requires repeated trips to the doctor, especially if you are not an ideal candidate for surgery.¹⁷ Cosmetic surgery is designed for those already “average” looking people. For example, the ideal candidate for a face-lift “should be ‘of slender build, with soft, smooth skin and minimal sub-cutaneous fat, with a family history of youthful aging, without serious illness, emotional trauma, or weight fluctuation after operation, and with the desire and skill to augment the surgical improvement by makeup, hairstyling, and enhancing clothes’” (Davis 1995: 23; Bordo 1993: 190). Each type of plastic surgery has its own perfect

¹⁷ Breast implants in particular must be maintained with continual surgery for the duration of the woman’s life as the life of the implants is finite. Unless a woman has her implants permanently removed, she will have to have them replaced (University of Pennsylvania Health System 2007). For instance, saline implants are expected to deflate in an estimated span of five to ten years (ASCBS 2007). The life span of silicone implants is estimated to be 16.4 years. In a study conducted in 1998, it was found that after ten years, 79.1 percent of silicone implants were still in tact. After fifteen years though, that number fell to 48.7 percent (Goodman, Cohen, Thornby, and Netschek 1998).

patient, all of which highlight the ways in which cosmetic surgery will have to be a continuous investment for the typical recipient.

Third, even though the medical conditions under which these procedures are carried out are in most ways better than some FGM procedures, it does not change the fact that the risks are similar; death is always a risk whether we are talking about liposuction or FGM.¹⁸ Although no statistics are kept regarding the percentages of people who suffer side effects experienced as a result of cosmetic surgery, it is estimated that “around one in 300,000 people die during cosmetic surgery, but more die as a result of infection or an allergic reaction to the drugs used”¹⁹ (Gray 2005). For example, many health experts approximate “that the chance of side effects is between thirty and fifty percent,” some of which occur so frequently they are often referred to as routine complications (Davis 1995: 27). Additionally, procedures like vaginal rejuvenation can often involve a “loss of sensation, chronic pain, and infection.”²⁰ Breast implants are no better.

“The British Department of Health (2000) informs women considering implants that one in ten women suffer capsular contracture, when the scar

¹⁸ In 2004, two women died during routine facelifts in one of New York City’s most prominent cosmetic surgery hospitals, the Manhattan Eye, Ear and Throat Hospital. Each of the women went into cardiac arrest after lidocaine was improperly injected into their throats (Kucyzynski and St. John 2004).

¹⁹ Although statistics are kept for the numbers of people who suffer side effects or die from “routine” or “critical” surgeries, they are not kept for cosmetic surgery (a problem I think can be partly attributed to the frivolity couched within the very name of the surgery). In Uma Narayan’s book *Dislocating Cultures*, she encounters a similar problem when attempting to find statistics on the number of women who are murdered as a result of domestic violence (so as to compare them to the number of women who are victims of dowry murder), a figure that is mysteriously, or perhaps not so mysteriously, absent from all crime records. Narayan concludes that until there is a “readily available category that specifically picks out *lethal instances* of domestic violence in the United States” similar to the “visible *category* of ‘dowry murder’ that picks out a lethal form of domestic violence in the Indian context,” data will be tough to obtain. I believe an analogous argument can be made when comparing FGM to cosmetic surgery. Since there are no readily available statistics regarding cosmetic surgery side effects and deaths in the U.S., “exotic” practices like FGM cross over into the U.S. and are treated as foreign issues, even though there are quite a few similarities (Narayan 1997: 95).

²⁰ “A sampling of the new genital surgeries includes procedures to liposuctions and lifts sagging pubes; inject fat into flat labia majora to give them a plumper, more youthful look; tighten vaginas with lasers; prune long labia minora; and unhood clitorises for greater friction” (Scheeres 2006: 262).

tissue contracts ‘causing the implant to deform, become hard and, in some cases, painful.’ Up to one in twenty women suffer scars which are ‘red, or highly-coloured, thick, painful and... take several years before they improve.’ All women are likely to have painful nipples for three to six months following surgery. Implants may also rupture, cause ‘creasing, kinking, vertical ripple folds and rippling in the breast’, look or feel ‘unsatisfactory’ and bleed or become infected. All implants ‘interfere with the ability of x-rays to detect the early signs of breast cancer, either by blocking x-rays or by compressing the remaining breast tissue and impairing the ability to view any changes which may indicate breast cancer’” (Chambers 2004: 31).

Fourth, cosmetic surgery is often performed on young girls, who by Nussbaum’s standards, are not of consenting age. In 2006, 93,966 cosmetic surgical procedures were conducted on young men and women ages 13 to 19, another 150,158 cosmetic “minimally invasive” procedures were done as well, bringing the 2006 total of teenage cosmetic surgeries to 244,124, an increase from 2005 (American Society of Plastic Surgeons 2007). Fifth, although it is often touted that sexual equality has been achieved, “women continue to be excluded from full participation in the public realm... [thus causing the] cultivation of the body [to become] one of the only ways they can achieve the exciting life which they had come to expect was within their reach” (Davis 1995: 48). Therefore, it is not surprising to find women, especially older women, undergoing all types of cosmetic surgery in order to remain, for example, competitive in the workforce. But competition is not the only social condition behind women’s “choices” to undertake cosmetic surgery. In Chapter Three of her book entitled *Reshaping the Female Body: The Dilemma of Cosmetic Surgery*, Kathy Davis recounts her field research in which she was allowed to observe a number of cosmetic surgery consultations in the Netherlands (where, at the time, cosmetic surgery was covered under the national health insurance). She explores the different accounts women provide in justifying their decisions to have the procedure done, finding that women had a number of very similar rationalizations for problems they all claimed to be unique. “I really *hated*

them....”, “It just made everything else worse....”, “It didn’t belong to the rest....”, “You just can’t stop comparing....”, “I felt so ashamed....”, and so on (Davis 1995: 73-83). Each of these women communicated a story involving their suffering and powerlessness due to their defective body part(s). Again, if a perceived lack of options underscores most women’s decisions to have cosmetic surgery, it cannot be argued that women in fact freely choose to have cosmetic surgery (156).

Sixth, cosmetic surgery often means the irreversible loss of the capability to feel pleasure. Dr. Malcolm Lesavoy, a cosmetic surgery instructor at the University of California at Los Angeles, warns that “anytime you make an incision, nerves are cut. For that reason you have decreased sensitivity” (Scheeres 2006: 264). Given this finding, Dr. Lesavoy advises women against having genital surgeries, especially for cosmetic reasons (advice I believe should be extended to all forms of cosmetic surgery). And seventh, cosmetic surgery is ‘unambiguously linked to customs of male domination’ and ‘male pleasure.’

“The notion that the body can be controlled through a little will power (‘mind over matter’) sustains power relations between the sexes. Women believe that by controlling or containing their bodies... they can escape the pernicious cycle of insufficiency, of never being good enough. Moreover by controlling their bodies they can take on ‘male’ power – power-as-self-mastery. Thus, women paradoxically feel empowered or liberated by the very beauty norms and practices which constrain and enslave them” (Davis 1995: 55).

It is clear then that some form of intervention is required in order to alter these harmful norms. Cosmetic surgery, practically by its very definition, is disempowering as the main reason that people undergo it is because they feel their bodies are substandard, and without solving that problem they will not be able to reap the benefits society provides to those who pass the test of acceptable beauty. Surgeries like vaginal rejuvenation are based on similar conceptions of female genitalia that are held by those who practice the more conventional

forms of FGM.²¹ Both are “based on misogynist notions of female genitalia as ugly, dirty, and shameful” (Davis 1995: 262).

The important question in terms of the bodily integrity capability though is, why do women still think that sexual pleasure is tied to the vagina but not to these other parts of the body that they have surgically altered? Perhaps it is because we still live in a society that is dominated by the insistence on and importance of male pleasure. So of course women will have their breasts enlarged thus reducing their opportunities for sexual satisfaction because what is really important is the excitement and pleasure that their male partner receives from them. This is similar to why women are undergoing laser surgery to tighten their vaginal canals even though there are many other areas on the female body (that is if you haven’t already had them surgically altered, removed, or enhanced) where a woman can experience pleasure; male pleasure is linked to tight vaginas. Many feminists argue that the female vaginal orgasm is a myth.²² But our lack of knowledge about how desire is constructed or functions and how pleasure is experienced is intrinsically tied to the ways in which we construct women’s sexuality. This lack of understanding of the female body and its plethora of potential erogenous zones leads us to privilege what we do know, the penis, and thereby structures our desires and actions based on one-sided information. The point of the matter is that women do not undergo these surgeries for themselves; they know the rules and in order to remain in the game, feel compelled to cut up their bodies.²³ “People know the rules to

²¹ Yet an important difference between the two is that in most countries that conventional FGM is practiced it is outlawed; this is not the case in the U.S. and yet Nussbaum has no qualms about this.

²² Alix “Shulman tells us that the vagina has so little sensation that ‘women commonly wear a diaphragm or tampon in it..., without feeling any sensation at all’ (Tuana 2004: 217).

²³ Even cosmetic surgeons realize that women typically have these surgeries, especially vaginal rejuvenation, for their partners. In an episode from Anderson Cooper 360 degrees, CNN correspondent Randi Kaye interviewed Jeanette Yarborough who had recently undergone the vaginal rejuvenation procedure to have

success in this culture – they are advertised widely enough – and they are not ‘dopes’ to pursue them. Often, given the racism, sexism, and narcissism of the culture, their personal happiness and economic security may depend on it” (Bordo 1993: 30). However, individuals who undergo these surgeries should not trick themselves into believing that their isolated increase in personal power is not also reinforcing the dominant paradigm of male supremacy.

It is obvious that cosmetic surgery cannot escape Nussbaum’s analysis. Women who submit themselves to cosmetic surgery are not suffering from a lack of choice, but from limited options which are shaped by unjust conditions leading to unequal “choices”. Within the U.S. then, it is not the case that the state provides the social basis for sexual satisfaction and women simply choose not to have that function by surgically altering their bodies. If women were provided with the ability to love their bodies, compete on an equal basis in the job market and so on, they wouldn’t feel pressured to choose upward social mobility over sexual pleasure and health.²⁴ “Cosmetic surgery can only be a choice under circumstances where options are limited. It is never undertaken under conditions of perfect knowledge” or freedom (Davis 1995: 119). Here again lies the problem of prioritizing second-order autonomy; women may understand the rules of the game, but that does not mean they endorse them.

her vaginal canal tightened and her hymen reattached, a process that was referred to in the interview as “revirgination”. Jeanette told Randi that she had undergone the surgery “as an anniversary gift to her husband Louis.” What’s worse is that Jeanette described her experience in the waiting room, talking with other women who were planning on having similar surgeries. “Jeanette says some women even bring the doctor pictures from graphic men’s magazines... [and say,] ‘Do you see the way that vagina looks? I’d like to look like that’” (CNN Story on Laser Vaginal Rejuvenation, Labioplasty, and Hymenoplasty 2006).

²⁴ In fact, women are rarely ever provided with the opportunity to know that there is even such a thing as sexual satisfaction given that sex education programs in the U.S. overwhelmingly teach abstinence only.

PORNOGRAPHY.²⁵ “A model named Alex Arden, a former *Penthouse* cover girl, told interviewers from VH1:

‘When you get yourself into the really contortionist position that you’ve got to hold-up and your back hurts and you’ve got to suck in your stomach, you’ve got to stick your hips out, you’ve got to arch your back and you’ve got to stick your butt out all at the same time and suck in and hold your breath, you don’t feel sexy. You feel pain. And you feel like you want to kill [the photographer]’” (Levy 2005: 42).

This description of the torment Ms. Arden went through is representative of the way many other women feel about their jobs in this industry. And yet at the same time, this is probably an understatement regarding porn stars’ experience on the whole as the level of difficulty and pain involved in performing the tricks of the trade is heightened when acting in films.

Imagine trying to maintain the same pose Ms. Arden did while being jostled and pushed around by another person, all while on camera. Given these sorts of descriptions regarding the pain women experience during the production of pornography, it is quite fitting to find the industry described as one “that mass produces sexual intrusion on, access to, possession and abuse of women by and for men [and now growing numbers of women] for profit” (MacKinnon 1989: 194). If this were not the point of pornography, women might in fact experience pleasure from their job. Instead these women are forced to fake, through their

²⁵ Throughout this paper, when referring to pornography I will be using the definition included in the Minneapolis Antipornography Ordinance in combination with the one provided by Diana Russell: “Pornography is the graphic sexually explicit subordination of women through picture and/or words that includes one or more of the following: (i) women are presented dehumanized as sexual objects, things, or commodities; or (ii) women are presented as sexual objects who enjoy pain or humiliation; or (iii) women are presented as sexual objects who experience sexual pleasure in being raped; or (iv) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or (v) women are presented in postures or positions of sexual submission, servility, or display; or (vi) women’s body parts – including but not limited to vaginas, breasts, or buttocks – are exhibited such that women are reduced to those parts; or (vii) women are presented as whores by nature; or (viii) women are presented being penetrated by objects or animals; or (ix) women are presented in scenarios of degradation, injury, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual [; or (x) ‘material that combines sex and/or the exposure of genitals with the abuse or degradation in a manner that appears to endorse, condone, or encourage such behavior.’] The use of men, children, or transsexuals in the place of women in [the paragraph] above is also pornography” (Dworkin and MacKinnon 1988: 36; Russell 2000: 48).

pain I might add, sexual satisfaction. It is no surprise then that when these practices are imitated in real life, women actually do not experience pleasure but instead violation.

As pornography has moved from the margins to the mainstream, its power over sexual relations and sexuality in general has grown, becoming more and more pervasive throughout our society.²⁶ Even before this move to the mainstream, pornography enjoyed a sphere of power; it has and continues to be linked with violence against women and gender discrimination by and large (Donnerstein and Linz 1987; Jennings 1989; Ceniti and Malamuth 1984). The new problem is that as the industry experiences increased popularization, these cruelties stand to be further exaggerated given that, “pornography can invent women because it has the power to make its vision into reality, which then passes, objectively, for truth” (MacKinnon 1989: 205). People then begin to believe that women not only choose to be humiliated, demoralized, and submissive, but in fact, they enjoy it, they gain pleasure from these experiences. Actually, what porn stars gain is a paycheck. What they leave behind is a denigrated view of female sexuality that is exalted by the male-dominated society as truth. However, “there is a widespread belief that sexual freedom is an idea whose time has come. Many people believe that in the last few decades we have gotten more and more of it... [and] indeed many things have changed. But if you look closely at what is supposed to be sexual freedom, you can become very confused” (Stoltenberg 1990: 60). Where is the freedom in a photograph of a woman who has been bound and gagged, genitals flashing the camera? Where is the imagination and diversity in visions of sexuality which repeat over and over again, the male dominated heterosexual portrait of sex?

²⁶ Pornography Census: “Number of adult entertainment websites in 2000: 60,000. Number of adult entertainment websites in 2004: 1.6 million. 1 percent of all websites in 2000 were adult in nature. 40 percent of all Internet traffic in 2000 was to this 1 percent of ‘adult’ websites. In early 2007, 48% of U.S. visitors to adult websites were women” (Nathan 2007: 41).

Pornography then is not an exploratory enterprise that allows for free sexual expression, rather it is a commercially controlled business that dictates to its actors, viewers, and to the American populace what constitutes an authentic sexual experience.

When recounting the work of Andrea Dworkin, Nussbaum writes that “pornographic images repeatedly portray women as dirty and debased, as asking to be raped, as deserving of violent or abusive treatment. Pornography standardly portrays the will of women from a fictive male viewpoint, expressing the thought that they *want* to be used as things for male pleasure” (Nussbaum 1999: 246). It would seem that Nussbaum believes in the violence of pornography and yet she still couches her assessment of the industry in a language of respect for autonomy, but not on behalf of the victims of pornographic violence, but on the side of the producers and viewers of pornography (248-249). This is troubling since pornography has the potential to fill the same requirements for restriction as FGM.

First, force is an intrinsic aspect of pornography, both in its production and its effects. In its production women are sometimes beaten, told to enact a rape scene, sexually harassed, and so on. Each of these elements involves a degree of force, a degree that is carried over into the real world where men (and now women) reenact the objectification they see in pornography. Whether it is being coerced into taking your clothes off for the *Girls Gone Wild* team or violated as a boyfriend recreates a scene from his favorite *Snuff* film (videos sold of actual brutality for sexual entertainment purposes), the force behind pornography, behind sex, has invaded our raunchy culture. During the pornography civil rights hearings, “direct evidence of a causal relationship [, not simple but multiple causation,] between the consumption of pornography and increases in social levels of violence, hostility, and discrimination” were shown to exist in addition to numerous testimony heard from citizens

who described the force central to pornography (Dworkin and MacKinnon 1988: 25; Cornell 2000; Kimmell 1990).²⁷ These reports ranged from women who were “coerced into sex so that pornography could be made of it” to reports of “sexual harassment of living or working in neighborhoods or job sites saturated with pornography” or to a report from a young woman who recounted how her father had used pornography on her mother as well as herself in order “to keep her quiet about her mother’s screams at night, threatening to enact the scenes on [her] if she told anyone” (Dworkin and MacKinnon 1988: 34). And yet pornography is still sometimes viewed as a private, natural expression free from coercion. It is possible that some women freely participate in and take pleasure from pornography, but that possibility in no way diminishes the intimidating nature of pornography. And, “until women are socially equal to men, it will be impossible to know whether any women are in pornography freely” (44).

Second, while pornography itself is obviously reversible, its effects are oftentimes not. Rape, assault, abuse, harassment, and discrimination are all actions that can and do occur as a result of pornography. I suspect that one would be hard pressed to find a victim of any of these violent crimes whose feelings and torment regarding the incident(s) had reversed. Third, pornography is in fact linked to health problems and death. Participants do sometimes contract sexually transmitted diseases from partaking in pornographic films and many women are killed as a result of domestic violence triggered by pornographic portrayals of “natural” sexual relations. The statistics reflecting these occurrences are difficult, if not

²⁷ This hearing was not the only of its kind. During the 1986 Attorney General’s Commission on Pornography hearings numerous testimony was heard similar to those accounted for in the civil rights hearings. For example, “in one case, a man who had participated in over 100 pornographic movies testified at the... hearings... as follows: ‘I, myself, have been on a couple of sets where the young ladies have been forced to do even anal sex scenes with a guy which [sic] is rather large and I have seen them crying in pain’” (Russell 2000: 54).

impossible, to find, but one can assume that it is at least in the hundreds if not thousands. Fourth, child pornography is not an uncommon practice in the U.S.²⁸ In fact, a number of female porn stars, strippers, prostitutes, pin-up models, and the like have been victims of child sexual abuse (Dworkin and Mackinnon 1988: 35). Fifth, many of the reasons why women “choose” to enter the pornography industry are due to the fact that they suffer from intimidation, political powerlessness, economic dependency, and lack of other employment opportunities. Findings similar to those garnered by the city councils in both Minneapolis and Indianapolis state:

“The bigotry and contempt pornography promotes, with the acts of aggression it fosters, diminish opportunities for equality of rights in employment, education, property, public accommodations, and public services... demean the reputations and diminish the occupational opportunities of individuals and groups on the basis of sex;... contribute significantly to restricting women in particular from full exercise of citizenship and participation in public life, including in neighborhoods...” (33).

Sixth, pornography is certainly, if nothing else, linked to customs of male domination and pleasure. Nothing about pornography says that sex is about mutual satisfaction for both partners, it is constructed in such a way as to make any and all pleasurable experiences one-sided, and by that I mean male-sided. Therefore, “what is wrong with pornography... is its degrading and dehumanizing portrayal of women (and *not* its sexual content). Pornography, by its very nature, requires that women be subordinate to men and mere instruments for the fulfillment of male fantasies” (Longino 1994: 156). Since pornography has risen in popularity, so have images of coercive, violent sexual acts and this is precisely the problem. It is often, if not always, the case that pornographic images are tied to instances of pleasure

²⁸ Of course, child pornography is outlawed in the United States, but so is FGM in countries like India, and yet it is still practiced by particular individuals.

(it is designed specifically to induce sexual satisfaction), thereby making it difficult to drive a wedge between that which is sexually coercive and that which is sexually pleasurable.

Although pornography may not conclusively meet all eight of the criteria set by Nussbaum in order to require state interference, it is not clear that given the conditions to which it does match that Nussbaum could argue that pornography is a practice that exists above the threshold set by the bodily integrity capability. A basic requirement of the approach is that the state is to ensure the social basis of opportunities for sexual satisfaction so that people can choose whether they want that function. This requirement, however, is not met by pornography as its intensity seriously hinders the ways in which individuals can even conceive of sexual pleasure in the first place (nor does it secure people from violent assault, an additional component of the bodily integrity capability). Also, given the level of harm that is inflicted on victims of pornographic violence, it seems illogical to say that this is simply a moral argument and thus not suitable for state action. Pornography not only makes sexism sexy, “it keeps sexism *necessary* for some people to have sexual feelings,” as it not only alters the way in which sexualities are conceived but also the ways in which we view our bodies and thus ourselves (Stoltenberg 1990: 64). With the adoption of the capabilities approach, then, drastic action can be taken to combat both the institution of pornography and the practice of cosmetic surgery.

CHAPTER 4

IMPLICATIONS OF THE CAPABILITIES APPROACH IN THE U.S.

“Liberty is not just a matter of having rights on paper, it requires being in a position to exercise those rights. And this requires material and institutional resources, including legal and social acceptance of the legitimacy of women’s claims” (Nussbaum 2000: 54).

Although Nussbaum recognizes the importance and necessity of legally altering norms, public policy and providing material resources for change, she “brackets *the* political question: how?” (Quillen 2001: 94). Nowhere in her work does Nussbaum discuss the state’s role in implementing the necessary changes entailed by the democratic adoption of the capabilities approach, which seems like a rather curious exemption given her clear assertion that FGM should be banned. In order to better illustrate the significant outcomes of the capabilities approach in the U.S., I will argue for the inclusion of Chambers’s harm principle. With this addition, I will suggest that the capabilities approach, as applied to the U.S., would require two massive modifications to U.S. domestic policy in order to partially fulfill the sexual satisfaction component of the bodily integrity capability.

A Not-So Millian Harm Principle

In discussing the conditions constituting the need for the capabilities approach, Nussbaum mentions the impact of harmful norms, practices and policies, but never explicitly describes how we are to adjudicate between damaging and valuable practices. Chambers, noticing this deficiency, proposes her own harm principle that can be used when controversy exists in regard to the harms and/or benefits involved in a particular practice. The introduction of Chambers’s harm principle, forces Nussbaum to choose that which she

prefers most: a Rawlsian conception of political liberalism which would not allow for the banning of consensual FGM (in situations involving adults) or an appeal to justice that recognizes that a purpose of the state is to “enable people to make autonomous choices about their way of life in conditions of equality” thus not requiring “a politically liberal neutral state which makes no judgments about the content of a way of life” (Chambers 2004: 36). As stated earlier, given that preferences are socially constructed they can be formed under conditions of inequality that allow for those preferences to perpetuate inequality and inflict harm on others and ourselves. Therefore, the just state must pay special attention to the conditions under which preferences are formed and act to limit constraints that “perpetuate harm, inequality or both (unequal harm)” (36). But establishing harm and inequality is a tricky business and will prove to be quite difficult, which is why Chambers proposes two conditions that can be applied in order to ascertain when states should interfere in these matters. First, the state must establish whether the respective practice is significantly harmful. In the same way that force need not be limited to the physical and hence can manifest itself in many different forms, harm too can occur in social, material, physical and mental modes. Harm must be evaluated in light of these numerous manifestations. Once a harmful practice has been identified, the second condition is to establish whether “there are any good reasons for individuals to follow the practice, reasons which outweigh the costs involved” (37). As a result, the state should only intervene “to prevent [or restrict a] harmful practice if its benefits depend on the acceptance of [an unjust and/or unequal] social norm” (37). In the following two sections, I will apply this principle to both cosmetic surgery and pornography in order to ascertain the level to which the state should intercede.²⁹

²⁹ I realize that it may seem as though at the same time I am criticizing Nussbaum for creating hierarchies of oppression, I too am creating a hierarchy of harm. However, the reasons for the hierarchies are different.

Cosmetic Surgery: A Permanent Stamp of Inferiority

“Caroline’s story is a dramatic one. When I first spoke with her, she was twenty-six – a pretty blond woman who worked in a grocery store, had her own apartment in a small town, and was engaged to an auto mechanic. At the time of our second interview a year later, she had already undergone three operations and her right breast was massively scarred. More importantly, it was uncertain whether her body would accept the latest silicone implant, or, for that matter, any implant. She began her story with an account of how her right breast became painful and swollen immediately following surgery. A painful abscess developed, culminating in a traumatic experience three months later when ‘this slippery white thing poked its way through the infected hole in my breast before my eyes.’ The breast implant had to be removed until the infection subsided, leaving Caroline with ‘one good breast and this gaping *hole*.’ In the meantime, Caroline had gone on sick leave, become severely depressed, was seeing a psychiatrist, and had broken up with her fiancé” (Davis 1995: 142).

In terms of the harm principle, it has already been established (Caroline’s story illustrating this fact) that cosmetic surgery poses a number of ills to its recipients, the benefits of which are based entirely on unequal norms.³⁰ Women are sacrificing their health, their pleasure, and sometimes their lives all in the name of the unattainable standard of beauty that exists everywhere women turn. Again, men make up only 10% of all cosmetic surgery patients, 10% of six million. In addition to the risks and complications posed by cosmetic surgery, 40% of all plastic surgery recipients wish that they had had more information

Unlike harm, oppression should be eliminated wherever it exists which is why it does not make sense to prioritize certain oppressions over others; there are not good reasons, which outweigh the costs involved, to allow for the continued existence of oppression because it is inherently unequal and thus unjust. However, it is not the case that all harms are oppressive or even unequal. Driving a car is certainly a harmful practice (which is why it is regulated by the state) but it is not oppressive in the way that state policies on rape are.

³⁰ Kathy Davis and Elizabeth Anderson make a similar argument but reach far different conclusions than Chambers. They each contend that given the unequal conditions women operate under, cosmetic surgery may be the best possible answer. Chambers’s approach differs in that those same unequal conditions serve as the basis for state action to eradicate harmful norms and thus cosmetic surgery (Davis 1995: 103; Anderson 1999: 336).

regarding complications and side effects *before* having their procedure done (American Society of Plastic Surgeons 2007). So I must ask then, beauty for whom and at what cost?

Although much research indicates that many cosmetic surgery patients are in fact quite satisfied with their operations, in spite of the amount of pain they suffer (including Caroline from the above story), few mention the adverse effects that plastic surgery has on women as a class due to its normalization as a beauty regimen. This is the type of effect that is vital (although not necessary) to determining the harms involved in plastic surgery.

Cosmetic surgery is a dilemma, in part, because its effects are cyclical. Strictly by virtue of its existence, women are made to feel bad about themselves and if they can afford it, may feel compelled to have cosmetic surgery, thus triggering a chain reaction of shame among females of all shapes and sizes. Recipients of plastic surgery often contend that they undergo these procedures to relieve suffering. What these recipients do not acknowledge though, is that by having the surgery they help to create and perpetuate the suffering of other women who will increasingly grow to hate their bodies given that they will not resemble the “normal” bodies of women around them. The standardization of cosmetic surgery is creating an environment in which “women who contemplate *not* using cosmetic surgery will increasingly be stigmatized and seen as deviant” (Morgan 1994: 240).

In terms of state action, educating men and women about this issue is simply not enough to eradicate the harmful norm; consciousness-raising, although an important component of any feminist movement, may help women to better understand the issues involved in cosmetic surgery (“although I [suspect] they were already aware”), but cannot ensure that women will not have the procedure anyway (Bordo 1993: 30). At any rate, why wait for Americans to wake up and smell the silicone when the state can do something now

to save the lives, health and pleasure of women? Given that sexual satisfaction is an important aspect of this capability, we must then argue that “even *perceptions* of beauty... should yield before evidence of impairment of health and sexual functioning” (emphasis added) (Nussbaum 1999: 125) because,

“nobody should have to harm themselves so as to receive benefits which are only contingently related to that harm, [especially] where the contingency is a social one. This is for the simple reason that harm, by definition, is a bad to be avoided where possible; and where it is only a social norm which requires the harm, it is clearly within the scope of social action to limit that harm. Moreover, without a state ban ensuring universal non-compliance, any individual will face pressures to comply with the norm in order to receive the social benefit” (Chambers 2004: 37).

Pornography: Blushing versus Bleeding

“Gender is sexual. Pornography constitutes the meaning of that sexuality. Men treat women as whom they see women as being. Pornography constructs who that is. Men’s power over women means that the way men see women defines who women can be. Pornography is that way” (MacKinnon 1989: 197).

Pornography’s move into the mainstream has in effect glorified, normalized, and formalized images of women as “fuckable” objects; images that are then mass-produced and distributed in news media, magazines, television shows, movies, the Internet, and so on (197). Is it any wonder then why the types of gender violence that occur in these fictitious environments are translated into reality? The popularization of pornography, I think, is a perfect candidate for Chambers’s harm conditions. First, the practice of pornography is significantly harmful as it has created a hostile environment for women to operate in. Women are constantly objectified and are sometimes even victims of sexual assault and rape based on their relation to pornographic images (Russell 2000: 62). Also, pornography constricts the types of sexualities freely expressed and explored for both women and men. Second, the benefits incurred from pornography do depend on the acceptance of a social

norm that is both unequal and unjust, that is of male sexual pleasure at the expense of female degradation and pain.

Given that pornography meets the two conditions of harm, state intervention is required in order to attempt to eradicate the circumstances under which pornography is considered to be *the* authentic form of sexual expression. In this instance, I believe that we need to abandon our conceptions of pornography as a private choice and consider the idea that actually pornography is an issue of abuse. Therefore, I believe MacKinnon and Dworkin's proposed ordinance that would give women the civil right to legally sue the makers of pornography for harms inflicted upon them, post-production, should be reintroduced as legislation.³¹ The ordinance offers five possibilities for suit: "for coercion into pornography, for having pornography forced on you, for being assaulted because of a particular pornography, for defamation through pornography, and for trafficking in pornography" (Dworkin and MacKinnon 1988: 41). If in any of these instances a court of law sides in favor of the victim, the court can order that reparations be paid to the victim or a ban on the material that inflicted the harm. Many feminists disagree with this proposal, finding it to be too extreme and antithetical to feminist ideas of women's sexual liberation.³² However, the truth of the matter is that as long as smokers are allowed to sue cigarette companies and drivers are allowed to sue car companies, women who have been victimized by pornography, so long as it can be proven, should be allowed to sue the pornography industry. The last two

³¹ Texts of the Minneapolis, Indianapolis, and Cambridge ordinances can be found in Dworkin and MacKinnon's book *Pornography and Civil Rights* (Dworkin and MacKinnon 1988: 99-137). The basis of the ordinance is "proof of harm, not a judgment about the permissibility of an idea" (30).

³² Lisa Duggan, Nan Hunter and Carole Vance ask, "how can feminists be entrusting the patriarchal state with the task of legally distinguishing between permissible and impermissible sexual images?" These authors are right to ask this, but wrong to conclude that the ordinance does this. The ordinance takes the power away from the pornographers and puts it into the hands of the victims. (Duggan, Hunter, and Vance 1994: 165)

sections have illustrated the effects of adopting the capabilities approach in the U.S. In the following section, I will demonstrate the ways in which these consequences move outside of Nussbaum's arguments and analysis.

Beyond Nussbaum

“A liberal state should prohibit those practices which cause significant harm to those who choose them, if they are chosen only in response to unjust, unequal norms” (Chambers 2004: 40).

The implications of adopting the capabilities approach in the United States would move beyond Nussbaum's articulation of its effects in a number of ways. First, even though Nussbaum believes her theory to be universal, in her own practice it seems far from it given that she rarely applies it to Western countries, making the simple act of employing the theory in the U.S. fall outside of Nussbaum's scope. Nevertheless, even when she does apply the capabilities approach to institutions in Western nations, she does so only for those discreet groups (for example, religions in the U.S.) which allow for a choice to exit (Nussbaum 1999: 113). The application of the capabilities approach that Nussbaum advocates cannot apply to those customs, like cosmetic surgery and pornography, which are a part of our larger conception of culture.

Nussbaum argues that so long as customs and organizations are voluntary, thus providing citizens with the ability to exit, society must tolerate even those practices that may appear to be morally wrong or illiberal. But if you live in a society that is constructed based on norms and practices of inequality, to where can you exit? Practices like cosmetic surgery and pornography are so pervasive within U.S. culture that there simply cannot be a choice to exit. This is why state action to eradicate these harmful standards is necessary. “The disciplinary project of femininity is a ‘set-up’: it requires such radical and extensive

measures of bodily transformation that virtually every woman who gives herself to it is destined in some degree to fail” while those women who are able to disengage even in the smallest way, are often marginalized, disadvantaged or stigmatized for this refusal (Bartky 1990: 72). It is not enough to tell someone, “just don’t choose to have cosmetic surgery,” when everywhere you turn are the reasons why you should. Without support systems and resources provided by the state, it becomes difficult for many women to choose to disengage with these compulsory bodily practices. In the case of pornography, the industry has become increasingly inescapable for women and men. As was mentioned previously, pornographic images have inched their way into the most mundane portions of our lives thus influencing the ways in which men think of women and women think of themselves. Oftentimes the “choice” to engage in pornography is no choice at all. And yet, based on her adherence to second-order autonomy or unobscured choice, Nussbaum would argue that this situation is just and thus does not require state interference. In many ways, Nussbaum’s refusal of state action in the practice of pornography is indicative of her belief that justice already exists in the U.S. given that freedom cannot preexist justice, it “always exists on the far side of justice” (Stoltenberg 1990: 62). Since Nussbaum engages with the situation of women in the U.S. from the perspective of choice, it is clear that, for Nussbaum, justice has already been served. I argue instead that state intervention is quite crucial to the elimination of the harmful norms that Nussbaum acknowledges.

The words “state ban” typically invoke images of a paternalistic big brother dictating the good life to society. However, the state makes paternalistic decisions each day when creating food laws to protect the health of its citizens or driving laws to protect the lives of its citizens. Why not also then a ban on medically unnecessary surgeries and an expanded civil

rights law to further ensure the health and lives of citizens? Of course, a ban may not always be a proportional state response, but the reallocation of funds and the transformation of state standards based on Chambers's harm principle just might. For example, make-up does not impose a serious enough harm to warrant prohibition, even though it perpetuates unequal gender norms, as it does not interfere with a woman's ability to experience sexual satisfaction. An appropriate state response might then be to require the use of "non-airbrushed photographs of make-up free women [and men] in state media campaigns or leaflets" (Chambers 2004: 39). This would begin the process of altering harmful norms from the perspective of the state. On the other hand, outlawing practices like breast augmentation or vaginal rejuvenation is reasonable because, given Nussbaum's argument, a society cannot allow for practices to exist that can eradicate the ability to choose a function, especially those based on unequal norms.

In the case of pornography, a ban would not be fitting as "not all sexually explicit material is pornography, nor is all material which contains representations of sexual abuse and degradation pornography" (Longino 1994: 154). This is why it is important to create the civil right that puts the power to determine harm and its cause in the hands of the victim, those who have been actively subordinated by pornography. However, Nussbaum specifically argues against the introduction of such an ordinance, yet another reason why including the capabilities approach in the U.S. moves beyond her assertions (Nussbaum 1999: 249). Even so, Nussbaum's theory suggests support for the ordinance given her thorough analysis of the importance of the bodily integrity capability. However, Nussbaum believes that pornography is a practice that should be protected by, for instance, the First Amendment. She raises four concerns with the ordinance: (1) she believes that MacKinnon and Dworkin

have not articulated a satisfactory distinction between law and morals; (2) she does not believe there to be a direct causal link between pornography and violence against women; (3) she believes that the producers of harmful materials should not necessarily be held accountable for the effects of their works; and (4) we should not put a great deal of faith into a judge's ability to not abuse the ordinance by allowing charges to be brought against material not intended to be covered by the ordinance (Nussbaum 1999: 248-249). However, even given these apprehensions, in *Sex and Social Justice* Nussbaum does not deny the effects stemming from pornography; she recognizes that it is a violent act that can spawn other brutal attacks (246). But then how can Nussbaum argue against the ordinance given that it meets two of the four criteria in the bodily integrity capability: freedom from violent assault and sexual satisfaction. She deems her four trepidations to be qualification enough to side against MacKinnon and Dworkin while also maintaining the veracity of the capabilities approach. But I believe her criticisms of the ordinance cannot withstand her own inspection.

First, the ordinance exists not as a response to people's moral concerns but rather as a response to material evidence illustrating the harms created by pornography. Therefore, the law was created not because some people simply do not like certain sexual acts, but because it was decided that the harm caused by the *acts* represented in MacKinnon and Dworkin's definition of pornography "is not worth the sexual pleasure they give to other people" (Dworkin and MacKinnon 1988: 40). Second, although crimes such as rape and other forms of violent assault can have multiple or competing causes, in many cases the cause is quite obvious. During the pornography civil rights hearings, numerous women testified that pornography was the cause of their rape or the sexual harassment they experienced, and so on. Several other laboratory studies were conducted which confirmed that increased levels of

hostility toward women were evident as more pornography was introduced into the lab setting. It seems then to be a rather empty criticism of the ordinance given these studies and the fact that the victim must be able to prove beyond a reasonable doubt that pornography is at the root of the crime. “Just as smoking is not the only cause of lung cancer [and yet smokers can sue the tobacco industry], neither is pornography the only cause of rape,” but that does not mean that pornography does not have a major role to play in some rapes (Russell 2000: 88). Third, Nussbaum claims that we cannot hold all persons responsible for the effects of their works, otherwise we would be infringing on speech as well as creativity. She uses Nietzsche as an example given his influence on the Nazis. What Nussbaum fails to keep in mind though is that *Beyond Good and Evil* is not the same as the latest *Snuff* film; Nietzsche is not a pornographer and thus could not come under the ordinance as it only allows citizens the right to sue for harms inflicted due to pornography. Nevertheless, it is a fact that the state holds citizens responsible for their actions regardless of intent everyday. In sexual harassment laws, for instance, the intent of the harasser is the one thing that is of no matter in a court of law. Even though the accused may not have intended for it to be harassment, the outcome of the action speaks louder than intent because what is at issue is the crime committed and its *effects* on the victim. I doubt that Nussbaum would suggest we reverse the 1991 Court of Appeals decision in *Ellison v. Brady* so as to amend sexual harassment laws to include exceptions for the intent of the accused.³³ Similarly, then, the ordinance is not proposing regulations on ideas but actions, and why should those actions that are a part of pornography involving force, assault, coercion, and so on be tolerated? Pornography cannot come under the same types of queries that traditional speech forms do

³³ Although imperfect, this landmark decision by the 9th Circuit Court of Appeals did conclude that sexual harassment must be evaluated from the perspective of the victim (UC Riverside Title IX Office 2003).

because “pornography is not speech but a material practice” (Mason-Grant 2004: 14). Lastly, the justice system in this country can be a risky business but no more risky than doing nothing to help defend the victims of pornography.

Similarly to pornography, although Nussbaum never explicitly addresses the issue, one can assume that she would be opposed to a ban of cosmetic surgery. As has been argued already, Nussbaum believes that when it comes to practices like dieting, women choose to participate and hence would more than likely conclude that women choose to have plastic surgery. Consequently, I believe that both Nussbaum and Kathy Davis hold similar positions regarding the restriction of cosmetic surgery:

“...Taking the decision out of women’s hands is not only paternalistic, but misrepresents women’s competence to make a choice on the basis of the information available. More seriously, by denying women the power to decide to have cosmetic surgery, it also forecloses the opportunity for them to decide not to have it. Rather than encroaching upon women’s rights to making decisions about their bodies, it is my contention that we need to think about ways to effectuate their decision making: by providing information, support, and opportunities for reflection and deliberation” (Davis 1995: 155).

Based on her position as a political liberal and her prioritization of second-order autonomy, for Nussbaum it would be a rights violation for the state to intervene in such an issue. The problem with this line of argument is that banning cosmetic surgery does not misrepresent women’s competence. Many critics of cosmetic surgery are fully aware that plastic surgery recipients are knowledgeable of the reasons why they engage in the bodily practices that they do. The argument made by these critics though is that a practice that is strictly based on notions of inferiority should not be allowed to persist given that it perpetuates harmful norms, the benefits received are tied to ideas of female deficiency, and it limits opportunities for sexual pleasure. It is true that most people living in this world operate under conditions of

limited knowledge and options, but when those limits are tied to inequalities and are thus unjust, the government has a responsibility to limit those situations when and where possible. Given Nussbaum's own argument of what counts as an undeformed preference and hence a free choice, in addition to her proposed ban of practices like FGM, it is possible to conclude that she would have to agree. The capabilities approach demands that she take the oppressions of American women far more seriously than she does by requiring she also apply the logic of her argument to those women in Western countries because fighting injustice is what is truly at the core of her work.

In summary, the capabilities approach, if applied to the U.S., would require the reallocation of large sums of money, the creation of new resources to address issues of inequality that do not preclude the ability to choose a function, and the outright banning of those that do. For all these reasons, in addition to her colonialist resistance to address the injustices in the U.S., the capabilities approach moves beyond its "humble" origins. "Sexism is not just a set of attitudes regarding the inferiority of women but the behaviors and social and economic rules that manifest such attitudes," therefore, the response cannot be limited to those advocating a change of heart and mind; bigoted notions require extreme measures to ensure deep-seated change (Longino 1994: 160).

CHAPTER 5

CONCLUSION

Breast augmentation, rape, tummy tucks, sexual harassment, vaginal rejuvenation, *Snuff*, liposuction, assault... each of these words helps to capture the most recent upsurge in the devaluation of females and the female body in the U.S. However, it is often thought that the U.S. is a liberal democracy that upholds freedom and equality while also promoting human flourishing. According to this logic, then, it is often concluded that the inequalities that do exist in our society are a matter of individual preference and therefore do not need to be addressed in any radical way. But as Nussbaum has argued, preferences are adaptive and are thus often shaped in response to the oppressive situations in which we live. A slave may begin to think as a slave and accept the limits put on them as part of their own structure of preference, but we should not mistake this occurrence as being just (Nussbaum 2000: 150). It is Nussbaum's conception of justice which can give way to the radical transformation of oppressive societies into stable, just, democratic communities. With the case of the U.S., in order to eliminate the inequalities discussed in this paper, citizens would need to create systems of support that (1) educate women and men about the harms involved in cosmetic surgery and pornography, (2) provide the appropriate resources so that individuals are able to have a healthy self-image and sex life, and (3) implement extreme measures such as the banning of nonmedically necessary forms of cosmetic surgery and the reinstatement of the antipornography civil rights ordinance. Because women often justify their operations by saying that they had no other choice and since women can frequently point to the cause

behind the sexual violence that was inflicted upon them, we can no longer fall back on excuses of liberty, choice and autonomy in an avoidance to reconcile the issue. So long as women's bodies are considered something to escape from, something inferior to those of their male counterparts, even if some women are able to escape the confines of their defective bodies and achieve social acceptance, the female body "will always be thought less of" and thus can become the object of abuse and disregard (Levy 2005: 112).

Ultimately, if the capabilities approach were democratically adopted, the injustices existing in the U.S. would be unabashedly exposed forcing American citizens to not only account for these existing inequalities but to also create solutions that would eliminate them as forms of oppression. To take the capabilities approach seriously then means to accept that there are considerable implications and political changes attached to doing so. The approach is *not* a humble one as Nussbaum claims, because it clearly illustrates the heightened levels of inequality present in countries we often consider to be just as well as practices we often mistake as being feminist.³⁴

What might society look like then if we implement the capabilities approach and are able to achieve true sexual liberation and equality? bell hooks provides a convincing suggestion that invites us to acknowledge the revolutionary power of the capabilities approach. She writes:

"a shift that will undoubtedly emerge as the struggle to end sexual oppression progresses will be decreased obsession with sexuality. This does not necessarily mean that there will be decreased sexual activity. It means that sexuality will no longer have the importance attributed to it in a society that

³⁴ However, given the criticisms lodged against the capabilities approach in general, many of which I find persuasive, I am unsure if the capabilities approach is what feminists should be advocating. I think the conclusions drawn in regard to the approach's implications are important but not exclusive to the adoption of the capabilities approach. There are other ways in which to advocate for these changes that might avoid some of the criticisms made of the capabilities approach.

uses sexuality for the express purposes of maintaining gender inequality, male domination, consumerism, and the sexual frustration and unhappiness that deflect attention away from the need to make social revolution” (hooks 1984: 158).

In the end, Nussbaum’s hope to avoid the position of the Western feminist imperialist appears to crumble as she constructs a hierarchy of oppression ranking women in foreign countries as the most oppressed and women in Western countries as the least. Creating this sort of hierarchy only serves to further disadvantage those who are already oppressed because by attending to some exploited peoples at the expense of another, or all others for that matter, only serves to buttress those already existing inequalities while also creating new forms of oppression. Although Nussbaum emphasizes that a theory of justice must recognize that a person is a person no matter how far, she does so to the detriment of those living closest to her (Nussbaum 1999: 122). A truly universal theory of justice would stress that an injustice is an injustice, no matter where you are.

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