

Interview:

From Marx and the Capabilities Approach, to Rawls and Liberal Egalitarian Justice: An Interview with Martha Nussbaum

In your work on the capabilities approach you note the kinship between your own approach and Marx's early work. What is it exactly about Marx's work that you find important?

I find Marx's early work important for its recognition that a flourishing life for a human being is not simply a life of satisfaction, but rather a life in which truly human functioning, functioning appropriate to the worth of a human being, is available. Such a life requires material and institutional arrangements that foster not only a decent living standard in the usual economic sense, but a good human relationship to our living, by which Marx meant the availability of sociability and practical reasoning in all areas of life. In place of 'the wealth and poverty of the economists' Marx placed 'the rich human being and rich human need,' understanding the rich human being as a 'human being in need of a

totality of life-activities.' I consider this insight the ancestor of the capabilities approach. Another way in which Marx's early work is important for my approach is in its insistence that human functioning always has material and institutional preconditions: even freedom itself is not available just because the state keeps its hands off. The state that is going to produce real human freedom has an affirmative task, to create the material conditions in which a free life can be lived. (I connect this idea particularly with the need for state support for education and health care.)

The capabilities approach has been very influential in the areas of international development, poverty measurement, women's development and political philosophy generally. Where you discuss these issues in your own work, you have highlighted how the approach provides not just a good metric for understanding disadvantage, but a way of including the concerns of some of the most oppressed people. How would you situate your approach on the political spectrum?

Well, I would begin by *not* situating it on the US political spectrum, since this sort of comprehensive concern for the prerequisites of a flourishing human life is utterly off the political table in the US at present. Such was not always the case. Roosevelt's idea of the 'second bill of rights' and Eleanor Roosevelt's related work on the Universal Declaration of Human Rights have a close relation to the approach I favor, as did much of Lyndon Johnson's Great Society. Even the Supreme Court in those days seemed likely to recognize a range of social and economic rights as enjoying constitutional protection, with the great Justice Brennan taking the lead. Today, however, I would find this approach most nearly realized in the social democracies of Europe — before they began to cut back on their commitments. Having worked with a UN agency in Finland, I have formed a close attachment to that political culture, and I think Finnish social democracy is a very good example of what I favor, if we can leave to one side the issue of closed borders, and the xenophobia that is a rather pervasive feature of Finnish society. (On the issue of respect for pluralism, which is an aspect of my approach that I share with the political liberalism of John Rawls, I think that the US does relatively well, indeed somewhat better than many of the nations of Europe, and that our system of liberal education, which makes it easy to integrate the study of race and ethnicity, of women, and

of other minority issues, into the university curriculum deserves a lot of credit for this.)

While critical of many aspects of the Rawlsian approach to justice in your book Women and Human Development, you nonetheless seemed closer to his project than in your present research. What differences does your understanding of a capabilities approach make when developing a non-contractarian theory of justice?

I don't believe that I have moved further away from Rawls in my present work. I continue to think that his theory of justice is one of the strongest such theories we have, and I continue to have a lot of agreement with it, particularly in the area of pluralism and respect for diversity. (I'm currently working on a new introduction to *Political Liberalism*, for a new edition that will be published.) It is simply that in my current work I am turning to issues concerning which Rawls himself was unsure that his own theory could be extended to provide adequate guidance. These issues, which he mentions in *Political Liberalism* as problems for his theory, are: justice to people with disabilities, justice to non-human animals (Rawls does not actually grant that these are issues of justice), and justice across national boundaries. Concerning the last of these, Rawls believed that his approach could ultimately be extended to provide adequate guidance. In his last book, *The Law of Peoples*, he attempted this extension. I believe that this book is his weakest, and it dramatically shows that Rawls's approach cannot (without major change, which he does not attempt) address economic inequalities between nations. Concerning the first two issues, Rawls himself said that they were questions on which 'justice as fairness may fail;' he invited people to pursue them and see how serious a problem this might be for his theory. I view myself as following this invitation.

There are three aspects of Rawls's theory that I believe we must call into question, and in each area I would argue that the capabilities approach does better. First, we need to conceive of the 'primary goods' that society distributes as capabilities, not resources, in order to take account of people's different abilities to convert resources into capabilities, as Amartya Sen has long said. Rawls is unwilling to make this shift because of the importance he attaches to wealth and income as definite ways of indexing relative social positions, a strategy that is

crucial to his argument for the difference principle. However, that commitment is independent of his general contractarian approach, and one might reject it without altering the basic structure of his theory – though one would either have to come up with a different argument for the difference principle or to argue instead (as I do) for an ample social minimum.

Second, we need to take issue with his Kantian conception of the person, with its emphasis on a rather idealized notion of rationality as the core of our political humanity and our human dignity. Such a political conception of the person makes it impossible to respect the equal humanity of people with mental disabilities, and makes it impossible to envisage any type of reciprocity between human beings and non-human animals. I believe that it also distorts our relationship to the frailties and disabilities of the 'normal' human life cycle, an important issue as populations age. The capabilities approach as I have developed it uses a political conception of the person that is more Aristotelian than Kantian, seeing human rationality as one aspect of an animal existence, and not the only one that is relevant to our dignity. Human dignity is seen in our animality, not as opposed to it. This means that the approach can recognize and respect dignity in children and adults with mental disabilities, and envisage political reciprocity in ways that fully include them. It also means that it is easy to extend the approach to take account of the need to reform our relations with non-human animals, seeing dignity in their lives and trying to figure out how we might respect that dignity.

Third, and finally, we need to challenge the assumption that lies very deep in the social contract tradition, namely that people will get together and contract for principles to form a society only if they are rough equals in power and ability, because only then will cooperation yield mutual advantage. Despite the egalitarian and Kantian elements that are very important in Rawls's theory, he declares himself a contractarian at this point, and he says that the idea of a rough equality of power and ability (which he traces to Hume as well as to the contract tradition) is his analogue to the idea of the state of nature in classic contract doctrines. He makes it explicit that this rough equality means that the parties in the original position know that their physical and mental powers lie with the 'normal range.' He knows well, and emphasizes often, that his particular type of contractarianism entails that problems posed by people with

disabilities can be handled only after basic political principles are already chosen, at the legislative stage. I believe that this is inadequate. Certainly we can easily see that it makes it impossible to include the severely disabled on a basis of full equality. And of course it makes impossible any account of fundamental entitlements based in justice for non-human animals. Rawls does not believe that our relations to non-human animals raise questions of justice, but I do.

The capabilities approach operates with an account of the purposes of social cooperation that is richer and more inclusive than contractarian accounts: people get together to form a society in part for mutual advantage (understood in the usual economic terms), but also out of a love of justice and a love of humanity. Only if we have such an account of the purposes of social cooperation can we explain why people would (as by now we do) seek to create a society that respects the dignity of people with disabilities and supports their full inclusion as citizens.

What do you take to be the chief legacy of John Rawls's work?

I believe that the chief legacy has been to supplant utilitarian ideas with a much richer set of ideas, which, I think, correspond much more nearly to people's 'considered judgments', to use Rawls's phrase. The idea that each person should be treated as an end, and none as a mere means to the ends of others, was present in the tradition, of course, in Kant and, in a different way, in Smith and even (I believe) in Mill. But it took Rawls to show us in detail what this intuitive starting point would yield for political theory. So that idea of the person as end, and the related idea of impartiality, is the important idea, but the great thing about Rawls's work is that it is not just an intuitive idea, but a vast and extremely well-argued structure, in which all the parts are complexly related to one another and illuminate one another.

I myself also deeply value the core ideas of *Political Liberalism*, concerning reasonable disagreement and the need to respect comprehensive conceptions of value. Some people think that here Rawls moved away too much from the Enlightenment, but I think that he is right, and that the resulting theory is urgently important for modern societies, who are grappling with all the difficulties of pluralism.

You have been openly critical of some American feminism influenced by postmodernism, noting that some of it has only the 'flimsiest of connections with the real situation of real women'. In your own work you stress the importance for feminism of notions of dignity and equality. How do you understand the requirement to focus on 'real lives' with an appeal to universal notions? In particular, how does your model of a list of basic capabilities respond to hostile but democratic discussion?

I do think that the starting point should always be people's real problems and what they say about those problems. That is why I keep going out into the field and looking at what good NGOs in India working with women are doing. But it is not possible, in our theory-driven world, that the particular insights of such activists will prevail in the policy arena without some kind of theoretical structure. If one goes to the World Bank and tells stories of poor women's lives, one will not get much of a hearing, nor would anyone understand the extent to which these stories entail rejection of dominant economic-utilitarian models. So one needs a counter-theory, one that encapsulates the voices and, I hope, the insights of good activists and goes to bat for them in the halls of power. That's how I like to see my theory, and I think that there is some evidence that it is working in this way. It is no use pretending that one can do without theory, since the world is right now run by theories, some of them grossly defective. The only hope a richer humanistic vision of the goals of policy has is to be formulated in the form of a theory, and that is what I try to do. Theories must, of course, use universal notions, as do activists themselves, when they talk about human rights and human dignity. The notion of human dignity is a central one in constitution-making the world over, and I often follow the lead of the Supreme Courts of India, South Africa, etc., in my understanding of what this notion implies. The list of capabilities can be seen as a list of what the fundamental rights section of a constitution might include.

I do not think that people's current preferences are always automatically the best basis for social policy, because preferences are often distorted by unjust background conditions: by fear, subordination, lack of information, as well as by enjoyment of power, racism, and sexism. But the NGO's that I visit seem to me to exemplify conditions under which preferences are reasonably reliable: trust, lack of hierarchy, lack of intimidation, respect for each person, etc. (I discuss all this in ch.

2 of *Women and Human Development*; Paolo Freire has written well about these conditions.)

Now of course one of the points I try to emphasize throughout is the great importance of respect for pluralism and different visions of the good. There are five ways in which this respect for pluralism works itself into the very structure of the theory: (1) The list of capabilities is tentative and open-ended, subject to revision, supplementation, and deletion. (2) The list is formulated at a high level of generality, to leave room for the legislative and judicial processes in each nation to specify the relevant capabilities rather differently. For example, Germany has a free speech right that is somewhat less protective of dissident political speech than is the corresponding right in the US; antisemitic speech can be suppressed. Each country has responded in a reasonable way to their own different histories. (3) The conception is regarded as a list for political purposes, in the context of a form of 'political liberalism,' not as a theory of human nature or a comprehensive ethical conception. People can link it to their religious or secular comprehensive conceptions in many different ways, as the framers of the Universal Declaration of Human Rights explicitly did. (4) The major liberties that protect pluralism (liberties of speech, expression, religion, press, etc.) are major items on the list. (5) The political goal is capability, not actual functioning; many people who support a right to vote and freedom of religion would be offended were voting made mandatory, or religious functioning. (6) The whole project is a basis for persuasion and dialogue, not for implementation. I believe that questions of interference in the internal affairs of another nation are very difficult questions, and I favor humanitarian intervention only in a very narrow range of grave cases. So I imagine the capabilities list as something we will continue to debate, but it will only be implemented to the extent that nations decide to implement it (and to put it into international treaties and organizations). If a given nation decides that it does not want equal treatment of the religious groups, or equal treatment for women, I think we can show by a good philosophical argument that they are wrong. But that doesn't license us to use force against them; it does license us to use persuasion and argument.

Do you think US academics, particularly philosophers, responded adequately to effects of recent US interventions in Afghanistan and Iraq, especially the effects on women?

Well, we have no idea as yet what the effects of these interventions on women may be! In the case of Afghanistan, they initially seemed good, but there are ominous signs that the situation is degenerating, and I feel that it is important to keep insisting on a larger role for women in the decision-making process there. I am not sure that academics involved with these issues made enough of that point, although I was glad to see an increased general level of concern with women's opportunities, something that feminists had tried to get people to care about for a long time without success.

In the case of Iraq, overall I think that US academics, prominently including philosophers have played a good role, expressing their views, whatever they are, and spending a lot of money on ads to state those views in places where people would see them. But the problem is just there: we have to pay thousands of dollars to get our views into the *NY Times*. The American media are even more closed to academic voices than they were a few years ago, and it is difficult for any of us to get into media that have general circulation. The government has even less interest in soliciting the views of academics than US governments usually do, and none at all in soliciting the views of academic feminists. As for women and Iraq, I have been very worried all along that going in there without a well-worked-out plan for 'nation-building' and a cooperative multinational force to implement it would lead to a sharp downturn in the capabilities of women, as fundamentalism rushes into fill the empty space. I hope I will be proven wrong; in any case, I think academics are well aware of this danger, but nobody cares what we think.

In general, I think that the corporate ownership of the US media has led to a real decline in the freedom of the press. The press in Britain seems to me more inclusive and expressive; so too in India. And neither of those nations has ever had the degree of anti-intellectualism that the US has always had. In the US, being an academic virtually guarantees that nobody in Washington will listen to you.

In your recent work you argue that compassion is a basic social emotion with respect to the creation of civil society. Could you explain what you

mean by this, and whether compassion is any more basic than other human emotions that have been associated with anti-egalitarian theories such as fear or envy?

First of all, I am writing much more on this topic: indeed, I've promised a book on connections between compassion and the capabilities approach. One sign of the position I'll take is an article I wrote in *Daedalus* winter 2003, called 'Compassion and Terror.' But to try to answer your question as well as possible: in *Upheavals of Thought* I argue that compassion is a basic social emotion, in the sense that it forms a connection between oneself and the reality of another person's good or ill. One does not have compassion, I argue, unless one sees the other person's plight as seriously bad, and as an important part of one's own scheme of goals and projects. In the emotion itself, this connection between oneself and another is affirmed and strengthened. (I draw on psychological studies that link compassion to helping behavior.) Fear and envy are not social in this way: other people figure in them only as obstacles or instruments to one's own well-being. They do not involve the affirmation of another person's good as an important part of one's own scheme of goals and ends. Now of course compassion can go wrong, particularly by mis-estimating which predicaments are really serious, and by putting only a narrow group of people into one's circle of concern. That is why I argue that we need to combine compassion with an adequate ethical account of our relations to people at a distance, to educate the emotion accordingly, and to build institutions (such as a good tax system) that incorporate and fix the insights of an ethically appropriate compassion, so that we need not rely on having perfectly compassionate citizens all the time. But such institutions will not be stable unless we also produce compassionate citizens, or at least enough of them to make a difference. There is a lot more to be said about the relationship between compassion and the arts, which nourish the ability to imagine the predicament of another and estimate its seriousness.

You also argue that the emotion of pity is a similar emotional state to compassion. What do you say to those who want to make a sharp distinction between compassion and pity, and to those within social movements (such as the Disability Rights Movement) who vehemently

object to being defined by prominent egalitarians as 'tragic and pitiable victims' of brute bad luck?

Well, the point I make is a slightly different one from the one you describe. I try to say that there is great continuity in the Western philosophical tradition in discussing an emotion that writers call by various different names, in the different languages, but define in a common manner. Because a central ingredient of this emotion, in the classic accounts, is the thought that one's own possibilities and vulnerabilities are similar to those of the sufferer, it is (rightly) thought to be an egalitarian emotion, and not one that involves condescension. This emotion is called *pitié* by Rousseau, but he stresses its sense of common fellowship, and the way in which it undermines hierarchy. Similarly, the Greek terms *eleos* and *oiktos* always stress common vulnerability, although the most common English translation for these words is 'pity.' In German, the most common term is *mitleid*, which we usually translate 'compassion,' but Nietzsche feels perfectly free to use French *pitié* as an alternative, when he is scoring points against Rousseau. So my point is that although by now the English word 'pity' has nuances of condescension and superiority, that is not so of Rousseau's *pitié* and Greek terms that are rendered in English by 'pity.' We should therefore prefer 'compassion' as an English translation for these terms. I am sure that there is an emotion that corresponds to what the disability advocates are worried about: It says 'Poor you,' from a position of smug invulnerability. The English word 'pity' often designates such an emotion. That is very different from the emotion that I am talking about, which insists on the fact that we are all prone to disabilities of many sorts. I think sometimes people with disabilities reject both sorts of emotion, both what I am calling 'pity' and what I am calling 'compassion,' taking up an extremely Stoic position. The Stoics thought that misfortunes are never really bad, because the dignity of the will and of human agency is never taken away by them. So they thought that compassion was always inappropriate, because it involves the thought that the misfortune matters greatly. I think that some disabled people have the Stoic view: their disability doesn't really matter, hasn't made things worse for them. If that is their view, they will reject both 'pity' and 'compassion.' I believe that this rejection is comprehensible, because so often the agency and intelligence of people with disabilities have been denigrated. An understandable reaction is to say, 'I am not

damaged at all, thank you.' Still, my own view is that it is best for us to treat disabilities as large and serious misfortunes (that any human being might suffer), because only then do we have the proper social incentive to support the full inclusion and functioning of people with disabilities and to treat these conditions medically (and to insist on public funding for these treatments) insofar as we can.

Liberal egalitarianism underwent a revival in the 1980s and 1990s at the same time as many national governments in the West were retreating from egalitarian principles. Would you see this as a symptom of the detachment of philosophers from reality or a genuine attempt to articulate an alternative to dominant principles?

I find this remark puzzling. The impetus for the revival of liberal egalitarianism in philosophy was surely John Rawls's great work, *A Theory of Justice*, which developed in the 1960's, and was published in 1971, at the height of the Great Society. Rawls always thought of his work as something of an apologia for the status quo: he said he refused honorary degrees because he was so mainstream, and he feared that a Marxist or some other non-mainstream person might not be honored for work of similar distinction. The US then began its march away from these ideas, but, not surprisingly, philosophers kept on debating and refining them, since they found them good ideas, as indeed they are. At this point in history, of course, the feeling is that we are proposing an alternative to dominant principles, but that is not always how things were. I would add that Rawls's theories still do coincide with the status quo in the area of 'political liberalism' and respect for religious and ethnic diversity, where there is reasonable harmony between reality and philosophy.

In some other areas, philosophers seem to me to follow political changes, rather than leading them. In 1970 hardly any philosophers were writing about feminism and none was writing about sexual orientation; now philosophers in the mainstream debate all of these issues of justice, at the same time that American society also does so. In feminism, the work of leading theorists has very much influenced the political debate; but in the area of sexual orientation, politics has moved well ahead of the timid profession of philosophy, for the most part. So too with the issue of disability: there is fine work, but most of it is either done by

philosophers who are also activists, or is posterior to the work of disability activists.

In the area of animal rights, the philosophers who care about that are indeed 'ahead of' and offering a challenge to the mainstream culture, but that has been the case since Bentham's time, and Bentham's prophecy that cruelty to animals would one day look to everyone as odious as slavery has not yet been fulfilled.

So it's much as one would expect: sometimes philosophers move ahead of or against the current, sometimes they try to preserve good ideas that have been rejected, sometimes they simply recognize and incorporate into their work social changes that are taking place.

Some of the most interesting research being done in political philosophy at present is concerned with aspects of global justice. To what do you attribute the surge of interest in global justice in recent years among philosophers?

Well, what we might also ask is, why didn't philosophers address this issue before? Utilitarians did to some extent. But basically it is only very recently that people have begun to develop systematic theories on this topic. I believe that the failure to address global justice until recently has several causes. One is that philosophers are on the whole not very knowledgeable about the world outside their own nation, at least American philosophers. The blame for this rests to a great extent on the American educational system and the American media, but philosophers could have done more to inform themselves. When we were hiring a colleague, several years ago, who would hold a joint appointment in the philosophy department and the Human Rights program, we looked, not surprisingly, for knowledge of the world, and we found very little. Luckily, the only candidate who adequately displayed such knowledge was also the best philosophically, and he accepted our offer. Similarly, when Sen and I worked on quality of life at the World Institute for Development Economics Research, we had a very hard time getting philosophical papers that had an adequate empirical grounding. Some of the very good ones we published never were sufficiently tethered to the facts.

Another obstacle in the way of philosophers' addressing the issue of global justice is that our major theories of justice have taken the nation state as their basic unit. In the case of the dominant social contract

tradition, this is no trivial aspect of the theory, easily to be modified. It is built deeply into the logic of the theory. So addressing global problems in a really adequate way would mean major theoretical change. It would, *inter alia*, mean recognizing the role of entities such as corporations, non-governmental organizations, international treaties and organizations, in the allocation of duties to promote human rights and human well-being. So a wholly different sort of theory seems required, and theories will have to have a high degree of responsiveness to the world, as the nature of the entities involved shifts over time.

So why have philosophers finally come to take up the topic? Well, it is important, and people see that. One incentive is surely the phenomenon of globalization, which makes clear the inadequacy of any theory of justice that treats the nation-state as an isolated entity. Another incentive is surely the information that people increasingly have – even philosophers – about global inequalities. Philosophers, if not all that well-informed about world events, are, on the whole, a rather decent group of people, and any egregious injustice that exists they will probably address sooner or later.

Article:

Curbing the Deficit: Democracy After the European Constitution

Albena Azmanova

Summary

This study assesses the democratic potential of the draft Constitutional Treaty for Europe.¹ It reviews the various sources of the democratic deficit in the European Union and examines the effect of some of the provisions of the draft Constitutional Treaty on the quality of democracy at national and supranational level. The institutional strategies contained in the Treaty collide to create a policy dilemma: increasing democratic

¹ This article is based on a lecture I delivered at the symposium on European Enlargement and Institutional Reform at the Diplomatic Academy of Vienna, organised by the Institute for European Studies of The Free University Brussels (VUB), 18–19 September 2003. I have profited from the feedback Chris Bertram offered on the first draft, as well as from the detailed comments I received from the group of anonymous reviewers. With pleasure I acknowledge my gratitude to William Chew III and Jacqueline Cessou for help with the final revisions. The intellectual companionship of Steffen Elgersma, as always, gave energy to my writing. Of course, I retain full responsibility for the content and structuring of the ideas expressed in this work.