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Edited by Flavio Comim and Martha C. Nussbaum

Excerpt

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Introduction

Capabilities, challenges, and the omnipresence
of political liberalism

Martha C. Nussbaum

The chapters in this volume cover such a wide range of topics and engage in such intricate debates with my work that it would be impossible to respond to them all with the level of rigor and detail that they invite, and it would be rude and disrespectful to respond to only some of them. I shall therefore use this Introduction to do two things. First, I shall lay out some future challenges for the capabilities approach that the chapters, as a group, suggest – both by what they say and by what they omit. I shall then delve into just one issue that currently engages me a good deal, closely connected to the recent paper on political liberalism that is reprinted in the present volume: the question of whether the idea of political liberalism is applicable to all the democracies of the world, and to the global political order itself, insofar as there is one. That issue is not addressed in the reprinted article, but it urgently needs addressing.

Challenges for the capabilities approach

Confronting alternative theories

Political justification, as I conceive it (accepting John Rawls's account of how we pursue reflective equilibrium), is a matter both of repeated testing against people's considered judgments and of confronting alternative theories.¹ In *Women and Human Development* I confronted informed-desire Utilitarianism, trying to show how the capabilities approach (CA) is superior. In *Frontiers of Justice* I did something similar with theories of the social contract. It is a matter of intricate philosophical work to confront such theories, especially the best and deepest, and

¹ See Nussbaum, *Women and Human Development* (Cambridge University Press, 2000), Chapter 2, for a detailed account. One should also take note of my "On hearing women's voices: a reply to Susan Okin," *Philosophy and Public Affairs* 32 (2004), 193–205, where I correct a common misreading: listening to the voices of poor people is, for me, not a part of political justification but rather a part of self-education, to make sure that the theory responds to reality. Gough's paper (Chapter 14, below) has this misreading, or so I believe.

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I view my engagement with John Rawls's great theory as an ongoing conversation. For that reason I particularly welcome Henry Richardson's eloquent defense of a reformulated Original Position (OP). Responding to him in the *Journal of Ethics*, I have said that the changes he proposes in Rawls's formulation satisfy the most urgent of my objections.² But since Richardson focused on the question of disability, not the equally important questions of transnational justice and justice to non-human animals, there is more work to be done in this regard, and I look forward to engaging with him further in the future.

Similarly inviting is the alternative theory articulated by Mark Fleurbaey. Just as Richardson modifies Rawlsian contractarianism to meet my objections, so Fleurbaey modifies preference-based Utilitarianism in a quite attractive way that invites full-scale treatment. I think he has gone a long way to removing some of the biggest objections to preference-based approaches, and I also agree with him that one should not make choice the be-all and end-all of political principles. Where I would want to engage further, however, would be in the area of fundamental political principles that express equal respect for all. It seems to me that our interest in having equal voting rights, equal rights of conscience, etc. does not derive from individual preferences in any direct way. We want our nation to show respect for each and every person by giving them equal voting rights even if they don't care about voting, as many Americans don't. It's an objective statement of the equal worth of persons, and we make that statement because we think the worth of persons is equal, period. Indeed, I have defended equal voting rights for people with severely impaired cognitive capabilities, who could not possibly understand or care about voting, just on the grounds that this is required by a deep idea of equal respect.³ I think Fleurbaey's otherwise attractive proposal runs into serious difficulty dealing with people whose cognitive disabilities are severe, given its emphasis on rankings of lives, which many such people can't do, and on autonomy, which they cannot attain. The next step in our dialog would be to explore all of these issues.

The Gough–Doyal approach to basic needs is another that needs extensive discussion, although I think Gough (Chapter 14) is correct that it dovetails in many respects with my own. Still, the approach is more subjective than mine. First, it attaches considerable weight to actual consensus, whereas

² Nussbaum, "Replies," *Journal of Ethics* 10 (2006), 463–506.

³ Nussbaum, "The capabilities of people with cognitive disabilities," *Metaphilosophy* 40 (2009), 331–351. Reprinted in *Cognitive Disability and its Challenge to Moral Philosophy*, ed. Eva Kittay and Licia Carlson (Malden, MA: Wiley-Blackwell, 2010), 75–96.

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The omnipresence of political liberalism

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I follow Rawls in making consensus only a possible goal. Second, the approach defines serious harm as “fundamental disablement in the pursuit of one’s vision of the good.” I am not sure how this makes room for the lives of people with severe cognitive disabilities, nor even for the problem of adaptive preferences. On those areas we’d need further dialog. Finally, since Gough concludes that the “foundations” of my theory are “shaky,” I would want to point out that, with Rawls, I reject any type of foundationalism in political justification: if one looks for foundations, one will not find them, because I think justification is and should be holistic and ongoing, reaching toward an endpoint of reflective equilibrium that is not yet attained by any theory. Detailed confrontation between Gough’s theory and mine would be part of that search.

Finally, although nobody mentions it here, Amartya Sen’s challenge to all ideal theories of justice, in *The Idea of Justice*,⁴ raises a fundamental issue for my theory as much as for Rawls’s, since my theory is more like Rawls’s than like the non-ideal theory advanced by Sen, in its overall aims and nature. I have said a good deal about other differences between Sen’s theory and my own,⁵ but that large difference remains to be explored – not necessarily by me!

Animals and the environment

The chapters by Bendik-Keymer and Holland represent very welcome statements about how the capabilities approach may possibly help us to address urgent issues of environmental quality and non-human life, and what dividends we might expect from its application there. They represent, however, just the first steps in a larger theoretical project. Holland applies the capabilities approach entirely within the context of an anthropocentric account of capabilities. That’s one good thing to do, but we need to ask, at a deeper level, whose capabilities count as goals. In *Frontiers of Justice* I have offered some reasons for thinking of non-human animals as subjects of political justice, but I (so far) resist the inclusion of plants (except instrumentally), and I retain the principle that individuals are ends, thus refusing to make ecosystems ends in themselves, though they are surely important for the ends of animals and humans. Others will take the dialog further. Bendik-Keymer, emphasizing the depth and multifacetedness of the notion of dignity, gives us a good start.

⁴ Sen, *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009).

⁵ In Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Harvard University Press, 2009).

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Emotions

Although quite a few of the chapters (especially, perhaps, Comim's eloquent one) mention the emotions and their role in my work, none focuses on their political role. As I mentioned at the conclusion of *Frontiers of Justice*, that is my next, and current, project. Imagining a demanding political goal that demands sacrifice of self-interest requires imagining how people can be led to care about it. We cannot justify it without showing that it can be stable over time, and for the right reasons. John Rawls understood this, and he supplied a sketch of how a public psychology of emotion might underwrite a just society. But it remained both too sketchy and too abstract, in my view, too little connected to the uneven, quirky emotions of real people. So that is the task that has been occupying me for the past ten years, and in 2013 my book *Political Emotions: Why Love Matters for Justice* appeared.⁶ Suffice it to say that themes of gender are at the very heart of the project.

Law and public choice

Nobody in the present volume takes up my contention that the capabilities are a template for constitution-making or for implicit constitutional entitlements in nations without a written constitution.⁷ My own writing on this focuses on the US Constitution and the Indian Constitution, but it would be great to have much more work on this topic from a variety of legal traditions. One issue that is illuminated thereby is the constantly vexing issue of measurement. How do we measure the presence of a capability? People usually search for some quantifiable something. But if they thought about the history of a constitutional principle, such as free speech, or freedom of religion, they would see that the way we typically measure how far it is present in a society is more discursive and historical: we study the history of case law, for example, seeing what sorts of litigants bring their grievances before the courts, and how their complaints are adjudicated.⁸ Especially where gender equality is concerned, this would be a very fruitful approach.

⁶ Martha C. Nussbaum, *Political Emotions: Why Love Matters for Justice* (Cambridge, MA: Harvard University Press, 2013).

⁷ I say this everywhere, but the idea is developed at greatest length in Nussbaum, "Constitutions and capabilities: 'perception' against lofty formalism," Supreme Court Foreword, *Harvard Law Review* 121 (2007), 4–97.

⁸ I wrote a longish book about just one principle: *Liberty of Conscience: In Defense of America's Tradition of Religious Equality* (New York: Basic Books, 2008); that entire book is what I take to be a measurement, in the case of one nation and one principle.

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Another invitation I've repeatedly issued is for more work on the institutional structure of the capabilities approach. Iris Marion Young often criticized me for not saying anything about this, and I said to her that she could do it far better than I could. But, tragically, she will not address that or any other further issue. I, however, still feel that I don't know enough. I have made an effort to study public choice theory, with the aid of a superb class taught by my colleague, Saul Levmore, but this showed me two things: first, that the literature contains intense debate rather than settled consensus; second, that my type of mind is not the type that is going to make creative contributions in this area. So I really wish that some formally trained scholars would take this on. I know there is much to be learned here.

Political liberalism: omnipresent and transnational

In "Perfectionist liberalism and political liberalism," reprinted in this volume, I make an argument for a norm of Rawlsian political liberalism at the domestic level.⁹ It might be thought, since my discussion begins from Rawls, that I intend the argument to apply only to Europe and North America, since Rawls (apparently) so limits it. Indeed, John Alexander's chapter in the present volume argues that I have no warrant for exporting it to the nations of the developing world, since Rawls did not so apply his own concept. I did once make an argument that the norm of political liberalism applied to transnational norms, as well as to norms internal to non-Western societies, but that argument (written for my article "Rawls and feminism" in *The Cambridge Companion to Rawls*) was excised for reasons of space and because other sections of the article were deemed more immediately pertinent to feminism.¹⁰ Here I shall not reproduce that older argument, but shall begin from the ground up, so to speak, although I shall incorporate elements of a little-known paper of mine, "Political liberalism and respect: a response to Linda Barclay."¹¹

I shall argue for several claims in this brief discussion, which should be read as a crucial addendum to the *Philosophy and Public Affairs (PAPA)* article:¹²

⁹ See John Rawls, *Political Liberalism*, expanded paper edition (New York: Columbia University Press, 1986). Hereafter *PL*.

¹⁰ Nussbaum, "Rawls and feminism," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge University Press, 2003), 488–520. Some of the material from the excised section will appear in Nussbaum, "Rawls, *Political Liberalism: A Reassessment*," to be published in a volume of essays on *PL* edited by Thom Brooks and Martha C. Nussbaum (Columbia University Press, 2014).

¹¹ In *SATS: A Nordic Journal of Philosophy* 4 (2003), 25–44.

¹² Reprinted as Chapter 1 of this book.

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- (1) That John Rawls, although he did apparently restrict the application of political liberalism to the European and American nations, did not advance compelling reasons for so doing.
- (2) That the same issues that make political liberalism a normatively good position for a Western domestic society are reasons present in every existing democratic state.
- (3) That these same reasons are not only not undercut but actually acquire additional force when we move from the domestic sphere to that of international relations.

Rawls's restriction

It is actually quite difficult to know why Rawls decided to restrict the application of his doctrine of political liberalism and overlapping consensus to Western countries that have a legacy of thought deriving from the experience of the Wars of Religion.¹³ Indeed, he does not exactly say that he views that legacy as a necessary condition for the application of the doctrine; what he says seems compatible with the idea that he takes no stand one way or the other regarding its extension to other cultures.

Before we go further, we need to know what Rawls thinks needs to be the case if we are to apply these ideas to a society. Clearly, he does not think that we need to be able to show that most citizens in a nation currently hold these views. For Rawls clearly thinks his ideas applicable to the United States, where he knows and repeatedly states that they face strong opposition of one type or another.¹⁴ Nor, apparently – since he adopts positions on economic redistribution and campaign finance that he is well aware were minority positions in 1986, when the paper edition of *PL* was published – do we even need to show that these positions are majority positions. On another front, Rawls's account of religious liberty and equality is probably incompatible with the views and practices of a majority of Europeans.¹⁵ So, actual consensus or even majority support are not necessary. Nor does he claim that he has proven that such a consensus “would eventually form” around his ideas.¹⁶ The chapter on overlapping consensus, indeed, shows us that he believes that all that is required – at most – is that we be able to demonstrate a

¹³ For pertinent comments, see *PL*, xxvi, xxxi

¹⁴ Consider the discussions of free speech and campaign finance in *PL*, where he uses US legal materials to apply his basic ideas.

¹⁵ See Nussbaum, *The New Religious Intolerance: Overcoming the Politics of Fear in an Anxious Age* (Cambridge, MA: Harvard University Press, 2012).

¹⁶ *PL*, xlvii–xlviii: “PL makes no attempt to prove, or to show, that such a consensus would eventually form around a reasonable political conception of justice.”

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plausible path from where we currently are to an overlapping consensus, over quite a lot of time. From a mere *modus vivendi*, we can see how we might advance to a constitutional consensus; and from there we can imagine how we might advance to the overlapping consensus. He does not tell us where he thinks particular nations currently are on this spectrum. (Kurt Baier argued that a constitutional consensus is sufficient for political stability, and that the US is already at the stage of constitutional consensus, although it would appear that he was thinking about political and civil liberty, not about economic justice.¹⁷) This transition, Rawls holds, is made possible by the looseness in most people's comprehensive doctrines: they are not all of a piece, and new ideas can lodge in part of a doctrine that will ultimately cause the revision, even radical revision, of other parts.¹⁸

It is abundantly clear from that important chapter¹⁹ that a nation that right now has at best a *modus vivendi* on crucial matters can be a full and unproblematic candidate for the application of Rawls's doctrines. Indeed, by continuing to include the US and Europe, although no country in the group has even a *modus vivendi* on the full range of issues that Rawls's theory addresses (the US not on economic matters, Europe not on religious liberty and religious establishment), he strongly suggests that we usually begin further back, with an unsettled debate in which the normative ideas of the political doctrine he defends are but one voice among many. All that's needed is the not utterly unreasonable hope that these ideas could over time follow the type of trajectory he imagines, and a plausible story about how that transition might go. Indeed, by suggesting a parallel between our current situation and the situation of liberal intellectuals in Weimar Germany (who failed to provide a compelling abstract defense of their norms, a mistake that Rawls intends to help us not make today), Rawls strongly suggests that the values he defends may at present be those of a severely embattled minority.²⁰ At the conclusion of the Introduction, moreover, he emphasizes that even the idea that human beings have a moral nature of the sort that could eventually accept the principles of justice is not advanced as a fact, but only as a Kantian practical postulate, which we accept because the alternative would leave us wondering "whether it is worthwhile for human beings to live on the earth."²¹

¹⁷ Kurt Baier, "Justice and the aims of political philosophy," *Ethics* 99 (1989), 771–790. Rawls discusses Baier's article in *PL*, 149 and n. 15, noting that he is not claiming that a true overlapping consensus is necessary for political stability: Baier might be right that constitutional consensus is enough.

¹⁸ See *PL*, 159. ¹⁹ *PL*, 133–172. ²⁰ *PL*, lxi–lxii. ²¹ *PL*, lxii.

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Why, then, does Rawls believe that the ideas apply only or primarily to the US and Europe? Certainly not because he ignores the existence of illiberal ideas in those political cultures and their history: indeed, the eloquent preface to the paper edition of *PL* couches the whole project as a response to fascism. He says virtually nothing. But let us imagine his most likely response (given his emphasis on the Wars of Religion). It is that the experience of the Wars of Religion gave European nations (and their colonial offshoots in North America) an idea of how wrong it is to oppress people and how important liberty of conscience is. Even if such ideas did not immediately prevail, they struck deep roots, and stuck around. At the same time, the experience of the Wars of Religion gave those nations experience of a fact that Rawls makes fundamental to his account of the “burdens of judgment”: namely, that under conditions of liberty people do not come into agreement in their comprehensive ethical and religious doctrines. And seeing that lack of agreement, combined with the importance of conscience, people would reasonably find attractive the ideas of political liberalism.

This is plausible enough, but note that it took a very long time for anyone in North America or Europe to find this inference plausible. Westphalia was not an agreement in favor of liberty of conscience and respectful pluralism. Domestically, people kept trying to oppress minorities, just as the former dissenters, who ought to have known better, did in North America – with the shining early exceptions of Rhode Island and Pennsylvania. So Rawls can’t mean that this experience is a sufficient condition for people coming to find political liberalism attractive.

Does he think it a necessary condition, and, if he does, why does he? Now first of all, I think we really should be asking not “What is required for people to want to apply a normative concept to themselves?” but rather “What is required in order for a normative concept to be correctly applied to them?” There are all sorts of reasons why people fail to apply normative concepts to themselves (concepts such as racial equality and gender equality, to name only two) – reasons including ignorance, greed, and selfish partiality. Rawls, as a Kantian, is fully aware of this. The Original Position has its roots in normative ideas of impartiality that do exist in people’s minds, but along with a lot of other stuff that works against impartiality: that’s why it takes the veil of ignorance, which renders that other stuff inoperative, to extract its implications. So Rawls does not hold that a concept is applicable to people only if they already have it and apply it to themselves. At most he holds that the concept has roots in some things that people believe, even if for the most part they act in accordance with other things they believe.

So it seems that he ought to conclude that the normative concepts of political liberalism, concepts such as equal respect and overlapping consensus, and the impartiality of the OP itself, are applicable to people whenever there is something in the thought of that group, and of many individuals in the group, that could reasonably ground the development of such concepts.

Rawls clearly thinks that the experience of the Wars of Religion helped people get these ideas – although, as I have mentioned, it certainly took a long time. Does he think that other ethical traditions of the world – Buddhism, Islam, and Hinduism, for example – do not contain these grounding experiences and the associated concepts, while the religions of the West and the history of the West do better? He certainly does not say this, and he would have been ill advised to do so, since so far as I know he never devoted study to those nations and traditions. We certainly see prominent recognition of ideas of human equality and equal respect in the independence movements and the subsequent constitutional traditions of both India and South Africa, two of the largest and most prominent non-Western democracies.

Did they borrow these ideas from the West? Even if they did, it would still be important to insist that this does not entail that the ideas must be applied only there. All human beings are ingenious borrowers of ideas. The West got all of its mathematics from the East, and the Enlightenment could not have taken place without that borrowing; nonetheless, we do not consider that we have no right to claim those ideas. Similarly, even were it true that the ideas of political equality, democracy, human dignity, and toleration were basically Western Enlightenment notions, this would not prevent and has not prevented many other nations and peoples of the world from putting them into their constitutions, from fighting and dying for them, and so forth. Such a deliberate staking of one's future on the ideas would seem to make the ideas theirs even more firmly than they are ours, who got them by habit. If, moreover, we were to adopt the principle that the ideas of a people are only the oldest ideas in their tradition, we ourselves would have to go back to Homeric Greece, perhaps, where none of the Rawlsian ideas can be found in anything like their modern form, as Rawls himself stressed.²² (Not to mention the fact that many of "us" would trace our origins back to Africa, China, India, the shtetls of Eastern Europe, etc., all with their different ideas.) Why do we allow ourselves and not others the ability to change and to borrow?

²² *PL*, xxiv.

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Second, the historical record of any culture is the record, largely, of its most powerful voices; we have little record of what poor, illiterate people have thought about the world they live in, or what women of any social class have thought of their lives. So to the extent that we defer to what appears to be the entrenched tradition of a distant society, allowing that tradition to delimit what we expect of it, we are simply agreeing to entrench sexism and class hierarchy, without fully hearing the voices of those who suffer from them. For many women, for example, the ideas of feminism are more intimately theirs, more their tradition, than whatever it was that oppressed them.

We should not, however, concede that the ideas that provide the materials for Rawls's conception are "Western," even in the sense of their historical origin. Is it plausible to suppose that Gandhi and Mandela, when what they saw of "the West" every day was brutality and utter disregard for human rights, together with the most obtuse and virulent racism, would have thought that they should go to "the West" to pick up those ideas? Of course, both of these men admired parts of Western civilization, but both considered that it had failed, as Gandhi's famous remark about Western civilization ("I think it would be a good idea") shows with characteristic pithiness and humor. But both also found deep roots of these ideas in their own traditions. Gandhi, of course, had work to do to find human equality in Hinduism, but he energetically undertook this reconstruction of what he took to be the religion's core, with some assistance from India's Buddhist traditions, which were much admired by Nehru, and which were so deeply admired by B. R. Ambedkar, chief architect of India's Constitution, that, a dalit, he converted to Buddhism. And Buddhism was no recent import: it had been teaching human equality since the time of Ashoka in the third to second centuries BCE. Islam, present in India since at least the eighth century CE, has deep traditions of equality, and in its own historical context was a revolutionary egalitarian movement. Of course, no religion has done well with gender equality until recently, but that's a general story, and certainly the Wars of Religion did not shed light on that important value. As for condemnation of selfishness and greed, that is a staple of all the major religions, not peculiar to those of the West.

What about the ideas most immediately at issue in the debate between political and comprehensive liberalism: the idea of the "burdens of judgment" and the persistence of religious and ethical pluralism under conditions of liberty? Did the experiences of non-Western nations contain experiences that would give thoughtful people such ideas? (We can quickly agree that most people all round the world don't automatically have them.) Well, if we just look at India, we will see that the history of