

Human Rights and Human Capabilities

Martha Nussbaum*

I am a theorist, not a practitioner, and I believe that good theory is important for good practice. The most important theoretical development in human rights during the past two decades has been the elaboration of the “Human Development Approach,” otherwise known as the “Capability Approach,” embodied in the Human Development Reports of the United Nations Development Programme annually since 1990, and in theoretical work by Amartya Sen, myself, and, by now, hundreds of young scholars in various nations. The Human Development and Capability Association, four years old, of which Sen was the first President and I am currently the second, now has 700 members from around forty-nine nations, dedicated to pushing this intellectual work further. The Capability Approach, as I have developed it, is a species of a human rights approach. It makes clear, however, that the pertinent goal is to make people able to function in a variety of areas of central importance. Some who use the approach use it simply comparatively; I myself have attempted to defend the use, for political purposes, and as a basis for constitutional thought, of a list of ten “Central Human Capabilities,” including Life, Bodily Health, Bodily Integrity, the Development and Expression of Senses, Imagination and Thought, Emotional Health, Practical Reason, Affiliation (both personal and political), Relationships with Other Species and the World of Nature, Play, and Control over One’s Environment (both material and social). I specify each of these more concretely in Appendix A, but I also leave a good deal of room for countries with different histories and traditions to do this specification somewhat differently.

Producing capabilities requires material and institutional support, and the approach thus takes issue with the facile distinction of rights as “first-generation” (political and civil) and “second-generation” (economic and social). All rights, understood as entitlements to capabilities, have material and social preconditions, and all require government action. The Capability Approach has pushed forward the analysis of women’s human rights, the rights of the poor, and, more recently, the rights of people with disabilities. At the same time, we have been arguing for the crucial importance of material redistribution across national boundaries. The Human Development and Capability Association is working on further theoretical development of the approach, and also on practical implementation. The United Nations Development Programme produces a Human Development Report each year that ranks nations in accordance with capabilities, not GNP, and this has led to a new attentiveness to health and education, for example, as keys

* Martha Nussbaum is Ernst Freund Distinguished Service Professor at the University of Chicago, appointed in Law, Philosophy, and Divinity. In spring 2007, she is Visiting Professor of Law and Classics at Harvard University.

to a truly flourishing human life. Almost all nations now publish their own internal Human Development Report. Even the United States, which typically lags behind, has recently done so. The Capability Approach has raised awareness that you do not secure the necessary ingredients of democracy without at the same time focusing on material issues such as health care and the provision of universal primary and secondary education.

The approach was initially developed as a way of looking at nations one by one and comparing them with one another. But, used in my version, with a list of specific capabilities as a benchmark for a minimally decent human life, it is well suited to address inequalities between nations. I have done so in my recent book *Frontiers of Justice*,¹ where I argue that the Capability Approach gives better guidance on that issue than is supplied by utilitarian approaches or approaches in the classical social contract tradition. If we begin with the idea that all world citizens are entitled to a decent minimum level of the capabilities on my list, we can work back from that starting point to think about how nations, international organizations and agreements, multinational corporations, NGOs, and individuals can share the duties corresponding to those entitlements.

As we leave behind twenty years that yielded a theoretically fortified Capability Approach, we head into the next two decades facing a number of critical human rights challenges. Chief among them are producing a world in which all children grow up with a decent set of opportunities for education, health care, bodily integrity, political participation, choice, and practical reason. At the same time, we must produce a world that treats nonhuman animals decently and protects their habitats. For those who are ready to begin the work of producing such a world, the Capability Approach holds great promise for framing the way we approach, and ultimately overcome, these challenges.

1. MARTHA NUSSBAUM, *FRONTIERS OF JUSTICE: DISABILITY, NATIONALITY, SPECIES MEMBERSHIP* (2006).

APPENDIX A: THE CENTRAL HUMAN CAPABILITIES

1. *Life*. Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living.
2. *Bodily Health*. Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.
3. *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.
4. *Senses, Imagination, and Thought*. Being able to use the senses, to imagine, think, and to reason—and to do these things in a “truly human” way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing works and events of one's own choice, religious, literary, musical, and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences and to avoid non-beneficial pain.
5. *Emotions*. Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.)
6. *Practical Reason*. Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance.)
7. *Affiliation*.
 - A. Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)
 - B. Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of non-discrimination on

the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.

8. *Other Species*. Being able to live with concern for and in relation to animals, plants, and the world of nature.
9. *Play*. Being able to laugh, to play, to enjoy recreational activities.
10. *Control over One's Environment*.
 - A. *Political*. Being able to participate effectively in political choices that govern one's life; having the right of political participation and protections of free speech and association.
 - B. *Material*. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.