

Interview

Martha Nussbaum

Edited by *Sara Protasi**
sara.protasi@yale.edu

MARTHA NUSSBAUM is currently the Ernst Freund Distinguished Service Professor of Law and Ethics, appointed in the Philosophy Department, and Law School. She is an Associate in the Classics Department, the Divinity School, and the Political Science Department, a Member of the Committee on Southern Asian Studies, and a Board Member of the Human Rights Program. She is the founder and Coordinator of the Center for Comparative Constitutionalism. Prof. Nussbaum has chaired the Committee on International Cooperation, the Committee on the Status of Women of the American Philosophical Association, and the Committee for Public Philosophy. In 1999-2000 she was one the President of the Central Division. She has received awards and honorary degrees from more than forty colleges and universities in the U.S., Canada, Asia, and Europe.

Her latest published book is *The New Religious Intolerance*. Her current book in progress is *Political Emotions: The Public Psychology of a Decent Society*.

1. Two years ago you published a book called *From Disgust to Humanity* (Nussbaum, 2010). From its very title, it is apparent that it contains the development of some themes present in your 2004 book *Hiding from Humanity*, which contained a powerful critique of the role played by shame and disgust in the law. The subtitle of *From Disgust to Humanity* is *Sexual Orientation and Constitutional Law*, and makes it clear that it is an application of those theses to the topic of discrimination based on sexual orientation. In the book you vehemently argue against what you call the *politics of disgust*, to which you oppose the *politics of humanity*. The politics of humanity is a politics of equal respect that is empowered, and in some cases made possible only, by the exercise of imagination. It is quite difficult to respect a human being that has been presented under the guise of a slimy and oozy

* Department of Philosophy, Yale University, USA.

thing, source of contamination and impurity, and it is precisely under this guise that LGBT people are often presented in the public sphere.¹ You suggest that the morally appropriate and politically efficacious response to the anti-gay propaganda based on eliciting disgust is to find ways of showing that LGBT people are «human beings of equal dignity and equal entitlement pursuing a wide range of human purposes» (Nussbaum, 2010, p. 51). An important analogy throughout the book is the one between discrimination against LGBT people and discrimination against African Americans, Jews, and other ethnic minorities. In general, you argue that «the case of sexual orientation seems analogous to gender and race because, in all three cases, people are classified by a trait, and then being denied fundamental opportunities in a wide range of areas because of that trait» (Nussbaum, 2010, p. 44). You mention also discrimination against disabled people. In particular, you frequently refer to anti-miscegenation laws as analogous in many ways to anti-sodomy laws. It is now unthinkable for most of us that not so long ago it was illegal for a white person to marry a black one. A little while ago, the satirical magazine *The Onion* published a “science fiction” article in which students look at the issue of gay marriage in a similar way to how we now think of anti-miscegenation laws (<http://www.theonion.com/articles/future-us-history-students-its-pretty-embarrassing,19099/>). Aside from the topic of marriage, do you see any significant difference between the two kinds of discrimination?

I think that each type of discrimination is subtly different, and indeed that is a project I have for the future, in collaboration with some colleagues in India: to investigate the varieties of discrimination – on grounds of caste, religion and ethnicity, race, gender, sexual orientation. My argument is that homophobia and American racism share an underlying anxiety about the body that leads people to project onto the minority the disgust properties – bad smell, sliminess, hypersexuality – that people fear in themselves. But there are subtle differences. African-Americans were standardly portrayed as mere animals, brutes, not even quite part of the same species. Gay men are portrayed as sex maniacs, but are thought to be crafty and intelligent (as indeed were Jews), planning a takeover of society and a destruction of its institutions. Then there is the whole issue of lesbians. As I argue in the book, they are subject to dis-

¹ LGBT is an acronym that collectively refers to “lesbian, gay, bisexual, and transgender” people.

crimination, as are gay men, but are less often the objects of disgust. Indeed, sex between women is a staple of straight male pornography and is standardly found arousing. In the case of lesbians, the focus of discrimination is on their rejection of the patriarchal family as the norm, and this is found threatening without being found disgusting in the same way that the sex acts of gay men are found disgusting. I think a major task for interdisciplinary inquiry (involving psychology, philosophy, law, anthropology, sociology, and history) is to investigate the subtle differences among types of discrimination in their concrete historical and political contexts.

2. It seems to me that one important difference in the case of LGBT people is that their differentiating trait is not recognizable in many ordinary interactions. In fact, you say that most people who are disgusted by homosexual behavior (or what they imagine as such) are unaware of being acquainted or even closely related to homosexuals and bisexuals. This may turn out to be in favor of the politics of humanity: it is thanks to seeing them as “normal human beings” with passions and virtues similar to theirs, that they can cease to be prey of the anti-gay propaganda. Do you agree with this suggestion?

Yes, the possibility of “passing” is one thing that works differently. Disability is rarely hidden. Race is sometimes hidden, but not so often. Sexual orientation can be very successfully hidden. This creates a difference in the way in which the deforming psychological pressures of discrimination operate: often a person may live an entire life in the closet, and thus be cut off from any community of other gay people, whereas it is less common for racial minorities to be totally cut off from community. But then too, as you say, the closet creates possibilities of closeness that sometimes, once the person eventually comes out, foster acceptance. When your own friend or child, whom you have known for years, comes out, it is very difficult to convince yourself that this person whom you have come to love is really a monster. We often see profound changes of view in parents and friends of gay people. With race, it is possible to go through life without close relationships with people of a different race, in part because you usually know who those people are.

3. You say that «sexual orientation ... seems to lie deep in the structure of people’s personalities, in ways that are crucial to their pursuit of happi-

ness» (Nussbaum, 2010, p. 121). Is this the origin of another difference with race and gender discrimination, or do you think that also gender and racial identity structure the way people pursue their happiness?

I think here again there are differences. Sexual orientation is about goals and projects: what sorts of people will I seek to bond with, what sexual relationships will I form? Race and gender don't in this way give one a set of specific life projects. To the extent that sexual relationship are important for a person—and for most people they are pretty important—sexual identity is also important. Race is different. I would say that race is significant only because history and prejudice have made it significant. Scientifically, it is an utterly bogus category, as Anthony Appiah eloquently shows in *Color Conscious* (Appiah & Gutmann, 1998). So with race it is in that sense optional whether a person wishes to make a racial identity central to his or her pursuit of a good life. The reasons for doing so range from solidarity with other oppressed people to pride in a group's history of struggle. But there are also reasons for not doing so: for example, one thinks other aspects of one's identity are more important. Gender is in between. Differences of sex are themselves less binary than people usually take them to be, but still there is a biological reality there. Differences of gender are social and are uneasily correlated with biological differences of sex, but it is still difficult to imagine a society in which no gender distinctions of any sort exist – while it's not so difficult to imagine a society that has transcended race. Gender identity will probably remain important to most people as a way of thinking about their life projects, but we can hope that by pursuing anti-discrimination policies in this area we can make people free of the rigid demand that they conform to a narrow social norm.

4. In your *Women and Human Development* (Nussbaum, 2000) you have articulated your version of an approach introduced in the context of social justice by Amartya Sen (Sen, 1985): the capabilities approach. As you say in your article “Capabilities as Fundamental Entitlements: Sen and Social Justice (Nussbaum, 2003, p. 1): «Against the dominant emphasis on economic growth as an indicator of a nation's quality of life, Sen has insisted on the importance of capabilities, what people are actually able to do and to be».

Sen's idea was that considerations of capabilities would have to complement considerations about people's fundamental rights, given that so-

cial groups such as women tend to exhibit *adaptive preferences*, that is, preferences that have been shaped by unjust background conditions.

You have not only endorsed that approach, but developed it further, arguing in favor of a specific list of capabilities: life; bodily health; bodily integrity; use of senses, imagination and thought; development and expression of emotion; practical reason; affiliation, being able to live with concern for other species and nature; being able to play; control over one's environment.

The list is meant to be open-ended and subject to ongoing revision and rethinking.

In your most recent book, *Creating Capabilities: The Human Development Approach* (Nussbaum, 2011), you argue again in favor of this approach. What are the new contributions of this book to the question of discrimination based on gender and sexual orientation?

Well, the book makes very clear that you can't have an adequate account of discrimination or of what society owes to people who are victims of discrimination, without having a concrete list of capabilities of the sort that Sen refuses to give. I said all this in a 2003 article in *Feminist Economics* (Nussbaum, 2003), so the book basically recapitulates that discussion, but it does make clear some differences between my approach and Sen's that are not stated in *Women and Human Development* (Nussbaum, 2000). Indeed, although you say that Sen introduced the capabilities approach in the context of discussing social justice, I'd say that this is not perfectly accurate: he introduced it as an alternative approach to the proper space of comparison in measuring social welfare or the quality of life, comparatively. What I now say is, if you really want to use the approach in thinking about social justice, you have to say much more about content, which capabilities are most central, and you should not suggest, as Sen sometimes does, that there is an all-purpose good of freedom that it is the business of politics to maximize. (You could compare my move to Hart's critique of Rawls's idea of the priority of liberty, where Hart says that a definite list is required – except that Rawls accepted Hart's critique, and Sen has not really commented on mine!)

5. I played a little game: every time I found the word *women* in your 2003 article (Nussbaum, 2003), I substituted it with *LGBT people*. It works well most of the time, but sometimes it doesn't. For instance, it seems to me

that LGBT people do not have the problem of not having their work recognized as work, which is typical of women and especially of women in developing countries. And there are some cases in which the substitution works only with some provisos: for instance, LGBT people may incur in educational deprivations indirectly, because being harassed in school may affect their capacity to fully take advantage of the educational resources, but they are rarely if ever excluded by education as such. What are the most interesting differences that you see between the two social groups with respect to the capabilities approach? Can these differences bring new insights to the capabilities approach?

You have identified some of the most important differences. I'd say that discrimination on grounds of sex has been, throughout human history, a much deeper and more organizing fact about how societies structure themselves than discrimination on grounds of sexual orientation. Laurence Thomas once wrote a controversial article called "Racism and Sexism" (Thomas, 1980), in which he argues that sexism is likely to be more difficult to eradicate than racism, because men's concept of their manhood is deeply bound up with domination over women, in a way that white people's self-conception is not inherently bound up with domination over black people. There is, he wrote, no concept of a "real white" that corresponds to the common notion of the "real man", meaning one who displays his power by controlling women. Well, I would say that he was right, and I think the same point applies to sexual orientation: there's no concept of "the real straight" that requires straight men to dominate gay people. And so we can expect that sexism will be much more enduring than discrimination against LGBT people. And we see this already. There have been massive and rapid generational changes in this area: people under 30 just don't have the same attitudes any longer. But people are not changing so rapidly with respect to sexism, because the whole structure of daily life is so deeply bound up with it. When I hear gay people speak these days, I hear a note of optimism and celebration that is utterly impossible to imagine in women talking about their own situation, no matter what country one is in. Let me put this another way. For a straight man who is homophobic to change and be non-homophobic, he probably does not need to change at a very deep level. He just needs an attitude of live and let live. This attitude would be more stable if he did change underlying attitudes about bodies and sexuality, but change is not absolutely required, since he does not need to deal with gay people in intimate

spheres of life. For a sexist man to change and to be non-sexist, he really does have to change in profound ways: his attitudes to the family, child-rearing, work, probably sexuality as well. So much of his daily and intimate life is bound up in sexist practices that change is difficult.

6. You have argued that the capabilities talk is superior to the rights talk because it rejects the traditional distinction between public domain, which the state regulates, and private sphere, where citizens have a right to privacy and to behave as they wish without state's interference. This distinction has been nefarious for the women's cause, for instance by legitimizing marital rape and domestic abuse in general.

Sexual orientation is often seen as a private matter. I read about a headmistress of an Italian preschool who, when informed by a student's mother that the girl had two moms, replied aggressively: "Why do you come share with me your private business?" It seems to me that also in the defense on LGBT rights the private becomes public. But do you see any significant difference with the defense of women's rights?

First of all, let's be clear: I say that capabilities talk is not contrasted with rights talk, it is one species of rights talk, a species that avoids three pitfalls that are present in some common versions of rights talk: (1) the suggestion that rights are secured when the state does not act – whereas the capabilities approach points out that all capabilities require state action for their protection and implementation; (2) the strong distinction between "first-generation" (political/civil) and "second-generation" (economic and social) rights, given that the capabilities approach makes clear the fact that all capabilities have a socio-economic aspect, requiring taxation and expenditure for their implementation; and (3) the point you make about the public and private. In response to your question, I would insist (as I have in several places, including chapter 6 of *From Disgust to Humanity*), that the notion of the "private" is confused and confusing, conflating considerations that ought to be kept distinct: seclusion, informational secrecy, autonomy, intimacy. When we say that sexual matters are nobody's business, we are alluding above all to the fact that they are intimate areas of life that an individual has the right to conceal from the view of others; we may also be alluding to the autonomy interest people have in those activities. None of these uses of "private" entails that there is a special privi-

leged place (“the home”) that law cannot regulate because of the kind of place it is. That is the notion that I reject.

7. You claimed that the capabilities approach is «very important for gender justice: the state needs to take action if traditionally marginalized groups are to achieve full equality» (Nussbaum, 2003, p. 7). I wonder whether someone who does not believe in the existence and/or utility of gender distinctions could find the very concept of *gender justice* preposterous. No doubt, someone could, but the question is whether that’s a legitimate move. Do you think that theoretical attacks to the metaphysical notion of gender can affect the discussion of gender justice as it has been conceived of so far?

I think it’s just like what I just said about race, for someone who utterly rejects the notion of gender: it still has historical and social reality, and has still been the source of great injustice. So it still makes sense to have affirmative action measures that use that category. If we were starting society afresh, we might not choose to use that notion at all, any more than India would use the notion of caste if it started from nowhere. But societies must take history into account when rectifying injustice.

8. It seems to me that in recent years you have devoted special attention to the issue of discrimination based on sexual orientation. What motivated you to tackle this issue?

Actually, I’ve written about this issue at least since the middle 1990’s, and I’ve been interested in it for even longer. I think my first public lecture on the topic was at the first gay studies conference at Yale in 1986. There has always been an issue about the politics of the issue: namely, do LGBT people want scholars who do not share that orientation to participate, or not? At that Yale conference I will never forget that Blakey Vermeule, then an undergraduate and now an eminent scholar of comparative literature, opened the conference saying, “We are here as lesbian and gay scholars.” Well, I felt that I was being told I did not belong; and of course many lesbian feminists have written that straight women are victims of false consciousness, and can’t even really be feminists. So I later asked John Boswell, the great scholar who organized the conference, whether he wanted the contributions of people who unrepentantly prefer opposite-sex relationships, and they discussed this with the student group. The

students agreed that it was an issue of justice for all people. I think it is different from race and gender in that, because of the difficulty of seeing who's who that you mention, any scholar working on it is likely to be suspected of being gay; for a time many straight men did not want to get involved, and I admire the ones who did face that suspicion (Andrew Koppelman especially) for the sake of justice. But anyway, how did I first get interested in it? Two things. First, as a scholar of Plato, I could not avoid noticing that the erotic relationships that seemed to me most admirable as paradigms for my own life, involving shared aspiration and intellectual commitment, were relationships between men, so having these relationships as paradigms, I wondered how society could take the attitude that they were disgusting. Second, I was a professional actress for quite a while, and I got to know a number of openly gay men and a few lesbians, and I felt that the society that marginalized them was unjust. There was this world, I'll call it "the little world," using Ingmar Bergman's wonderful term for the theater world, in which everyone was accepted, and then there was the outside world, where they were treated as shameful and bad. I preferred "the little world".

REFERENCES

- Appiah, K.A. & Gutmann, A. (1998). *Color Conscious: The Political Morality of Race*. New York: Princeton University Press.
- Nussbaum, M.C. (2000). *Women and Human Development: The Capabilities Approach*. Cambridge (MA): Cambridge University Press.
- Nussbaum, M.C. (2003). Capabilities as Fundamental Entitlements: Sen and Social Justice. *Feminist Economics*, 9(2/3), 33–59.
- Nussbaum, M.C. (2004). *Hiding from Humanity: Disgust, Shame and the Law*. Princeton: Princeton University Press.
- Nussbaum, M.C. (2010). *From Disgust to Humanity: Sexual Orientation & Constitutional Law*. Oxford: Oxford University Press.
- Nussbaum, M.C. (2011). *Creating Capabilities: The Human Development Approach*. Cambridge (MA): Harvard University Press.
- Sen, A. (1985). *Commodities and Capabilities*. Oxford: Oxford University Press.
- Thomas, L. (1980). Sexism and Racism: Some Conceptual Differences. *Ethics*, 90(2): 239–250.

