

## HUMAN DIGNITY AND HUMAN CAPABILITIES IN MARTHA C. NUSSBAUM

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Human dignity is an idea much cherished today in the public debate.<sup>1</sup> According to majority's opinion, it constitutes a common value upon which laws, in a pluralistic society, may be grounded. As a matter of fact, almost all modern Human Rights Charters<sup>2</sup> and national Constitutions<sup>3</sup> do make explicit reference to this idea. Nonetheless, there is no single way of defining its content, nor there is any agreement regarding its beholder or its effective applicability.

In the present paper, I will critically examine the notion of human dignity espoused by Martha C. Nussbaum. Her theory of justice does in fact give a prominent place to the notion, just like international and constitutional law.<sup>4</sup>

In particular, our philosopher strives to offer an Aristotelian (classical) and Marxist (modern) conception of human dignity. An effort which – in its intent to blend Marx with Aristotle – has not failed to raise a few eye-brows.<sup>5</sup>

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<sup>1</sup> In the US., The President's Council on Bioethics has recently commissioned a series of essays on the subject of *Human Dignity and Bioethics*. Furthermore, in the European context, it is worth mentioning the recent contributions on the subject by ERNEST-WOLFGANG BÖCKENFÖRD: Menschenwürde als normatives Prinzip. Die Grundrechte in der bioethischen Debatte in *Juristen Zeitung*, 17, 2003.

<sup>2</sup> The Charter of Fundamental Rights of the European Union, for instance, dedicates the whole, introductory chapter to the notion of human dignity. The same notion appears in the title of the 1997 *European Council Convention on biomedicine*.

<sup>3</sup> A list of the most important juridical documents conveying the idea of human dignity may be found in J. KNOX-M. BROBERG (eds): *Dignity, Ethics and Law*, Copenhagen: Centre for Ethics and Law, 1999.

<sup>4</sup> MARTHA C. NUSSBAUM: Human Dignity and Political Entitlements in *Human Dignity and Bioethics*, Washington D.C.: The President's Council on Bioethics, March 2008. 351; NUSSBAUM (2006).

<sup>5</sup> Diana Schaub, for instance, writes that "Nussbaum (...) treats the works of the philosophers as brightly colored scraps to be stitched together in a policy quilt of her own liking". DIANA SCHAUB: Commentary on Nussbaum, Shell and Kass in *Human Dignity and Bioethics*. Uo.

## The idea of human nature

The notion of human dignity generally refers to a quality inherent in human nature which ennobles and renders one's life precious. It is thus unconceivable to tackle the subject of human dignity without briefly examining the parallel notion of human nature. This is the more true in the case of Martha Nussbaum's «capabilities approach». As anticipated, her notion of human dignity does presuppose a specific conception of human nature, resulting from her personal synthesis of the classical, Aristotelian tradition and the modern idea of human nature.

### 1.1 Human nature in Aristotle

The classical, Aristotelian, definition of man as the unity of soul and physical-body is an example of a metaphysical conception of human nature. This formula indicates *what man is*, *what* remains identical in him despite contingent external changes, e.g., the presence or absence of operational capabilities. As Spaemann states, it is exactly this substantial identity that permits the individual to refer to the various phases of his existence as expressions of his 'I', and not only as unrelated phenomena.<sup>6</sup>

Accordingly, for the Aristotelians, the search for the metaphysical conception of man requires an abstractive process of the human mind, "a process by which one moves from the concrete sensible to the abstract intellectual, from particularities of things to universal concepts"<sup>7</sup>. Thus eliminating, through an effort of the imagination, all the contingent properties of an object in absence of which the object continues nevertheless to retain its meaning.<sup>8</sup>

The concept of nature this process of abstraction finally leads to still retains a reference to the physical-body. However, the latter is simply defined as a passive principle which the rational *soul* – defined as the «first act» – informs and specifies.<sup>9</sup>

It is this unity between soul and body, that Nussbaum would like in principle to retain from the classical tradition. In her view, the modern, Kantian emphasis on rationality alone as the sole individuating element of human nature does not take in consideration the fact that human beings have emotions and basic physical needs.<sup>10</sup>

<sup>6</sup> ROBERT SPAEMANN: *Personen: Versuch über den Unterschied Zwischen "etwas" und "jemand."*, Stuttgart: Klett-Cotta, 1996.

<sup>7</sup> RAMON LUCAS LUCAS: *Orizzonte verticale: senso e significato della persona umana*. Cinisello Balsamo: San Paolo, 2007, 106.

<sup>8</sup> ROBERT SOKOLOWSKI: *Introduction to Phenomenology*. Cambridge: Cambridge University Press, 2000.

<sup>9</sup> For an Aristotelian like Thomas of Aquinas, the soul informs and shapes each individual cell of the human body: "(...). the soul forms the bones, muscles, nerves, blood and enzymes of a living being, and is constantly reconfiguring and activating the matter in its cells (...) the soul is (...) the unifying and determining principle of the material elements, and has an active causal role on matter (...)". FEDERICA BERGAMINO: *La struttura dell'essere umano*. Roma: EDUSC, 2007, 66–68.; T. AQUINAS: *ST. I*, q. 76. a. 8; ARISTOTLE: *De anima*. Book II, Part I, 412b 5–10.

<sup>10</sup> In *Frontiers of Justice*, Martha Nussbaum writes that "Kant contrasts the humanity of human beings with their animality (...) the capabilities approach, by contrast, sees rationality and animality as thoroughly unified". Also, she adds that "(...) bodily need, including the need for care, is a feature of our rationality and our sociability". NUSSBAUM (2006) i. m. 159–160.

## 1.2 *Human Nature in Martha C. Nussbaum*

Following the lead of Aristotle, then, Nussbaum does also conceive the human being as a rational animal. In this sense, her «capabilities approach» distances itself from the Kantian conception of the person. However, moving under the influence of modern functionalism, she defines both the body («animality») and reason in functional, rather than metaphysical terms. As a quick look to the subsequent list of fundamental capabilities shows, the body is defined by Nussbaum in terms of the capability to move or use the senses. Analogously, reason is defined as the capacity to engage in critical reflection.

On the one hand, any reference to the *soul* as the «first act» is obliterated. On the other, reference to the physical body – as passive principle – is also brushed aside.<sup>11</sup> Thus she understands both rationality and animal needs as psychic functions which are, on one side, completely separated from the spiritual unifying principle, the soul. On the other, they stand apart of the physical body .

### *The Central Human Capabilities*<sup>12</sup>

«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 reason (...)

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

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

7. **Affiliation.** Being able o 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 (...).

8. **Other Species.** Being able to live with concern for and in relation to animals, plants, and the world of nature

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<sup>11</sup> Along this line, in *Changing Aristotle's Mind*, Nussbaum explicitly affirms that, "while embodiment in some sort of suitable matter is essential to animals and their life-activities, the particular material realization is contingent. (...) So again, on the former line, we could say that an animal must have blood, without ruling out the possibility that some non-organic stuff could play that same role in the animal's life". MARTHA C. NUSSBAUM – HILARY PUTNAM: *Changing Aristotle's Mind* in NUSSBAUM M.C. – RORTY A.: *Essays on Aristotle's De Anima*. Oxford: Clarendon Press, 1995, 35.

<sup>12</sup> NUSSBAUM (2006) i. m. 76–77.

9. **Play.** Being able to laugh, to lay, to enjoy recreational activities

10. **Control over One's Environment.** (...) Being able to participate effectively in political choices that govern one's life. (...) Being able to hold property (...) being able to work (...) and entering into meaningful relationships of mutual recognition with other workers»

## 2. *The Notion of Human Dignity*

The different conceptions of human nature illustrated above do in turn influence the way human dignity – the value inherent in human nature – is conceived. To the classical conception of human nature corresponds what may be defined as the metaphysical notion of human dignity. On the other hand, Nussbaum's 'modern' notion of human nature leads to a functionalist understanding of human dignity.

### 2.1 METAPHYSICAL NOTION

As Robert Spaemann clearly states “in the classical perspective, the recognition of the personal [inalienable] dignity of each single human being is justified by the fact that his (or her) empirical qualities are only an external manifestation of a core substance”<sup>13</sup>, or soul. To the extent that the soul is the «first-act», it is also the primary perfection from which the secondary acts, or perfections, like capabilities, do flow.

Given the prominent value assigned to the rational soul by the classical tradition, some may be misled in identifying the metaphysical notion of human dignity with the modern notion which (as we shall see) places a great importance on the idea of rational awareness. Furthermore, some may be misled in thinking that the metaphysical notion does not take in due consideration the human-body in the picture.

In order to cast this possible misreading aside, it is therefore helpful calling to mind that rationality, in the classical sense, “is not an action, nor a power, but rather a way of being – thanks to which the individuals belonging to a species are at once the cause and end of their own motions”<sup>14</sup>. In modern philosophy – starting from Locke - rationality is on the other hand generally conceived as an empirical capacity, in virtue of which man is aware of his own psychic states.<sup>15</sup>

Finally, by conceiving the rational soul as intrinsically connected to the physical body, classical hylomorphism views the body as dignified in itself.

### 2.2 FUNCTIONALIST NOTION

At first glance, the notion of human dignity espoused by Nussbaum seems to have a lot in common with the notion of human dignity derived from the classical tradition. To begin with, her notion of dignity does in some way impinge on reason. In the second place, our

<sup>13</sup> ROBERT SPAEMANN: *Das Natürliche und das Vernünftige: Essays zur Anthropologie*, München: Piper, 1987; It. Translation: *Natura e Ragione. Saggi di antropologia* (edited L. Tuninetti), Roma: Edizioni Università della Santa Croce, 2006. 80.

<sup>14</sup> ANTONIO PETAGINE: *Profili dell'umano. Lineamenti di antropologia filosofica*. Milano: Franco Angeli, 2007. 248.

<sup>15</sup> PETAGINE, i. m. 260.

philosopher does think of dignity as an inalienable property, “as a type of worth in the human being (...) that exists and remains even when the world has done its worst”<sup>16</sup>. Finally, she does assign normative value to the dimension of the human body too.

Even so, there are a few important elements of her understanding of human dignity which differentiate it from the former. Nussbaum, for example, does not conceive of reason as a structural, ontological feature of the human being, as that *part of the soul* which exercise thought (in the way Aristotle does).<sup>17</sup> Rather she identifies reason with some of its manifestations: like, for instance, the capacity to form a conception of the good and plan one’s life.<sup>18</sup> A capacity which, in the classical tradition, constitutes only a secondary perfection: deriving its worthiness, like all other capabilities (be they acquired or innate), from the primary perfection, or substance (the soul, or *psyche*) of which it is a contingent manifestation.

In the second place, Nussbaum does value the human body,<sup>19</sup> but only its functional dimension. Only the sum of the body’s needs and capabilities (what may be defined as the psychic body) is worthy of respect. Not so the physical body.

Identifying worthiness with one’s capabilities, Nussbaum’s understanding of human-dignity ends up having a limited scope and looses (in spite of Nussbaum’s best intentions) its inalienable character (unless one conceives its inalienability as a feature co-extensive to man’s functions only). On the one hand, the human body-cells are deprived of their inherent value.<sup>20</sup> On the other hand, it is conceivable for a person to loose one’s inherent dignity – due to an accident or a grave illness – as in the case of someone in a persistent vegetative state. Likewise, her functionalist understanding of human dignity does not apply to the person who does not possess, nor manifest, the minimal capacity of sentience (the anencephalic child is an example).<sup>21</sup>

Paradoxically, animals may be considered in her view as equally, if not more dignified than human beings.<sup>22</sup>

<sup>16</sup> NUSSBAUM (2008). 357; MARTHA C. NUSSBAUM: Duties of Justice, Duties of Material Aid. Cicero’s Problematic Legacy in *The Journal of Political Philosophy*, vol. 8, n.2, 2000, 200.

<sup>17</sup> ARISTOTLE: *Nicomachean Ethics*, Book I.7, 1097b-1098a.

<sup>18</sup> The same goes for sociability, which is mainly defined in terms of psychic qualities like the capacity to show affection and gratitude for those who take good care of us, and not, instead, as the inherent condition of the human being, whom from the cradle to the grave is dependent for his/her existence on others – in the way some natural law philosophers do make clear. SERGIO COTTA: *Perchè il diritto*. Brescia: Editrice La Scuola, 1992, 3° edizione. 31–32; FRANCESCO D’AGOSTINO: *Bioetica*, Torino: Giappichelli, 1998, 173–179.

<sup>19</sup> “I propose here to articulate (...) an Aristotelian/Marxian account of dignity, which sees the dignity of the human being as squarely part of the world of nature (...)”. NUSSBAUM (2008) i. m. 351.

<sup>20</sup> “As for stem cell research, my position on sentience as a necessary condition of moral considerability entails that it is not morally problematic. Indeed, I find it rather extraordinary that people are up in arms about the putative dignity of a non-sentient clump of cells (...)”. NUSSBAUM (2008) i. m. 375.

<sup>21</sup> NUSSBAUM (2006) i. m. 181, 361–362; NUSSBAUM (2008) i. m. 373.; J. LOCKE: *Saggio sull’intelletto umano*. Milano: Bompiani, 2004.

<sup>22</sup> “Capacities crisscross and overlap; a chimpanzee may have more capacity for empathy and perspectival thinking than a very young child, or an older autistic child. And capacities that human sometimes arrogantly claim for themselves alone are found very widely in nature (...)”. NUSSBAUM (2006) i. m. 363. To this, Schaub replies by citing Kass, who thinks that “only by understanding human life as «a grown-togetherness of body and soul» can we achieve and maintain our (human) special dignity”. SCHAUB (2008) i. m. 383.

### 3. Human dignity and public discourse

According to Nussbaum, the «functionalist»<sup>23</sup> notion of human dignity may be the object of public discourse and overlapping consensus.<sup>24</sup> Being “designed to avoid concepts that belong to one major (...) metaphysical doctrine or epistemological view of the human being (...)”<sup>25</sup>, its content “can be affirmed from the point of view of many different comprehensive doctrines”<sup>26</sup>. Even those who espouse a metaphysical notion of human dignity could at least accept the list of fundamental capabilities as a set of basic public goods.

Thus, only the functionalist understanding of dignity may legitimately constitute the basis for public laws in a pluralistic society. In her view, that is, it would be “inappropriate to base the political principles on any particular comprehensive doctrine not shared by reasonable citizens” – like the metaphysical notion of human dignity. “That would itself be a failure of respect” of pluralism and, according to one of the Founding Fathers of the United States of America – Roger Williams – it would amount to “a type of soul rape”<sup>27</sup>.

Three different sorts of counter-arguments may be advanced in response. To begin with, as Richard Neuhaus points out, when there are at stake issues of life and death, citizens may hardly be satisfied with a «thin conception of the good»<sup>28</sup>. This is not to say that law and politics should operate a sort of “soul-rape” – as envisaged by Nussbaum – imposing a specific view of the good and curtailing citizens’ freedom of conscience. By their very nature, law and politics are concerned only with regulating the social conduct of the citizens, and may not impinge on what citizens freely believe in.<sup>29</sup>

In the second place, the fact that the metaphysical notion of human dignity is parochial, or belongs only to a specific religious tradition, is not evident. As in the case of Aristotle, such a notion is not necessarily grounded on theological arguments, but abstracted from our common human experience. Paradoxically, its awareness may even spring forth the lived-experience of threat and deprivation.<sup>30</sup> As Pellegrino

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<sup>23</sup> This is a term which Nussbaum does not use. Rather she prefers to define her notion of human dignity in Rawlsian terms as a «thin» conception or, alternatively, a «political» conception of the good.

<sup>24</sup> MARTHA C. NUSSBAUM: *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press, 2000, 76.

<sup>25</sup> NUSSBAUM (2006) i. m. 182.

<sup>26</sup> NUSSBAUM (2008) i. m. 376.

<sup>27</sup> NUSSBAUM (2008) i. m. 360.

<sup>28</sup> “In general (...) our political life is not heavily burdened by theory (...). In the realm of bioethics, however, and specifically with respect to the dignity of the human person, such explication is sometime required”. RICHARD JOHN NEUHAUS: *Human Dignity and Public Discourse in Human Dignity and Bioethics*, i. m. 224.

<sup>29</sup> “Laws against homicide, for example, do not forbid people from *believing* that the sorts of homicide proscribed by the law are in fact morally permissible (...); they forbid people from carrying on those homicides”. ROBERT P. GEORGE: *Making Men Moral, Civil Liberties and Public Morality*. Clarendon Press, Oxford, 1993, 75–76.

<sup>30</sup> “(...) we must understand human dignity not only abstractly as a concept and an idea, but also as an experience, a lived reality of human life. (...)By a «lived experience» I mean the way human dignity is

points out, it took the Holocaust, slavery and genocide, in order for the world to focus the attention on its full meaning and express its moral revulsion in the Universal Declaration

Therefore – and with this we enter into the third counterargument – reflection on our common experiences sheds light on the existence of values (e.g. human dignity), which stand above the level of empirical verifiability. Thus, the presumption that the object of public reason (which proceeds from common experiences) is only restricted to the scientific and empirically verifiable realm is unjustified. Even though Rawls himself – from whom Nussbaum borrows the notion of overlapping consensus – initially operates this sort of restriction,<sup>31</sup> the latter is not congruent with the principles of his political liberalism.<sup>32</sup> In fact, the reduction of the object of public rationality to the scientific beliefs<sup>33</sup> is not only unfounded, but it is also un-respectful of pluralism, to the extent that it favours certain comprehensive (scientific or secular) views over others (non-secular and religious).

Furthermore, it is not congruent with the formal definition of practical, public rationality given by Nussbaum in *Poetic Justice*<sup>34</sup> and other works.<sup>35</sup> Here and there, she does depict public reason as a non-comprehensive discourse «open» and receptive to men’s feelings and inner world. A type of discourse which – being not focused on empirical facts alone – is in dire contrast with economic and scientific reason.

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perceived by human beings as they respond to the valuations of their worth and worthiness by others and by themselves”. EDMUND PELLEGRINO: “The lived experience of human dignity” in *Human Dignity and Bioethics* i. m. 521.

<sup>31</sup> “(...) I believe that there is no reason why a Rawlsian could not hold that at least one thing in favour of a (public) policy is that it promotes *scientific truth*. Rawls himself, at any rate, appears to exempt *science* from his general hands-off attitude to truth claims”. MARTHA C. NUSSBAUM: *Hiding From Humanity. Disgust, Shame and the Law*. Princeton: Princeton University Press, 2004, 329.

<sup>32</sup> In fact, JOHN RAWLS has revisited the notion of public reason espoused in *A Theory of Justice* (1971), as he openly admitted in *The Law of Peoples* (1999).

<sup>33</sup> Traces of this reduction may be found in the following passage: “If we go by what *science* tells us and what our daily experience tells us, trying not to bring our religious comprehensive doctrines into the picture, we will be bond to concede that many animals share may features with human beings (...)”. NUSSBAUM (2008) i. m. 374–375.

<sup>34</sup> MARTHA C. NUSSBAUM: *Poetic Justice. The Literary Imagination and Public Life*. Boston: Beacon Press, 1995.

<sup>35</sup> MARTHA C. NUSSBAUM: Emotions as Judgements of Value in *Yale Journal of Criticism*, 5, 1992, 201–212; MARTHA C. NUSSBAUM: Compassion: The Basic Social Emotion in *Social Philosophy and Policy*, 13, 1996, 27–58; MARTHA C. NUSSBAUM: Poets as Judges: Judicial Rhetoric and Literary Imagination in *University of Chicago Law Review*, 62, 1995, 1477–1519; MARTHA C. NUSSBAUM: The Literary Imagination in Public Life in *New Literary History*, 22, 1991, 878–910; MARTHA C. NUSSBAUM: *Upheavals of Thought: The Intelligence of Emotions*, Cambridge: Cambridge University Press, 2001.

