



## The Fragility Of Goodness

As one of the world's most prominent moral and legal philosophers, Martha Nussbaum, who teaches at the University of Chicago's law school, has written at length about theories of justice, the fragility of human goodness, and the intelligence of emotions. She has also played a major role in the development of what's called the capabilities approach, which has been used by international organizations as an alternative to such economic measures as gross domestic product to assess the well-being of a country's citizens. In August, Nussbaum spoke with *California Lawyer* editor Martin Lasden.



Martha Nussbaum

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**Q.** Professor, I feel I have to confess something to you. And that is, when I think about what it would be like to live in a truly just society, the first thing I think about is all the entirely unfair advantages I've had throughout my own life. So I'm wondering how you would respond to someone who says to you: "You know professor, as an abstract concept the idea of social justice really sounds good to me. But then when I think about the fine dining I do every week, and the fancy trips to Europe I take, and the private schools I want to send my kids to, I'm just not sure this social justice thing is right for me." What do you say to that person?

Well look, I think this is where I began, too. I too had all these privileges. But when I was 16, I went on a foreign exchange program and lived with a family of factory workers in South Wales. And I suddenly saw what the life of poverty was like, how the health of these people was undermined. And I saw how their spirits and hopes were worn down, and that revolutionized my thinking. ... I'm not asking for a kind of mechanical, across-the-board equality. But I am asking for a very ample threshold, where no one is stopped by ill health, lack of education, and lack of basic goods.

You've written about the relationship between emotion and justice. But how can you have a system of justice that's, say, compassionate and at the same time impartial?

Impartiality suggests that we shouldn't begin from our own point of view, that we should have principles that apply absolutely to everyone. But the trouble is that human life is based on the personal point of view. We start as infants with close attachments. And so developmentally we have to build out from the meanings that we understand and try to extend [them] to the world, and if we jump over that and just try to say we'll have the same rules for everyone, we risk having an impartiality that's empty of urgency. Marcus Aurelius, the stoic philosopher who tried to run an empire on the basis of impartiality without any love, writes in his journals that life ended up seeming meaningless to him, that people started to look like just insects or rats running for shelter. The sense of them as human beings required an understanding of what might make a human being lovable, and that he lost that when he lost his partiality. So we have to balance the dialog between compassion and impartiality rather than just throwing out the

particular, and I think the right way to do that is through law.

Your approach identifies ten central capabilities that should be safeguarded. Among them: bodily integrity, bodily health, imagination, emotional health, etc. What, if anything, does your capabilities approach have to say about abortion?

Well, for a long time I said nothing about it because, first of all, it's a very tough topic, and I do think it's one where there's such deep disagreement among religious and other comprehensive views and that politics has to respect that. But on the whole where the capabilities approach would go is in the direction of having a very complicated balancing test, in which the health of the mother would certainly be very important and be protected, but that past a certain age of development the fetus would also acquire some entitlements. And so basically we're sort of where *Casey v. Planned Parenthood* is.

People who recognize the right of a woman to have an abortion describe themselves as pro-choice. But as you know, in many countries women exercise that choice only after they determine

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through the use of ultrasound technology that they're having a girl, and the reason they have abortions at that point is because girls are not as valued as boys in their societies. Doesn't that put the whole pro-choice argument in a different light?

Oh sure, and it's amazing to me how American feminists don't really think about that at all. But when you get into a country that has that problem, feminists are often inclined to be very wary of abortion rights—and some have wanted to criminalize abortion because they think they can't eliminate sex selection any other way. I would rather not sweep that broadly. But really I think the right course is to make abortion on the grounds of sex selection illegal.

I don't hear politicians talking too much about Aristotle, Kant, or John Rawls these days. But when they do talk about philosophers, more often than not it's about Ayn Rand. As a philosopher do you think she deserves to be taken seriously?

I read *The Fountainhead* a long, long time ago, and I actually read some of her more technical works. I think she's a very bad philosopher. When she writes about things like aesthetic judgment and analytic-synthetic distinction, it's quite ridiculous. If you want good libertarian thought, you should start with the thinkers of the social contract. But of course when you do that you find out that they're actually very complicated; they're not cardboard cutouts. I think Ayn Rand is more appealing to some people because she is a cardboard cutout.

Your colleague Richard Posner wrote a book ten years ago called *The Problematics of Moral and Legal Theory*, in which he argued that what moral philosophers do is essentially useless. Was he 100 percent wrong about that?

I don't think that was one of Dick's most successful books, and the trouble, I think, is that he dislikes moral philosophy so much, he can't spend much time with it. I think he should have spent more time with it, but he was just not going to do that. [@](#)