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Human Rights and Martha Nussbaum's Capabilities Approach. Connections and Interrelations.

Abstract

Freedom, equality and brotherhood are the three pilasters of human rights. Human rights find the major expression in the *Universal Declaration of Human Rights*, dated 1948. Human rights represent, among other things, a small revolution at the international level, such as, for example, in the idea of the international legal personality of the individual. Human rights, are, in fact, individual human rights. The idea of human right is quite strong but complex and has its fragilities. I consider Nussbaum's definition of human rights: "A human right is an especially urgent and morally justified claim that a person has, simply in virtue of being an adult, and independently of membership in a particular nation, or class, or sex, or ethnic or religious or sexual group."¹ For the main streams thoughts about them I refer to Dembour² who tries to categorize four diverse strings of position in regard to human rights: the naturalistic positions, the protest positions, the deliberative and the discourse positions. The capabilities approach, in the version elaborated by Nussbaum, gives, as Beitz says, a naturalistic interpretation of human rights. What I take into consideration in the dissertation is only civil and political, and economic and social rights, contemplated in the two Covenants, the *International Covenant on Civil and Political Rights (ICCPR)*, and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. The dissertation has four components. First I concentrate on the idea of civil and political and economic and social rights. I deal with the general notions associated with civil and political rights, trying to define them and to illustrate where the distinction between the two of them lies. In particular, I focus on the idea that negative rights, so often correlated with civil and political rights, vehicles often also positive actions. I follow Amartya Sen on these issues. Then I give

¹ Nussbaum (1997), "Capabilities and Human Rights" *Fordham Law Review* 66 (2): 272-300; p. 292

² Dembour (2010), "What are Human Rights? Four School of Thought" *Human Rights Quarterly* 32 (1): 1-20; p. 4

an understanding of what are-legally- civil and political rights, as shown in the *International Covenant on Civil and Political Rights*. I examine these rights trying to clarify some of the nuanced aspects and highlighting the possible consequences. One example could be the right to life: although it actually contemplates capital punishment as an acceptable derogation to it, it is nonetheless considered as one of the principal weapons for its abolishment. Further, in examining economic and social rights I plot their disputed status as rights, analyzing different aspects. From one side, the objections to these entitlements to be considered as human rights and their possible counter-arguments, and from the other side I take into consideration some of Amartya Sen, Nickel's and Brems' position on what their status exactly entails, in order for the economic and social rights to gain strength. I then attempt to focus on the main economic and social rights as expressed in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), trying to highlight them in their completeness and stressing the elements that sometimes are quite overcome in the international debate. One example could be the *right to housing* that is an element of the *right to an adequate standard of living*, or the psychological element of the *right to health*. Topical importance is given to the right to education. With all their appeal and rhetoric strength, however, human rights presents quite a few unsolved subjects: in their same meaning, for instance, in their content and justification (what might be envisioned as a human right, and for which reason), in their basilar grounds. I take into regard the capabilities approach, chiefly in the adaptation given by Martha Nussbaum, in relation to the above mentioned matters. The second chapter is devoted to the delineation of the neo-Aristotelian method expressed in Martha Nussbaum's early thought, and to the peculiar basis it provides for the capabilities approach. Nussbaum takes from Aristotle the idea of *eudaimonia*, that she translates as human flourishing, human good: this is both the political aim of the government, that has at its core the realization of its citizens, and it is expressed in capabilities, or better, a minimum core of capabilities, that embodies what Nussbaum calls the *thick but vague theory of the good*. All the same, it is important to underline that Nussbaum's wants to be a liberal position. In the dissertation I examines her argumentation on the topic. Her neo-Aristotelian method, through which it is possible to isolate the central capabilities, is backed up by her peculiar notion of essentialism, that she calls internalist essentialism. Through the internalist essentialism she individuates a normative conception of the human being, that is already ethical, and it is the first level of the thick but vague notion of the good. Starting from these *features of humanness* so individuated, again the neo-Aristotelian method is at work to draw from these the second level of the *thick and vague theory of the good*, in other words the ten central capabilities of

her list. Internalist essentialism relies on the idea that is actually feasible to find certainties internally to the human dimension, utilizing the tools human beings have at disposition, such as their practical reason. All this is possible provided the human acceptance of the element of finitude, limit and contingency as a fundamental element that shape its life and its codes, moral, ethical, political, scientific, and so on and so forth. Only accepting fallibility human beings can achieve a certain kind of human universality and security. These common elements human beings share can be found through this neo-Aristotelian method, that concerns over an investigation among “the appearances”, among the elements that are at disposal of the practical reason, to be looked for especially in the production of how human beings view themselves. Once she has isolated the common elements of humanity, Martha Nussbaum utilizes the capabilities approach, found through the method mentioned above, to articulate the *thick but vague* theory of good that is built upon this normative conception of the human being. In the third chapter I take into consideration the capabilities approach. I considered the capabilities as a general approach, mainly in the version given by Amartya Sen, comparing it with alternative approaches. The capabilities approach focuses on the potentiality and the achievements that are the results of the translation of the resources into effective possibilities and opportunities, taking into consideration, Sen argues, the multiple diversities among the people and even within the same person under different points in time and circumstances. Capabilities are considered as substantive freedoms, and the notion of choice is central in the concept. I consider some objections to the idea of capabilities, some of them moved by Bernard Williams, and about the relation between capabilities and functionings, or, for example, the consequences of taking into the main focus the concept of functioning or that of capability. I take into focus the capabilities approach as developed by Martha Nussbaum. I explore her three-folded notion of capabilities, the correlation among capabilities, human good and human dignity, and the compatibility of her capabilities approach with the concept of pluralism, unavoidable in a pluralistic world. Finally I face the issue of Nussbaum’s capabilities list, analyzing also some objections to it, and accepting some of them. I suggest that the early neo-Aristotelian method can be used for the justification of the capabilities list, considered, as Gasper says, an idea that it will be wide shared in the future, as expression, through an analyses of practical reason, of their beliefs.

The idea of capabilities, and in particular the capabilities list, can be very useful when talking about human rights. The fourth chapter is focused on the analyses of the correlations between human rights and capabilities, specifically Nussbaum’s capabilities theory. I examined the

link between the two languages considering them from the point of view of their consideration as two theories supporting each other as a point of strength. The capabilities approach represents the conceptualization of human rights, it elucidates their composition, and capabilities might be the aims of human rights and their essence justifies human rights' implementation. The capabilities list, further, may represent the basis, the grounds for human rights, for their justification and also for their individuation. The motive of human rights is the safeguard of the central capabilities, and which human rights do have effectively this status can be found out considering their belonging to the central capabilities of the list.

Explaining human rights in terms of Nussbaum's capabilities approach means cataloguing human rights in the fields of naturalistic theories, as Beitz says. They are, in this way, "fundamental" and "universal". Beitz criticizes this naturalistic understanding of human rights, arguing that they cannot be considered neither fundamental nor universal. Using Nussbaum's capabilities approach I try to show how and in which sense their fundamentality and universality is retained, taking into account at the same time Beitz's criticisms. I have also considered Beitz's objections to Nussbaum's precise position about capabilities and human rights, and I have tried to give them an answer.