

WHO SECURES WOMEN'S CAPABILITIES IN MARTHA NUSSBAUM'S QUEST FOR SOCIAL JUSTICE?

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Among the many issues that feminists have debated, three stand out for their urgency and significance: the relationship of theory to practice, universalism to particularism, and the transnational to the local and national. Feminism as theory continues to have a complicated and vexed relationship to women's activism. Even women who engage in struggles that observers might term feminist do not necessarily share feminist identities or participate in women's movements. Similarly, feminists continue to be troubled by universalism. Although certain forms of universalism are integral to most feminisms, Western feminist universalism has been presumptuous in condemning non-Western practices with scant understanding of the cultural and historical contexts which give them meaning. Feminist movements in the global South have sometimes been undermined by Western funded projects which have narrowed the agendas and constituencies of women's movements and by hegemonic Western feminists' appropriation of local discourses. As I elaborate below, I believe that debates about global feminisms have influenced Nussbaum's work and its reception.

I begin by describing the key tenets of the human capabilities approach and show how it represents an advance over human rights. I then place capabilities in the context of women's movements transnationally. I assess the different ways in which national states and transnational

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organizations impede and support the recognition of capabilities. I argue that social movements have a critical role to play in determining and realizing capabilities.

Capabilities represent a clear and deliberate advance over human rights in addressing relations between universalism and particularism, theory and practice, and transnationalism and nationalism.¹ Human rights advocates primarily focus on civil and political rights and have traditionally neglected rights within the private domain of the family. By contrast, Nussbaum rejects the view that civil, political, economic, and social rights should be attained sequentially and argues that capabilities are interdependent: the recognition of one of them requires the recognition of others. In *Frontiers of Justice* she states,

[C]apabilities cover the terrain occupied by both the so-called first-generation rights (political and civil liberties) and the so-called second generation rights (economic and social rights). And they play a similar role, providing an account of extremely important fundamental entitlements that can be used as a basis both for constitutional thought within a nation and for thinking about universal justice.²

Nussbaum identifies ten basic capabilities which, if realized, would enable people to achieve human dignity. They include literacy, liberty of conscience, political participation, freedom from physical violence, engaging in economic transactions, and developing the senses and practical reason.³ She argues that justice demands that all citizens should achieve the thresholds that the capabilities approach specifies.

Human rights advocates have tended to ignore the role of the state in addressing socio-economic inequalities. By contrast, Nussbaum identifies a key role for the nation-state in realizing capabilities and recognizes the futility of rights and of equality of opportunity when people lack the resources to make meaningful choices. She develops an outcome-oriented approach which supports substantial freedoms. She argues that the radical

¹ MARTHA C. NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH (2000) [hereinafter NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT].

² MARTHA C. NUSSBAUM, FRONTIERS OF JUSTICE: DISABILITY, NATIONALITY, SPECIES MEMBERSHIP 284 (2006) [hereinafter NUSSBAUM, FRONTIERS OF JUSTICE].

³ MARTHA C. NUSSBAUM, SEX AND SOCIAL JUSTICE 41-42 (1999) [hereinafter NUSSBAUM, SEX AND SOCIAL JUSTICE].

potential of liberalism lies in forging links between individual freedom and state responsibility.

In contrast to traditional human rights perspectives, feminism influences Nussbaum's conception of key capabilities. "Senses, Imagination, and Thought," encompass "Being able to use the senses; being able to imagine, to think and to reason . . . [and] to use the imagination and thought in connection with experiencing and producing expressive works and events of one's own choice, (religious, literary, musical, etc)." ⁴ "Emotions" concern the ability "to have attachments to things and persons outside ourselves. . . ." ⁵ Another capability entails "Being able to laugh, to play, to enjoy recreational activities." ⁶ Feminism expresses a consciousness of and resistance to gender inequality which can be manifest in everyday life as well as in episodic fashion, in culture and the arts, and in the private and public domains. What Mary Katzenstein terms the "discursive dimensions" of feminism are integral to capabilities. ⁷ As I elaborate below, feminism figures more in Nussbaum's conception than in her discussion of the enactment of capabilities.

The most controversial aspect of Nussbaum's approach is her unabashed universalism. She argues that the capabilities approach is designed for each and every citizen, in each and every nation. ⁸ In her words,

The body that labors is in a sense the same body all over the world, and its needs for food and nutrition and health care are the same. . . . Similarly the body that gets beaten is in a sense the same all over the world, concrete though the circumstances of domestic violence are in each society. ⁹

Nussbaum argues that individuals and governments have moral obligations to promote justice for people outside their own borders, and thus feminist philosophy should increasingly focus on the urgent needs of

⁴ *Id.* at 41.

⁵ *Id.*

⁶ *Id.* at 42.

⁷ MARY FAINSOD KATZENSTEIN, FAITHFUL AND FEARLESS, MOVING FEMINIST PROTEST INSIDE THE CHURCH AND THE MILITARY (1998).

⁸ *Id.* at 6.

⁹ NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 1, at 22–23.

women in developing countries.¹⁰ Her universalism is linked to her rejection of double standards towards gender inequality in the global North and South. She forcefully denies that privacy is or should be less valued in India than in the United States where matters of gender inequality are at stake.¹¹ Nussbaum's universalism also leads her to set a high standard for states in creating the conditions under which capabilities can be recognized.

The value of universalism, however, cannot be determined simply by evaluating its philosophical premises. As Pratap Bhanu Mehta points out, universalism embodies the historical project of imperialism.¹² It has tended to presume rather than to demonstrate a commonality of interests, needs, and ideas. Its claim to special authority has exempted it from scrutiny and contestation. This is not to say, Mehta notes, that universalism is inevitably ethnocentric, but rather that it has been associated historically with one set of cultural practices.¹³ The challenge that confronts universalist approaches then is to engage the political. Placing the capabilities approach within the context of social movements illuminates how political actors have deliberated, debated, rejected, and embraced capabilities.

The difficult questions concerning capabilities emerge in translating abstract philosophical conceptions into the messy world of politics. Are all capabilities equally important in all societies? Do they mean the same thing everywhere? Do different groups understand a particular capability the same way within a single society? Take, for example, the question of education as a central capability. There are enormous differences cross-nationally about what it means to be an educated person. Does it refer to being literate or well educated? To reading a newspaper, reading a third grade textbook, or exercising citizenship rights? How do the illiterate and uneducated regard education and what form of education do they value? As these questions suggest, exploring who will enforce capabilities inevitably necessitates reconsidering the very meaning and importance of capabilities in particular contexts.

¹⁰ *Id.* at 7.

¹¹ Martha C. Nussbaum, *Sex Equality, Liberty and Privacy, A Comparative Approach to the Feminist Critique*, in *INDIA'S LIVING CONSTITUTION, IDEAS, PRACTICES, CONTROVERSIES* 242 (E. Sridharan et al., eds., 2002) [hereinafter Nussbaum, *Sex Equality, Liberty and Privacy*].

¹² Pratap Bhanu Mehta, *Cosmopolitanism and the Circle of Reason*, 28 *POL. THEORY* 619, 622 (2000).

¹³ *Id.* at 622

I argue that social movements give concrete meaning to capabilities. Social movements often give voice to those who are formally voiceless. They express conceptions of capabilities that states neglect and deny. The social movements in which women have participated can be capabilities in and of themselves, catalysts for women's appreciating capabilities, or pressure groups on the state to recognize capabilities. Women's movements often seek to influence constitutional provisions for equality with respect to gender and sexual orientation, force states to deliver capabilities, make universal capabilities contextually meaningful, develop local arenas in which capabilities can be realized, and create possibilities for self-realization and dignity outside and beyond state control. Even conservative social movements which oppose gender equality, as many do, deliberate with their own constituencies and with the larger society and negotiate with the state. Such contestation and deliberation are indispensable both to formulating and implementing capabilities.

Attention to social movements helps to name the processes by which states are galvanized into recognizing capabilities. Social movements have often made states support capabilities and influenced their decisions about which capabilities to recognize. Authoritarian states are unlikely to support capabilities precisely because they repress social movements. Differences in the character of states call for different social movement strategies in interpreting and enforcing capabilities. All of these questions bear on the issue of universalism.

I. THE CONTEXT

Nussbaum published her influential book *Sex and Social Justice* in 1999¹⁴ and *Women and Human Development* the following year,¹⁵ on the heels of some critical developments in women's movements transnationally. Major international conferences on human rights (Vienna in 1993), reproductive rights (Cairo in 1994), and women's rights (Beijing in 1995) witnessed increased agreement and support for gender equality among governments and between governments and non-governmental organizations. Transnational women's advocacy organizations grew dramatically during this period.¹⁶

¹⁴ See generally NUSSBAUM, *SEX AND SOCIAL JUSTICE*, *supra* note 3.

¹⁵ See NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT*, *supra* note 1.

¹⁶ On the growth of transnational advocacy networks and movements, see VALENTINE MOGHADAM, *GLOBALIZING WOMEN: TRANSNATIONAL FEMINIST NETWORKS* (2005); CATHERINE ESCHLE, *GLOBAL DEMOCRACY MOVEMENTS, SOCIAL MOVEMENTS AND*

The bitter North-South conflicts among women which were evident at the international women's conference in Mexico City in 1975, had abated by the Nairobi conference in 1985 and further dissipated in Beijing a decade later. Women's movements in the global South had dramatically grown and come to command the attention of their national governments. They had arguably become stronger and more effective in this respect than their counterparts in the global North. Many women's movements in the South were grappling simultaneously with political representation, property rights, violence against women, reproductive rights, and a host of other issues. The growth of human rights activism and the increasing inter-twining of women's and human rights movements and discourses created new ways of addressing violence against women.¹⁷

This is the complex terrain in which Nussbaum made an important but contested contribution. In her years at the WIDER Institute in Helsinki and in her travels to India, she became increasingly attentive to gender inequality, especially in poorer countries. Nussbaum positioned herself as both a theorist and a practitioner through her work with the UNDP, particularly on the Human Development Reports, which measure the quality of life by examining capabilities. Together with Amartya Sen, she founded the Human Development and Capability Association in 2003.¹⁸ Her work reflected and contributed to the increasingly international character of feminism.

Nussbaum's position is controversial, however, because growing internationalism generates new debates as it puts others to rest.¹⁹ Many feminists are wary of universalism of any kind, particularly when it is prescriptive. They worry that transnational feminism will simply reflect geo-political inequalities in a world in which the U.S. government has

FEMINISM (2001); MAXINE MOLYNEUX, *WOMEN'S MOVEMENTS IN INTERNATIONAL PERSPECTIVE* (2001); and *GLOBAL FEMINISM: TRANSNATIONAL WOMEN'S ACTIVISM, ORGANIZING AND HUMAN RIGHTS* (Myra Max Ferree & Aili Marie Tripp eds., 2006).

¹⁷ See MARTHA E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998); JULIE PETERS & ANDREA WOLPERT, *WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES* (1995), and *WOMEN, GENDER AND HUMAN RIGHTS: A GLOBAL PERSPECTIVE* (Marjorie Argosin ed., 2001).

¹⁸ See Human Development and Capability Association, Home Page, <http://www.capabilityapproach.com> (last visited Feb. 1, 2010).

¹⁹ Some of these contending positions are expressed in the volume edited by Maxine Molyneux and Shahra Razavi, *GENDER, JUSTICE, DEVELOPMENT AND RIGHTS*, (Maxine Molyneux & Shahra Razavi eds., 2002).

justified militarist foreign policies, toward Afghanistan, for example, on feminist grounds. They fear that the growth of human rights discourses is linked to the hegemony of neo-liberalism and the concomitant demise of radical ideologies which advocate equality rather than rights. Some feminists believe that liberal discourses obscure the importance of community-based identities and that individual rights undermine the rights of minorities and indigenous communities. For example, Rosalva Aida Hernandez Castillo argues that mainstream women's movements in Latin America have undermined and neglected the concerns of indigenous women.²⁰ Some are concerned that the growing institutionalization of women's movements—both through their closer relations with states and with international organizations—has dissipated their radicalism. Sangeeta Kamat describes the NGO-ization of grassroots movements in India and Sonia Alvarez describes a similar phenomenon in Latin America.²¹

II. THE NATIONAL, TRANSNATIONAL, AND THE LOCAL

Nussbaum holds nation-states responsible for providing citizens with the resources necessary to make meaningful choices. She recognizes that “even a highly moralized globalism” needs nation-states because transnational structures are not sufficiently accountable to citizens and do not adequately represent them.²² She argues that external powers should not force sovereign governments to make decisions unless they have committed the gravest abuses.²³ Thus, Nussbaum accords a secondary role to multilateral organizations and to transnational and domestic non-governmental organizations.

Nussbaum rightly avoids the excessive importance that some feminist scholars have accorded to transnational institutions—which they regard as having supplanted national institutions and movements. As significant as the growth of transnational organizations may be, feminists

²⁰ Rosalva Aida Hernandez Castillo, *Towards A Culturally Situated Women's Rights Agenda: Reflections from Mexico*, in *WOMEN'S MOVEMENTS IN THE GLOBAL ERA* (Amrita Basu ed., 2010) [hereinafter *WOMEN'S MOVEMENTS IN THE GLOBAL ERA*].

²¹ See Sangeeta Kamat, *DEVELOPMENT HEGEMONY: NGOS AND THE STATE IN INDIA*, (2002), Sonia E. Alvarez, *Translating the Global: Effects of Transnational Organizing on Local Feminist Discourses and Practices in Latin America*, 1 *MERIDIANS: FEMINISM, RACE, TRANSNATIONALISM* 29–67 (2000)

²² NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT*, *supra* note 1, at 105.

²³ *Id.*

continue to confront powerful states and nationalist forces within the domestic context. The transnational feminist organizations which have intervened most effectively to support gender equality are organizations like Women Living Under Muslim Laws (WLUML), which have worked simultaneously locally, nationally and transnationally.²⁴

Many national women's movements view the growing influence of transnational networks and funding as mixed blessings. The resources that help sustain women's organizations often have strings attached. While many donors support the creation of women's policy bureaus, fewer support organizations that radically challenge economic inequality. And women's bureaus are far less likely than women's movements to promote women's agency. Some conservative states have fiercely resisted international attempts to monitor and change their policies on gender and the family. International support for women's rights may ultimately increase women's vulnerability as a result of the misogynist backlash it triggers.

A further question is whether non-democratic states will support human capabilities. Although the Indian state can be encouraged to recognize capabilities, it is not typical of post-colonial states. India is characterized by extensive poverty and gender inequality, as well as by strong courts, a vibrant civil society and a free press. India's Constitution contains extensive directive principles which encourage the state to pursue social justice. Unlike the U.S. Constitution, it provides for non-discrimination on grounds of sex.²⁵ It is a living, changing document which has frequently been amended. Thus, while activists may sometimes appeal to international human rights norms and laws, they have generally not asked international agencies to influence the Indian state. But think of numerous countries in which gender inequality is pervasive and democracies and constitutional protections are absent or weak. In these countries there are fewer prospects of state recognition of capabilities and to the extent they exist, they are created by women's movements,

Nussbaum is most compelling when she grounds her arguments in particular contexts. In *Women and Human Development*, she focuses on India and appreciates the diversity within it. As she points out, while patriarchy constrains the choices all women make, their lives are also influenced by their caste and class backgrounds, the regions they inhabit,

²⁴ See Women Living Under Muslim Laws, <http://www.wluml.org/> (last visited Feb. 1, 2010).

²⁵ INDIA CONST., art. 14 (Equality Before the Law) & art. 15 (The Prohibition of Discrimination on Grounds of Religion, Race, Caste, Place, Sex or Place of Birth).

their relationships with their families, and their incomes.²⁶ She opens and closes with the experiences of two women, Vasanti and Jayamma.²⁷ Whereas Vasanti is a lower middle class Rajput living in Ahmadabad and working with the non-governmental organization (NGO) Self Employed Women's Association (SEWA), Jayamma is a poor lower caste Ezha from Kerala who has no sources of income or support from her family.²⁸ In these examples, Nussbaum differentiates normative ideals of womanhood from women's lived experiences and explores economic and political influences on cultural practices. She thereby dispels essentialist assumptions about the fixed, homogenous, quarantined character of cultural identities and their rootedness in religion.

Nussbaum's understanding of Indian politics enables her to appreciate the vexed status of laws governing the family.²⁹ In principle, uniform secular law provides greater rights to women within the family than the current system of religious laws for India's five major religious communities. However, Nussbaum supports maintaining religious laws with the provision of exit options alongside the creation of a comprehensive secular code of civil law.³⁰ Indian feminists increasingly support this option to avoid making Muslim minority women choose between their community and gender identities. They have ceased to demand a uniform civil code to distance themselves from the Bharatiya Janata Party (BJP) which has supported it. Nussbaum's position reflects her respect for pluralism and religious freedom. The challenge for Nussbaum is to think about rights contextually when discussing capabilities in the abstract.

Nussbaum praises the Indian women's movement,³¹ but none of her books devote much attention to its role in debating, enhancing, and implementing capabilities. She accords more importance to NGOs among

²⁶ NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 1.

²⁷ *Id.* at 15–23, 106–09.

²⁸ *Id.* at 16–17.

²⁹ *See generally* Nussbaum, *Sex Equality, Liberty and Privacy*, *supra* note 11.

³⁰ NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 1, ch. 3 (discussing the dilemmas that religion creates)

³¹ MARTHA C. NUSSBAUM, *THE CLASH WITHIN: DEMOCRACY, RELIGIOUS VIOLENCE AND INDIA'S FUTURE* (2008) [hereinafter NUSSBAUM, *THE CLASH WITHIN*].

poor rural women.³² However, NGOs are less likely than social movements to support capabilities. Most NGOs are confined to localities and do not have a national impact. They tend to be highly specialized and narrowly concerned with particular issues which they have been funded. They generally consider themselves non-political. One of the most shocking instances of NGO failure was during the Gujarat violence in 2002, the main focus of Nussbaum's *The Clash Within*. Gujarat has among the largest number of NGOs of any state in India.³³ However, most NGOs, including the Self Employed Women's Association (SEWA), which Nussbaum praises in *Women and Human Development*, were silent during the pogrom. Although SEWA stated that it did not want to jeopardize the safety of its members by taking a stance, nor, clearly, did it want to risk state sanction.³⁴

We come full circle to the relative importance of national as opposed to international forces and of social movements as opposed to NGOs in implementing capabilities. Nussbaum argues, "[A] good idea is just that, a good idea. . . . But in all implementation a fundamental role remains for the nation state."³⁵ The question is often not whether rights are good or bad in the abstract but, rather, who is proposing them? Why? And who will implement them? What underlies resistance to these ideas? As important as the nation should be in enacting capabilities, it often is not. Ultimately, international actors may assume greater importance than Nussbaum would advocate precisely because of geopolitical realities and global inequalities. Ideas cannot be evaluated outside of the contexts in which they exist. This does not mean that good ideas should be discarded, but what remains unspecified is how to ensure that ideas refining the meaning of capabilities, can be shared, understood, debated, and adapted.

I turn to the many ways in which social movements are vital in addressing capabilities.

³² NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 1, at 17, 23, 40, 106–11 (discussing the strides of SEWA and other NGOs in the areas of literacy and economic independence for rural women).

³³ Amrita Basu, *The Long March From Ayodhya: Violence and Democracy in India*, in, IMPLEMENTING PLURALISM AND DEMOCRACY IN INDIA, (Wendy Doniger & Martha Nussbaum eds., forthcoming 2010) [hereinafter Basu, *The Long March From Ayodhya*].

³⁴ Interview with Mirai Chatterjee, SEWA member, Ahmedabad, Jan 13, 2007.

³⁵ NUSSBAUM, THE CLASH WITHIN, *supra* note 31, at 103.

III. SOCIAL MOVEMENTS

A. Movements as Capabilities

Social movements might be viewed as capabilities when they are committed to social justice and engage in deliberation. The Indian women's movement has enabled women to achieve access to credit, land rights and political representation. It also affords activists opportunities to develop friendships, exercise freedom, and engage in creative self-expression. Since movements are dynamic entities, they may become capabilities as activists attain agency, dignity, and freedom.

B. Deliberating capabilities

Most social movements are informed by activists' knowledge, reflection, and communication about structural and systemic sources of inequality. Deliberation also takes place within movements. Because activists generally disagree with one another, they routinely compare the importance of key capabilities. For example, feminists have long debated the attention they should accord to poverty, illiteracy, reproductive freedom and violence against women.

C. Appreciating the inter-linkages among capabilities

Because movements are dynamic and continually changing, activists who begin by addressing one set of issues often take up others that they had not anticipated. Women's movements have frequently grown out of other social movements—nationalist, revolutionary, democratic—which have both supported and reneged on their commitments to women's rights. In numerous peasant struggles originally targeting land rights, for example, women activists have come to challenge men's excessive alcohol consumption and domestic violence.³⁶ Women's movements have explored the linkages among capabilities by examining the connections between women's subjection to domestic violence and their lack of education, income, and property.

³⁶ I discuss this in my book. AMRITA BASU, *TWO FACES OF PROTEST: CONTRASTING MODES OF WOMEN'S ACTIVISM IN INDIA* (1992).

D. Influencing Constitutions

In Zimbabwe,³⁷ Poland,³⁸ Iran³⁹, and Pakistan⁴⁰, among other countries, women's movements have played critical roles in placing pressure on states to recognize capabilities. The experience of the women's movement in Zimbabwe provides an excellent example of the dialectic between the women's movement and the state. As a result of women's activism in the nationalist movement in the 1960s and 1970s, the state adopted legislation that would improve women's position, particularly within the family. Women's organizations felt empowered to demand constitutional change. They forged alliances with other groups and organized meetings throughout the country around a Women's Charter. When the state failed to respond, the women's movement organized sufficient support to defeat a state-sponsored referendum. Although the state responded with repression, the women's movement has allied with other civil society organizations and is at the forefront of the struggle for democracy and gender equality.⁴¹

E. Pressuring the state to realize capabilities

In India, movements organized by the lowest castes and by women have pressured the state to implement constitutional commitments to promote gender and caste equality. A comparative analysis of women's movements reveals that states are most apt to adopt policies and legislation supporting gender equality when women's movements compel them to do so.⁴² In a study of thirty-six countries, Laurel Weldon finds that the most

³⁷ Shereen Essof, *Ramagwana Rakajeka/The Future Will Be Better The Next Time: Opportunities and Challenges of the Zimbabwean Women's Movement*, in WOMEN'S MOVEMENTS IN THE GLOBAL ERA, *supra* note 20.

³⁸ Elzbieta Matynia, *Polish Feminism Between the Local and the Global: A Task of Translation*, in WOMEN'S MOVEMENTS IN THE GLOBAL ERA, *supra* note 20.

³⁹ Nayereh Tohidi, *The Women's Movement and Feminism in Iran: A Glocal Perspective*, in WOMEN'S MOVEMENTS IN THE GLOBAL ERA, *supra* note 20.

⁴⁰ Farida Shaheed, *The Women's Movement in Pakistan: Challenges and Achievements*, in WOMEN'S MOVEMENTS IN THE GLOBAL ERA, *supra* note 20.

⁴¹ Shireen Essof & Ramagwana Rakajeka, *The Future Will Be Better The Next Time: Opportunities and Challenges of the Zimbabwean Women's Movement*, in WOMEN'S MOVEMENTS IN THE GLOBAL ERA, *supra* note 20.

⁴² LAUREL WELDON, *PROTEST, POLICY AND THE PROBLEM OF VIOLENCE AGAINST WOMEN* (2002).

important determinant of improved government responsiveness to violence against women is the existence of strong autonomous women's movements.⁴³ Women's policy bureaus, in the absence of such movements, have been unable to promote government action on violence against women. One reason, Weldon notes, is that movements advance moral and political arguments to create public support for their claims.⁴⁴ Strong women's movements not only create a groundswell of support for public policies that promote gender equality but also increase the legitimacy of democratic governments.

F. Thinking strategically about the respective roles of the state, international bodies, and NGOs

Social activists often shift course depending on the conditions they confront in particular contexts, at particular moments in time. Thus movements which refuse to work with state agencies at certain moments might do so at other times. They thereby demonstrate the need for proponents of capabilities to think strategically about the role of key actors, particularly the state, in supporting capabilities. The women's organizations which have benefited most from transnational ties have had strong national foundations and can use transnational resources without being controlled by them. Strong women's movements have often sought to selectively accept foreign funding and work with the state, while maintaining some autonomy. They have also attempted to forge transnational alliances which do not entail accepting funding in order to avoid state scrutiny.

G. Realizing such capabilities as affiliation, play, the use of the senses, imagination, and thought

Social movements provide an incubator for cultivating citizenship based on affiliation, imagination, and practical reason. In *The Clash Within*, Nussbaum argues that Gandhi provided a spiritual and philosophical basis for Indian democracy by calling all Indians to a higher vision of themselves and by getting people to perceive the dignity of each human being.⁴⁵ She explains that Gandhi understood *swaraj*, self-rule, not only as a means of achieving independence but also of freeing the inner self. Gandhi knew that

⁴³ *Id.* at 187.

⁴⁴ *Id.*

⁴⁵ NUSSBAUM, *THE CLASH WITHIN*, *supra* note 33, at 105–06.

for democracy to flourish it had to cultivate the inner world of human beings, equipping each citizen to contend against the passion for domination and accept the reality, and the equality, of others.⁴⁶ She rightly praises Gandhi's non-instrumental, ethical form of political engagement.⁴⁷ I would add that Gandhi's commitment to self-transformation was associated with a deep skepticism towards centralized state power and appreciation of decentralized, democratic struggle. Today, social movements of diverse ideological persuasions continue to appeal to Gandhian ideals.

Nussbaum also deeply values the cultivation of imagination, the arts, and self expression in the creation of democratic citizenship. She writes admiringly of Bengali writer and Nobel laureate, Rabindranath Tagore, who viewed freedom as rational, emotional, and imaginative.⁴⁸ In 1901, Tagore founded Shantiniketan, a school in what is now West Bengal, to provide the kind of education that is essential to democratic citizenship.⁴⁹ It emphasized studying Bengali and learning about Bengali culture, inculcating habits of questioning, critical reasoning, and deliberation, learning about cultural differences at home and abroad, and nourishing the imagination through immersion in literature and the arts.⁵⁰ As Ashish Nandy notes, Tagore, like Gandhi, rejected reliance on the state and valued popular struggles for political justice and cultural dignity.⁵¹ He placed self-self over self-other dialogue.

Nussbaum directs us to the importance of identifying culturally specific ways of elaborating ethical concepts.⁵² The state can certainly create conditions under which capabilities are squelched or strengthened, but, as Nussbaum demonstrates so well, these capabilities often flourish in arenas free from state control. Shantiniketan's autonomy from public institutions enabled it to avoid the rote learning that deadens creativity.⁵³

⁴⁶ *Id.* at 16, 99–100.

⁴⁷ *Id.* at 101, 105.

⁴⁸ *Id.* at 87.

⁴⁹ *Id.* at 86.

⁵⁰ *Id.* at 86–88.

⁵¹ ASHISH NANDY, *THE ILLEGITIMACY OF NATIONALISM: RABINDRANATH TAGORE AND THE POLITICS OF SELF* 2–3 (1994).

⁵² *Id.* at 89–90.

⁵³ *Id.* at 85, 284–85.

Though he was a critic of patriotism, Tagore sought inspiration from his own cultural traditions.⁵⁴ The implementation of capabilities must entail promoting rich forms of practical reason, affiliation, and aesthetic expression.

Women's movements have visualized how practical reason, affiliation, and aesthetic expression can be realized outside the state. They have negotiated the relationship between private and public and individual and self, both when democracy exists in the formal political arena but not the family, and when democracy is absent in both domains. The slogan of the women's movement in Chile during the struggle against the Pinochet dictatorship was "Democracy in the country and in the home."⁵⁵ This aspect of movements is especially important to cultivating a respect for human dignity which Nussbaum believes is vital to democratic citizenship.

The Indian women's movement offers many examples of realizing capabilities through play, imagination, and practical reason. One such event occurred in the days following the symposium to honor Nussbaum. On February 9, 2009, the Ram Sena, (Army of Lord Ram) a right wing Hindu organization, attacked a group of women who were drinking and dancing in a bar in Mangalore.⁵⁶ A group of women who described themselves as a "Consortium of Pub-Going, Loose, and Forward Women" organized a creative and well-planned protest against this and other incidents of sexual harassment by the Hindu right. Their most notable act was to organize women to send "pink chaddis" (underwear) to the office of the Ram Sena on Valentine's Day. A web site and extensive media coverage documented 47,738 pairs of pink underwear being delivered to the Ram Sena office.⁵⁷ The pink underwear was a spoof on the deadly seriousness with which the Rashtriya Swayamsevak Sangh has donned khaki shorts as symbols of brotherhood. The organizers also encouraged women to head for the nearest bars on Valentine's Day.

The "pink chaddi" campaign is a wonderful illustration of how creative forms of activism are linked to capabilities. This protest entailed women using imagination and reason to laugh, play, and enjoy themselves.

⁵⁴ *Id.* at 90–92.

⁵⁵ Alicia Frohmann & Teresa Valdes, *Democracy in the Country and in the Home*, in *THE CHALLENGE OF LOCAL FEMINISMS: WOMEN'S MOVEMENTS IN GLOBAL PERSPECTIVE*, (Amrita Basu ed., 1995).

⁵⁶ See The Pink Chaddi Campaign, Homepage, <http://thepinkchaddicampaign.blogspot.com> (last visited Feb 1, 2010)

⁵⁷ *Id.*

The campaign asserted women's rights to live in an environment which was free from physical violence and insisted on the state's responsibility to ensure this. The state government was pressured into arresting Pramod Muthalik and other Ram Sena members to prevent them from harassing women on Valentine's Day.⁵⁸ Rejecting the allegation that they were westernized, the activists asserted the universal right of women to engage in self-expression. The protest promoted public deliberation and debate about women's freedom.

IV. CONCLUSION

I pose questions about how human capabilities can be secured with some trepidation. Nussbaum has already developed an approach to philosophy which is explicitly normative and grounded in women's material lives. She is unabashedly normative, feminist, and humanist. Her commitment to sympathetic understanding is evident in all aspects of her work. She takes an especially strong stand in addressing the needs of women who have suffered the most extreme deprivation and violations. Hasn't Nussbaum contributed enough to the formulation of gender justice? Is it fair to ask for more?

It is fair, because Nussbaum is concerned with how capabilities can be enacted. She challenges the value of separating theory from action and identifies the many ways in which theory creates a road map for change. She states that she intends to go beyond a negative conception of rights and an unqualified defense of freedom. She embraces a positive conception of social justice, both because of the magnitude of suffering and because she believes that capabilities can be realized—that is, they are not simply utopian. “The capabilities approach is not remote and impractical but urgently practical when it urges us to rethink our ideas of social cooperation,” she argues.⁵⁹ Moreover, she claims that capabilities are only effective when the means of securing them exist. Effective measures must be created to enable people to exercise rights.⁶⁰

Is it possible that Nussbaum does not delve too deeply into the question of implementation because doing so would open to scrutiny the troubled question of how widely capabilities are held? Deliberation might lead not to a consensus but to a questioning or prioritizing of capabilities.

⁵⁸ *Police Crackdown on Muthalik*, TIMES OF INDIA, Feb. 14, 2009.

⁵⁹ NUSSBAUM, FRONTIERS OF JUSTICE, *supra* note 2, at 306.

⁶⁰ *Id.* at 287.

The adoption of capabilities may only be possible if we suspend community-based democratic decision making. It would be ironic if the attainment of capabilities rested on the whims of the state, to the detriment of democratic deliberation. However, I do not believe that Nussbaum wants to evade deliberation for she contends that the realization of capabilities rests on their public acceptance. She states, "The threshold level of each of the central capabilities will need more precise determination, as citizens work towards a consensus for political purposes."⁶¹ What she does not adequately explore is how citizens can seek this consensus.

Missing from Nussbaum's account is an appreciation of the place of communities in engaging in deliberation. Her emphasis on individuals and institutions ignores the potentially vital role of groups within civil society. Even mechanisms to detect and prevent corruption often fail to secure social justice in the absence of popular consent and mobilization from below. Some scholars suggest that deliberation can develop standards for protecting people from cruel, inhuman and degrading treatment and thereby promote more positive forms of well-being. Abdullahi An Naim proposes inter-community cross-cultural dialogue.⁶² Sally Merry suggests that the deliberation of rights within the local context may result in their vernacularization, or adaptation to the material, cultural and political circumstances of people's lives.⁶³ Whatever forms deliberation takes, it is difficult to imagine capabilities being justified, let alone implemented, in its absence.

Social movements have assumed a variety of forms, including some which have opposed gender equality and capabilities. However, social justice movements are attuned to the contexts in which universal capabilities can be realized. In this respect, they engage in the search for the kind of precision that Nussbaum calls for. Moreover social movements represent deliberation in action. They are dynamic, strategic entities which are responsive to the changing political environment. Women's movements contend routinely with tensions between the universal and the particular—women's shared and specific interests based on their identities and location. As strategic actors, movements often engage in a variety of approaches to fostering change.

⁶¹ NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 1, at 77.

⁶² ABDULLAHI AN NAIM, HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS (1995).

⁶³ SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE (2006).

In India, the context which Nussbaum most thoroughly explores, the pressures that progressive social movements have put on the state and its responsiveness to their demands make possible the realization of capabilities. Nussbaum argues that whether or not particular nations possess constitutional liberal democracies, people can draw upon ideas inherent in a world culture of human rights.⁶⁴ She also looks to other states and international agencies to pressure recalcitrant states into adopting capabilities while generally rejecting intervention in the internal affairs of sovereign states. Given the difficulties that women's rights activists face in repressive nations and the risks of heightening nationalist resistance to Western influences, it is impossible to achieve capabilities without active community deliberation and mobilization.

A key to negotiating the different logics of particularism and universalism rests on the relationship between the state and key civil society actors. The Gujarat pogrom is a tragic example of how state sanction of bigotry and violence, supported by civil society organizations, resulted in horrific bloodshed.⁶⁵ The alternative is state recognition and support for capabilities which promote social justice. If the dialectic between states and social movements has sometimes led the state to undermine capabilities, it also contains the opposite potential. Top-down and bottom-up, egalitarian and pluralist, gendered and human, directive and deliberative—such is the character of progressive social change; and such is a way to recognize, adopt, and support human capabilities.

⁶⁴ FRONTIERS OF JUSTICE, *supra* note 2, at 304.

⁶⁵ For a lengthier treatment, see Basu, *The Long March From Ayodhya*, *supra* note 33; Amrita Basu & Srirupa Roy, *Prose After Gujarat: Violence, Secularism and Democracy in India*, in WILL SECULAR INDIA SURVIVE (Mushirul Hasan ed., 2004); AMRITA BASU & SRIRUPA ROY, *BEYOND EXCEPTIONALISM: VIOLENCE, RELIGION AND DEMOCRACY IN INDIA* (2006).