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Abstract

New societies require social polities based upon renewed ethical values. We are witnessing the regeneration of the ethical models that nourish social policy in a more inclusive manner, being more acquiescent with diversity than are the classical social contract and justice theories. This paper examines the regeneration of these ethical foundations from contemporary paradigms of thought, such as Martha Nussbaum and Amartya Sen's, in contrast to the ones proposed by Rawls and contractarianism. Special focus is put on the problem of dependency in our societies. The conclusions drawn advocate for an inclusive social contract that embraces the diversity of human functionings and capabilities. This work also discusses the reasons why a regeneration of ethical models shaping the theories of justice, which are the core of our social order, is essential.

Keywords: social policy, dependency, capabilities approach, Martha Nussbaum

Fundamentos Éticos de las Políticas Sociales: Martha Nussbaum y la Dependencia

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Resumen

Las nuevas sociedades demandan formas de organización social fundamentadas en valores éticos renovados. Asistimos, hoy, a la renovación de los modelos éticos que sustentan las políticas sociales desde paradigmas más inclusivos y mas condescendientes con la diversidad, que las hasta ahora vigentes teorías del contrato y de la justicia social clásicas. Este artículo trata de la renovación de estos fundamentos éticos desde paradigmas de pensamiento contemporáneo como el de Marta Nussbaum y Amartya Sen, así como de las carencias que presentan los modelos clásicos como los propuestos por John Rawls y el contractualismo. Se hará especial referencia al problema de la dependencia en nuestras sociedades y se concluirá en la necesidad de pensar las bases de un contrato social inclusivo que abarque la diversidad de funcionalidades humanas y de capacidades. Y se postulará la necesidad de renovar los modelos éticos que fundamentan las teorías de la justicia que son la base del nuestro ordenamiento social.

Palabras clave: política social, dependencia, enfoque de las capacidades, Martha Nussbaum

The political principles we choose to shape society reflect an image of who we are and how we want to live. The ethical foundations that we use to evaluate wrong or right policies or the appropriate development of society inspire these principles. Justice, equity, equality, freedom or autonomy are among these fundamental moral principles. The debate on the meaning of these concepts is now more vibrant than ever. The turn of political theory towards moral philosophy and the revival of ethics in the public realm, which has been pointed out by Rawls, Habermas, Rorty, Vattimo, Dworkin, Sandel, Nussbaum and Sen, among others, is due to at least two main factors: the excessive economism prevailing in political principles and, in turn, the search for a democratic regeneration to update these political principles (Habermas, 1997)¹.

Actually, Amartya Sen's work in the UN was aimed at finding indicators to measure human well-being and freedom. The Indian Nobel Prize-winning economist insists that life quality and well-being go beyond productivity and income level. The limitations of the GDP as a development indicator are revealed when the increased economic growth does not improve citizens' quality of life in many countries (Stiglitz, Sen, & Fitoussi, 2010).

In the same vein, Martha Nussbaum's works introduce moral philosophy in the field of development economics. She aims at finding political principles that are more detached from exclusively economic goals. These principles, Nussbaum holds (2006; 2011), must be inspired by ethical paradigms that understand human nature from less rationalist and utilitarian approaches. The American philosopher makes a critique of Rawls's theory of justice, which follows the traditional contractarian approach that envisages society as a mere association of independent individuals keeping contractual relationships driven by selfish calculation. Nussbaum's organicist conception of human nature is inspired by Sen, Aristotle and Marx. The human being is a developing creature that needs society to live and realise their capabilities and functionings. To this end, society must be able to provide all citizens with enough opportunities (Nussbaum, 2000) on an inclusive basis.

In this paper, we analyse the main aspects of Nussbaum's critique of the limits of one of the most influential theories of Western political philosophy: the social contract theory and its updated version in Rawls's theory of

justice. We explain how the capabilities approach, developed by the professor of Ethics and Law, can provide a more inclusive conceptual framework that embraces a conception of justice that allows countering inequity and exclusion in society. These problems demand theoretical changes, the first of which must be the revision of the political principles that exclude people with disabilities from citizenship. Finally, we analyse how the influence of development economics –Sen and Nussbaum– in moral philosophy has led to an anthropological turn in the understanding of human nature closer to the classical Greek concept –Aristotelean– of humans as social beings; a vision that relies on values of sociability, cooperation, capabilities and functionings.

The Capabilities Approach in the Context of Human Development Theories

Sen and Nussbaum's capabilities approach offers an ideal normative framework to evaluate the extent of individual well-being, assess equity in public policy and develop human nature. The term *capabilities* conveys the human being's potentialities, substantial freedoms at their disposal to develop the functionings that allow for fulfilment and well-being (Nussbaum, 2011). Although Sen and Nussbaum agree on this definition, they differ in other aspects of the theory. For instance, Sen prefers the term *functioning*² to *capability*, and defines capability as the possibility to achieve valuable functionings that improve citizens' qualifications and productiveness with greater life opportunities (Sen, 1987, p.46). For instance, when defining poverty, Sen makes reference not to lack of wealth but to lack of capability development. Here development is not economic growth but the process of providing individuals with opportunities to develop their capabilities and achieve good living standards.

The starting point of the capability approach is the critique of utilitarian and liberal conceptions that link development and well-being to consumption and distribution of wealth. Both the economist³ (1992) and the philosopher⁴ (2000) insist that quality of life and well-being are determined by the extent of capability development, rather than by the income level. It is

not about utility but opportunity to convert commodities at our disposal into valuable achievements:

Equal incomes can go with significant differences in wealth. Equal wealth can coexist with very unequal happiness. Equal happiness can do with widely divergent fulfilment of needs. Equal fulfilment of needs can be associated with very different freedoms of choice. And so on. (Sen, 1992, p.2).

In fact, the capability approach was developed within the context of human development theories. Such theories state that development cannot be measured only by economic indicators but by the quality of life. Quality of life involves development of education, healthcare, resources and income, of course. In this line, the United Nations Development Programme (UNDP) published the first report on human development based on Sen's studies⁵.

This first report on human development introduced the Human Development Index (HDI). The HDI measures the average achievements in a country, focusing on the ends rather than the means (namely, GDP) of development and progress. The HDI is calculated from national data on life expectancy at birth, adult literacy rate, gross enrolment ratio for primary, secondary and tertiary schools, and GDP per capita⁶. Actually, these dimensions of life quality (life, health and education) constitute three fundamental capabilities that all societies must guarantee and develop in their citizens. The HDI reveals which countries offer more freedom and development to their people:

People are the real wealth of nations. Indeed, the basic purpose of development is to enlarge human freedoms. The process of development can expand human capabilities by expanding the choices that people have to live full and creative lives. (UNDP, 2004, p.127).

The Capability Approach Theory in the Context of Social Justice Theories

In this state of affairs, the capabilities approach has become a conceptual theoretical framework not only to measure development but also to lay the foundations of a new social justice theory. The American philosopher

demonstrates that the capabilities approach provides good indicators for human development as well as an excellent framework for building up a theory of basic social justice. The central capabilities, such as health, life, education or nutrition, are key to the quality of life for all people, and therefore, she contends, they cannot be reduced to a single numerical scale (Nussbaum, 2011).

Nussbaum disagrees with Rawls on his conception of primary goods. She considers that equality in the distribution of goods does not meet the diversity of needs and capabilities of human beings. Here we must differentiate the distribution of goods from the capability to use them, because some people may fail to convert resources into valuable outcomes. This argument is in keeping with Sen's thought when he defines poverty as capability deprivation.

In *Frontiers of Justice*, philosopher Martha Nussbaum analyses the reasons why three groups are excluded from Rawlsian justice theory. These often-disregarded groups are animals, economically underdeveloped nations and people with disabilities (Nussbaum, 2006, p.23). We will focus on the different treatment given to people with disabilities or the dependent. This demand of equality is similar to that of women. According to Nussbaum, to solve this problem we first must envision a new way of thinking of citizenship and human beings.

One of the most conflicting points between both theories is precisely the conception of citizenship and the prerequisites of the individuals who choose the legal principles of the political community. John Rawls (1999) imagines an ideal scenario where all citizens have the same powers and capabilities⁷. In this situation of ideal equality, the just distribution of primary goods⁸ is guaranteed but both Nussbaum and Sen claim that such isonomy deserves more attention. First and foremost, because human beings differ in their capabilities and powers, even in the ideal situation suggested by contractarian approaches. Human beings are different in their capabilities and needs and, therefore, it is necessary to acknowledge the differences prior to the opening of a debate on equality. It happens that up to Sen and Nussbaum's works, all justice theories striving for equality, by means of utilitarianism or fair distribution of goods, assumed uniformity in the needs of individuals. They took little note of a fundamental fact: we human beings

are different from one another and diversity is not a secondary difficulty that can be disregarded or a variable that can be implemented later, but a key aspect in equality studies:

Human beings are thoroughly diverse. We differ from each other not only in external characteristics (e.g. in inherited fortunes, in the natural and social environment in which we live), but also in our personal characteristics (e.g. age, sex, proneness to illness, physical and mental abilities). The assessment of the claims of equality has to come to terms with the existence of pervasive human diversity. (Sen, 1992, p.1).

In both Sen and Nussbaum, the capabilities approach envisages each and every person as an end in themselves and takes no notice of total and average well-being in society. Instead, what actually counts are the opportunities available to each citizen. Nations and public policies are urged to enhance every person's living standards by providing the framework where capabilities can be developed. In his *Inequality Reexamined* (1992), the Indian economist makes two relevant critiques of egalitarianism, focusing on Rawlsian theories: the heterogeneity of human beings and the multiplicity of variables for evaluating equality (Sen, 1992, p.1).

On the other hand, while acknowledging that she pursues Rawls's footsteps along political liberalism, Nussbaum builds up her capabilities approach in the form of a dialogue and continuous critique of the Rawlsian concept of contract. This theory supports that the legal principles in a society are the result of a contract aiming at the mutual advantage between rational, "free, equal and independent" individuals. Let us examine this in more detail.

Contractarianism and the Principles of Exclusion

The belief that all men are rational and reasonable, which is inspired by Kant's deontological ethics, underlies contractarian justice theories. There is a traditional division of two main currents of ethical thought: material and formal ethics (Kant, 2012). The former nourishes ethical action and pursues moral good. As moral good is conceived differently depending on the individual, there are several currents of thought within material ethics ranging from Aristotle to utilitarianism. On the contrary, in formal or

deontological ethics, moral action is based on universal formal principles that bind everyone with no exception. These a priori principles are not imposed by God, religion or governing authorities, but by pure reason.

The problem arises and exclusion occurs when moral autonomy and reasonability, which are presupposed capacities in moral action, also become necessary criteria to be a party to the contract. As Nussbaum points out, Kantian moral elements in Rawls and contemporary contract theorists⁹ are a grave limitation to justice, as they differentiate first-class citizens from second-class citizens.

My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant (...) the guiding idea is that the principles of justice (...) are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. (Rawls, 1999, p.10).

Being free¹⁰, independent¹¹ and equal¹² (this rules the dependency cases out) are the a priori requirements of the parties to the contract, as Nussbaum (2006) underlines. Moreover, Rawls establishes that the principles of justice as fairness also require that these free, equal and independent persons be concerned to further their own interests, this is, the engine of social cooperation is based on self-interest. Therefore, we can highlight three controversial points in Rawls's theory of justice: the original position or the circumstances of justice, the attributes of those who engage in the social contract (free, equal and independent), and mutual advantage as the purpose of social cooperation.

The Original Position or the Circumstances of Justice

It is a hypothetical situation¹³ where Rawls finds the above-mentioned principles of justice, which are selected by individuals situated behind a veil of ignorance (no one knows their class position, assets or gender). Rawls establishes a list of hypothetical principles –heterogeneous, in Sen and Nussbaum's critiques– that range from material assets to human dignity. So far so good. But we run again into the core issue. Rawls, like all

contractarian theorists, presumes that all human beings are roughly similar in mental and physical powers and they are all free, equal and reasonable in their choices, which is not true. As pointed out by Sen (1992), Rawls distributes primary goods by assuming that all human beings have similar needs. Therefore, the theory of justice as fairness is flawed in this presumption though not in the theory.

Furthermore, the original position excludes people with special needs, as they do not have ‘normal’ mental or physical abilities. But it is not clear that having ‘normal’ capacities entails ‘normal’ rights. In other words, equality in capacities may not lead to equality in rights (or in morale). Therefore, equality in capacities is no guarantee of equality in rights (Nussbaum, 2006). The problem arises when standards of rationality are brought up when defining human beings. Actually, Rawls acknowledges some doubts regarding the inclusion of disabled people in the concept of global justice. He is trapped in a vision of the human nature that values humans mainly for their rationality. This vision is predominant in Western society since Nietzsche’s interpretation of the history of philosophy, and was started by Socrates, developed by Plato and Christianity, and culminated with Kant and the Enlightenment. As a matter of fact, Kant’s approach to human dignity leads to the exclusion of the disabled from this concept, which is a paradox, as Nussbaum contends, because dignified treatment is given only to those who are equal in mental and physical powers but not to those who are equal in humanity. To sum up, neither classical nor contemporary contractarian theories can solve these problems, not even their best version developed by Rawls.

Kant’s influence is also noticeable in the hypothetical situation of the original position in Rawls’s theory of justice. In this state of nature or original position, it is difficult to provide an account of the dynamics of being the subject of justice (those who choose just principles) and being the object of justice (those who benefit from just principles). In other words, who designs the basic principles of society? Who are the addressees? To Nussbaum’s view, all contract theories share this structural feature and misunderstand both questions (Nussbaum, 2006). Contractarians conflate primary subjects or recipients of justice with those who choose the principles of justice for all, and they specify certain abilities (language, minimum

moral capacity and willingness to be cooperative) as prerequisites for participation in the procedure that chooses principles. Persons with physical or mental impairments do not meet these criteria, and we are again before a double exclusion. We are referring to reiterative social exclusions of the disabled from the very foundations of society, which leads us to the second fundamental objection.

Free, Equal and Independent

Nevertheless, not all citizens are free, equal and independent throughout all their lives. Anyone can suffer a disease or become unemployed or dependant. Such relevant issues on dependency are disregarded from the foundations of the system. Therefore, the state has to intervene afterwards by means of public policies that can eradicate exclusion¹⁴. It is necessary indeed to think of the groundings of social justice from a different paradigm, but it is not easy to alter contract theories without affecting their basic principles: free, equal and independent. Obviously enough, one cannot make a contract without rationality. However, it is also obvious that rational capacity is not a prerequisite for citizenship. We need a Copernican turn in the anthropological vision of human nature. The way to begin, Nussbaum suggests, when we think about fundamental principles, is to think of the human being as a creature characterized by sociability (Aristotle, 1959). This leads us to the third critique of the justice theory.

Mutual Advantage as the Purpose of Social Cooperation

All contractarian theories envisage a concept of human nature that lies precisely in the need for a social agreement. Most have a vision that is close to the Hobbesian conflict and the pursue of self-interest (Locke, property) or common benefit (Kant, we all respect others so that we are respected too). In this way, justice only makes sense when the state of nature is abandoned and an agreement for mutual advantage is reached¹⁵. The idea of mutual advantage, accepted by Rawls, is central to the social contract tradition: the contracting parties leave the state of nature for mutual advantage (Nussbaum, 2006, p.156).

Nussbaum makes a direct critique of Rawls's assertion that mutual advantage is the origin of the principles of justice, since the pursue of justice must be based on justice itself rather than mutual advantage. She also claims that the capabilities approach does not secure mutual advantage because justice is a valuable common good that is pursued for its own sake (Nussbaum, 2006). But human beings can be cooperating out of a wide range of motives: love, pity, benefit of course, but also the love of justice itself.

The person leaves the state of nature (if, indeed, there remains any use for this fiction) not because it is more mutually advantageous to make a deal with others, but because she cannot imagine living well without shared ends and a shared life. Living with and toward others, with benevolence and justice, is part of the shared public conception of the person that all affirm for political purposes. (Nussbaum, 2006, p.158).

Conclusions. Towards a New Conception of Human Nature: Man is a Social Being

Nussbaum's capabilities approach provides a theoretical framework that envisions human nature based on values of social cooperation and moral duty to the citizens who are *not fully cooperating* members of society. She states that a comprehensive theory of justice must ensure reciprocity and respect to individuals with impairments, even with a grave mental disability. The American philosopher holds that human beings are creatures, social animals, characterised by sociability and her non-Kantian account of human dignity: a dignified and decent life. Sociability, she contends, encourages man to cooperate for survival and development rather than for benefit.

In practice, the exclusion of people with disabilities from the foundation of political principles leaves aside a great deal of relevant issues related to social justice: support centres, the value of care and caregivers, the costs of integration in labour market and education, public policies for capability development, etc. They are invisible, as women were not long ago. These complaints are relegated to the private life, which is none of the State's business, especially in a liberal system.

But ignoring human vulnerability is a mistake from the point of view of justice and our societies' principles. We all have chances to end up in a dependency situation. The capabilities approach understands nature in such a way that human weakness is not disregarded at all. Individuals, alone, are vulnerable. They need society to develop and grow and to pass through several stages where they are unavoidably dependent. If they grow old, they will possibly develop physical and mental impairments. MacIntyre, another voice of contemporary philosophy, approaches dependency from a socio-political dimension, envisaging vulnerability as inherent to human nature. MacIntyre tries to foresee:

A form of political society in which it is taken for granted that disability and dependence on others are something that all of us experience at certain times in our lives and this to unpredictable degrees, and that consequently our interest in how the needs of the disabled are adequately voiced and met is not a special interest, the interest of one particular group rather than of others, but rather the interest of the whole political society, an interest that is integral to their conception of their common good (MacIntyre, 1999, p.130).

In this sense, the capabilities approach provides a wider coverage and is encouraged by the Aristotelian idea that there is something wonderful and worthy in any complex natural organism. The starting point of the approach is that a worthy life is based on authentically human functionings, and human beings are beings in need of a rich plurality of human life activities that cannot be reduced to the fair distribution of resources and primary goods. Human beings have different needs of resources and different abilities to convert the same resources into functionings. As a matter of fact, “a society that does not guarantee these fundamental entitlements to all its citizens, at some appropriate threshold level, falls short of being a fully just society, whatever its level of opulence.” (Nussbaum, 2006, p.75).

Nussbaum justifies a list of ten capabilities¹⁶ (Nussbaum, 2011, p.33-34) as central requirements of a life with dignity¹⁷ that all societies must secure to a certain level (note again that this concept of dignity differs from Kant's). These are political principles that must be shared, guaranteed and implemented by all nations. Nussbaum supports that “the appropriate political target is capability and not functioning” and insists on “a rather

strong separation between issues of justification and issues of implementation” because the former leave room for human freedom (Nussbaum, 2011). In fact, the structure of the theory is outcome-oriented, focused on human development, rather than procedures. This is how this approach departs from formalist contractarian theories, and in particular, Rawls’s justice theory, which assumes that a correct and fair outcome, social justice, necessarily results from a correct and fair procedure. And here again we have the dilemma between the formal and the material, Rawls’s formalism versus consequentialism, which supports that a political scenario is proven right if results turn out to be good. Although Nussbaum insists that hers is not a consequentialist theory, the fact that some strong principles of social justice are achieved by securing development to a minimum threshold level does not match any deontological approach (Nussbaum, 2011).

In turn, the capabilities approach provides a more inclusive vision of human nature that does not exclude anyone from justice principles, for it starts from a conception of man as a social animal that needs society to live. The Aristotelean view of man as a political animal, *zoon politikon* (Aristotle, 1959), means that human beings were made to live in the polis, the city, to develop their human nature, because one who lives outside the society is either a beast or a god. On the other hand, this is such a Greek idea that Socrates is brought back to mind. He did not want to live outside the polis because his main interest was to go to the theatre and discuss his ideas with his contemporaries. That is why he took hemlock to die and avoid ostracism, for he knew he would become a beast, this is, lose his humanity. But this is a different story.

Notes

¹ The prevailing economism in political principles has drawn the attention of different disciplines, from moral philosophy and political theory to economic science. We cannot contribute the debate here. Among all the above-mentioned authors, Habermas is a key representative of the critique of the reduction of politics to economic dimensions.

² Martha Nussbaum prefers the term *capabilities* to *functionings*, because the former is less utilitarian and reflects better her understanding of the principles of justice, as we will see later

on. On the contrary, Sen thinks that “a functioning is an achievement of a person: what he or she manages to do or to be. The capability of a person is a derived notion. It reflects the various combinations of functionings (doings and beings) he or she can achieve. Capability reflects a person’s freedom to choose between different ways of living” (Sen, 1992).

³ Nobel Prize-winning economist Amartya Sen, in the Tanner Lectures held at Stanford University, delivered his speech *Equality of What?* In 1979, where he presented his conception of capabilities for the first time.

⁴ “Instead of asking about people’s satisfactions, or how much in the way of resources they are able to command, we ask, instead, about what they are actually able to do or to be. Sen has also insisted that it is in the space of capabilities that questions about social equality or inequality are best raised” (Nussbaum, 2000).

⁵ The Human Development Index was developed by Pakistani economist Mahbub ul Haq, working alongside Sen in the early nineties. It was Sen’s idea that well-being and development should rely upon the development of citizens’ fundamental capabilities (Pressman & Summerfield; 2000).

⁶ In 1996, the UNDP published the first attempt to measure poverty. The Capability Poverty Measure was a new indicator inspired by Sen’s works, a multidimensional index of poverty focused on three basic dimensions of human development: health, literacy and reproduction.

⁷ Otherwise, the legal principles legitimising differences could be established, as it happens in dictatorships.

⁸ Heterogeneous list of basic needs that any person would wish to accomplish their life goals.

⁹ Although classical and contemporary contractarian theorists deal with the circumstances of the social contract and the origin of society, they differ in their vision of human nature, the circumstances of the agreement and the political justification of the State (Fernández García, 1983). Classical contractarianism was born in the 17th and 18th centuries with Rousseau, Hobbes, Locke and Kant. It states that the principles of society are the result of a social contract originated in a hypothetical state of nature (Rousseau) or original position (Rawls), meaning an initial situation of equality in which individuals refuse to use force for peace’s sake and to get mutual advantage. This contract is the inception of the civil society (Locke, Kant) and the State (Hobbes).

¹⁰ *Free* in the Lockean sense: no one submits to others involuntarily. According to Kant, everyone is entitled to pursue happiness. Equal in social contract theory means that the parties to the contract start negotiations in equality regarding morale, entitlements and resources (Nussbaum, 2006).

¹¹ Equal: It is based on the capacity to think of a certain sense of justice, this is, the capacity to make rational, autonomous, moral choices (Nussbaum, 2006).

¹² Independent: according to contract theories, individuals must not dominate or depend on others (Nussbaum, 2006), which leaves children, the elderly and the disabled (formerly women as well, and today we could also add pensioners) out of the foundation of the political space.

¹³ The conception of the initial position is indeed a good hypothesis to lay the foundations for an egalitarian political society. Wealth, social class or status as sources of differences in

socio-political power are left aside in fair political systems, because men are equal in the hypothetical state of nature and this natural equality legitimises the political principles of society. Nowadays, no one would accept these differences and liberalism has much to do with the assault on feudal and monarchical traditions that made these differences legitimate.

¹⁴ The dependent are not only taken out of the scope of justice but they are also envisaged as second-class citizens with fewer rights. Additionally, care is assigned to a traditionally considered second-class social group: women. In the case of Spain, the State has treated women in a paternalistic way, enacting work-life conciliation and dependency laws.

¹⁵ However, Nussbaum does not refer to other visions of human nature that are closer to the goodness than to the conflict and that also lay the foundation for the contract. It is Rousseau's idea that man is born good. Even Kant, who was always between Rousseau and Hume, envisaged the most ambiguous human nature: unsocial sociability.

¹⁶ The ten Central Capabilities are:

- Life
- Bodily Health
- Bodily Integrity
- Sense, Imagination and Thought
- Emotion
- Practical Reason
- Affiliation
- Other Species
- Play
- Control Over One's Environment

¹⁷ A new definition of dignity that does not exclude anyone and does not make some human beings worthier than others; a definition that does not give rise to two categories of citizenship and does not associate dignity to rationality. This definition is not based upon moral autonomy or the capacity for reason and moral choice, but rather upon equal humanity.

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