

Women and Positive Rights

PHAVISMINDA Journal
Volume 8 (May 2009): 47-53.

Christopher Ryan B. Maboloc
Ateneo de Davao University, Davao City

At the very core of their being, women suffer because they are not really free. Women are systematically exploited by an enemy that seems to be eternally present: cultural bias. This cultural bias, for instance the prevalence of a "double standard", puts women to difficult, depressing, and demeaning circumstances, forcing them to live unhappy lives, a life that is "less than human". Due to poverty, a woman leaves her own child to take care of another, not her own. This, without a doubt, is a death sentence to her motherhood. And she suffers because she is – a woman. The poet Rainer Maria Rilke tells us that in a truly human world, we cease to be "male" or "female": we become "human" and "fully human". He writes in *Letters to a young poet* that there seems to be something "wild, malicious, time-bound, and uneternal" in the male species, one that diminishes "his art and makes it ambiguous and doubtful" (Rilke 1984, 27). Against this background, the "woman agenda" should survive the challenges and pride of a highly masculine world. We need a political framework that appeals to the very core of our humanity.

Martha Nussbaum, American philosopher, employs a more philosophical account of Capabilities Ethics in her book *Women and human development*. First, I will briefly explain the Capability Approach. By capability, we refer to the "positive freedoms of people". Positive freedom, or the "courage to be", means the ability or power "to achieve certain things in life". Subsequently, the entitlement to any one of these capabilities can be denoted as a positive right. According to Nussbaum, Amartya Sen uses the concept of capability "to make comparisons regarding the quality of life", which intends to advance the idea that it is in asking what people are "able to do or to be", and not in their "level of satisfaction" or the "amount of resources" they are "able to command that the quality of human life is best understood" (Nussbaum 2000, 12). But in contrast to Sen, Nussbaum's goal in her version of the Capability Approach is "to go beyond the merely comparative use of the capability space", for she intends quite clearly, against the background of a multicultural world, "to articulate an account of how capabilities can provide a basis for constitutional principles" (Ibid.).

Poverty constrains most women in developing countries from having the time for self-enhancing activities. Due to their difficult patriarchal environment, where the “daddy is the boss”, where “a beautiful body is no more than a sex symbol”, in a world where “FHM”, “Maxim” and “Playboy”, boldly portray them to a kind of spiritual violence, women are in many instances systematically rendered powerless. More often than not, women are denied the chance of pursuing a career because their role is defined by a social environment that objectifies them. Unarguably in the Philippines, many women in rural areas end up as domestic helpers and many under-aged girls have worked abroad as *japayukis* during the nineties. The effects are disheartening and the repercussions to one’s life are immeasurable. These women and their families suffer. Although they may not have lost the will to live a dignified existence, they elect to disregard society’s judgment. The fact remains, however, that many of their children have been alienated from the love and attention of a complete family. These women have also become victims of abuses in their host nations, not only due to the absence of support mechanisms from the Philippine government, but because a woman in a male dominated world or kingdom like Saudi Arabia is just – a woman. Thus, many women die a thousand deaths. According to Nussbaum, women “lack the support for leading lives that are fully human” and this lack is “frequently caused by their being women” (Ibid., 3). Simply put, many women in poor countries don’t have meaningful choices or fundamental options for “being and becoming”.

Rights and Constitutional Entitlements

Women are at the receiving end of the travails of poverty. At times, they live obscure lives. For instance, it can be said that many women in patriarchal societies are deprived of the chance to express themselves creatively. This deprivation is due to their lack of opportunity for critical and imaginative activities. For instance, when women are prohibited from attending school because they need to work at an early age or are forced to marry against their will, they are faced with substantial impediments to attaining a well-lived human existence. In the absence of “positive freedoms” or the capabilities that enable women to flourish, one can say that women are deprived of a life they deserve as a matter of universal right.

People are entitled to certain universal rights in order to live a life that is worthy of the dignity of the human person. Human life is not reducible to a mere function. Nussbaum says that “it is profoundly wrong to subordinate the ends of some individuals to those of others, that is, at the core of what exploitation is to treat a person as a mere object for the use of others” (Ibid., 73). To empower and liberate women from any form of exploitation means to



envision “a society in which persons are treated as each worthy of regard, and in which each has been put in a position to live really humanly” (Ibid., 74).

In what way can the issue above be addressed politically? I argue that constitutional reforms can be the battle ground for uplifting the lives of women and the poor in the third world. As a legal apparatus, constitutions should contain a “threshold of the essential human capabilities” which embodies the positive rights of people. Generally, national constitutions contain features which manifest the negative rights of people. By definition, a negative right is “a right to non-interference”. For instance, the rule – that “no person shall be deprived of life, property or liberty without due process of law” – exhibits this right to non-interference. Basically, the Bill of Rights enshrined in many countries’ fundamental law seeks to ensure that our negative rights are not violated. From the perspective of political theory, it is a matter of basic justice that these rights are constitutionally protected.

However, non-interference is not an assurance that one actually achieves real well-being. For instance, a poor woman may not have experienced any form of abuse in her whole life, but she may continually be living in misery because her capabilities, for instance her critical thinking and other creative faculties, may not have been fully realized because she is dominated by male siblings and a domineering father. The way forward, in order to liberate her from the fetters of poverty, is to constitutionally promote and protect her positive rights. Nussbaum’s list of basic capabilities are an enumeration of these rights, which seek, more than anything else, to empower the person and his or her autonomy. This autonomy, or capacity to choose, defines for the individual what it means to be. A life without freedom is not a life, for it is our “freedom to be” that makes us who we are. For example, self-expression, including “anger”, “angst”, “joy”, and “excitement”, are as important as any nutrient that nourishes the human body, for these feelings manifest our basic humanity, the “gladness to be”. Positive rights imply that certain things, opportunities and goods are ever present for the individual to attain a life that flourishes. It is a life that is well-lived, a realization of a life that is in pursuit of happiness. Positive rights are rights that empower people, and as such, they are a value in itself, for without them, we are “less than” who we really are.

While Article XIV of the 1987 Constitution specifies the right to free basic education, there’s nothing in our constitution that empowers women to really assert this right. For instance, there is not enough support mechanism from the State so that parents can actually send their children to school. Basic education in the Philippines is not really free. The reason being is that the State does not ensure the requisite social and economic conditions for a child to attend school. For example, if parents are to choose, they would opt to send a male child to school because they think that when a girl gets married she will no



longer be able to help her own siblings financially since she will be subjected to the control of her husband.

From a macro perspective, the real challenge is to make the entitlement to this benchmark of positive rights politically acceptable to people of different religions, beliefs, and cultural backgrounds as a guiding principle that ensures a decent way of life for each and every person in society. A decent way of life is a kind of life where each person is treated as an end. This requires, according to Nussbaum, "to take a stand on some values that will be made central for political purposes" (Ibid., 58). Thus, the answer to the challenge of masculinity and pluralism is setting a threshold or benchmark of core entitlements which manifests our universal human values. This benchmark will thereby serve as a guiding principle for governments "as we think about what it really is to secure a right to someone" (Nussbaum 2006, 287). Pursuing this benchmark means that people are "entitled to not only mere life, but to a life compatible with human dignity" (Ibid., 292).

Let me enumerate what Nussbaum calls the "ten central human capabilities". The list includes "life", which means that "one must live out that span of life normal to the species"; "bodily health", implying one's "being able to have good health and in order to obtain this, adequate nourishment and shelter"; "bodily integrity", or one's "being able to be physically secure, and with rights over one's own body, e.g., not forced to lose capacity for sexual satisfaction or forced to conceive or bear children"; the "senses, imagination, and thought", and thus the need to be "able to use the senses, imagine, think and reason, and to do this in a truly human way: adequately educated, informed and free from repression"; the "emotions", implying that one is "able to have attachments for other people and things"; "practical reason", or the capacity to "form a conception of the good and to engage in critical reflection for the planning of one's life"; "affiliation", which refers to "being able to interact well with other people, and to imagine and empathize with their situation" and "having the social bases for self-respect and non-humiliation; not being subject to discrimination on the grounds of race, sex, etc."; "other species" or "being able to live with concern for the natural world"; "play", for people need to "play and laugh"; and "control over one's environment", meaning to say, one is "able to participate in political processes" and one is "able to have possessions and seek employment" (See Nussbaum 2000, 78-80).

To truly realize our human potentials, that is, in a very practical way, to provide a "standard of living" worthy of the dignity of the human being, the above universal human values should be expressed as positive rights serving as basis for policies and/or constitutional essentials. From a political end, in order to bring about real change in the lives of the poor, I will elaborate on three basic entitlements. I argue that the benchmark of human capabilities should be



translated to people's rights to housing, universal health care and basic education which should be made constitutionally obligatory for governments. Realizing these entitlements will make possible the actualization of the above mentioned universal values even in a pluralist setting. As a minimum requirement, these three positive rights or entitlements are absolutely necessary in liberating women and the poor from their difficult, depressing, and demeaning conditions.

First, housing for the poor, as a positive right, should be constitutionally obligatory for governments. This entails, among other things, that the government should have the resolve to act in order to realize its moral duty of not allowing any single family to live on the streets. The Philippine government does not provide housing for the poor. It provides investments, in support of this right, to developers who cater only to those who are capable of paying. The *Gawad Kalinga* phenomenon is good, but it is not good enough. Even if GK builds 700,000 homes, its target in the next few years, there is still a shortage of 3,300,000, if estimates from government agencies are considered. Nussbaum says, "an adequate house or other shelter seems to be inherent in the idea of human dignity" (Ibid., 293). The basic idea is that housing for the poor should be addressed first-hand by the State, not merely by NGOs and cause-oriented groups. The reason being is that housing is the immediate effect of an ever-growing population, which demands, among others, adequate provisions for shelter, health, education, and food security. Housing should therefore be provided to each and every single family, period. It is one item, without a doubt, where a pluralistic consensus is always immediately possible. Seriously, there is no greater social anomaly than seeing a few people live in mansions while a big number of indigents dwell on the streets. A decent home makes one want to live a decent life, and thus, from another vantage point, such results to decent communities with decent people, and from a pragmatic stance, a reduction in criminality and many forms of abuses against the vulnerable, especially women and children. At the outset, such might seem to entail a huge cost on the part of society, but such is paid for, it can be argued, by a reduction in the social, physical, and legal costs of having to contain crime. Moreover, this will result to a sustainable peace and order situation, which means, in the end, more investments and thus, work opportunities for the unemployed.

Secondly, it is obvious that if one suffers from the constant threat of disease without access to reliable medical support, life can never be well-lived. For example, women bear the agony; their emotions shatter when they see their children burdened by diseases. Universal health care will eliminate the unnecessary deaths of children from preventable diseases. Once health care is prioritized by governments, people will have productive lives because they will

be secured in their health and bodily integrity, and thus, they will be able to use their limited resource for many other things, or thereby concentrate on other creative activities which enhance the quality of human life.

Health is essential for human development (Sen 1999). But this is taken for granted by governments who choose to invest primarily on big infrastructure projects while making health care secondary. For instance, in the 2007 Philippine General Appropriations Act, only 11 billion pesos was allotted to the Department of Health. It is a mere pittance, for instance, if compared to the budget for the Northrail Project which now costs almost one billion dollars. Development theorists note that in order to make poor countries globally competitive, loans are granted to governments in building airports, seaports and dams (Sachs 2005). But from a human development perspective, there is not enough investments on the improvement of health facilities, the training of doctors and the provisions for free vaccines and medicines. Fast and effective medical attention is only available at expensive private hospitals while public health facilities are in decrepit conditions.

Finally, in poor countries whose people are vulnerable to fundamentalism and violence, there is the moral necessity to fully realize education as an essential human right. This should mean that basic education should be made compulsory and fully funded by governments. The Philippine government has proudly stated that in 2009, it will spend 150 billion pesos for education. The 2009 General Appropriations Act also allocates 300 billion for debt payments. Why not, allocate 300 billion for education and 150 billion for debt servicing?

Illiteracy results to unemployment and poor living conditions. To a great extent, poverty bears the face of a young girl, wounded and defeated by the travails of human life because she spends the day helping her mother find ways to augment the family income instead of reading books, thus, her senses, imagination and thought are not used to their full potential. In most rural areas in the Philippines where men don't earn enough, poor women are forced to do "double jobs", one at home and another outside, for instance by selling goods and becoming domestic servants. A woman does these menial things because she lacks the requisite education for a better kind of work. In some instances, young women are sent to the home of rich people to work as servants as payment for unpaid debts. Poverty leaves poor families with no choice, and the only way to secure the good future of young children is for the government to see to it that all children are in school. There should be no other option. It is an absolute moral obligation.

The lack of education hinders the achievement of one's full humanness, for those who are left out in the cave of ignorance will feel that they can't appear in public or take the stage, for they will feel discriminated against and stigmatized by their being "illiterate". Thus, parents have the negative duty not



to harm their children by keeping them out of school, and the government has the positive duty to fully finance public education. A country like the Philippines may have enormous wealth in terms of natural resources, but unless the government provides for the necessary conditions of a decent way of life, people will continue to suffer from the kind of life not worthy of being human. Enhancing the "quality of life" of the people should be the moral end of just constitutional arrangements.

References

- Gasper, Des. 2004. *The ethics of development*. Edinburg: Edinburg University Press.
- _____. 2002. Is Sen's approach an adequate basis for considering human development? *Review of Political Economy* 14, no. 4: 435-461.
- Giri, Ananta. 2000. Rethinking human well-being: A dialogue with Amartya Sen. *Journal of International Development* 12, no. 7: 1003-1018.
- Nussbaum, Martha. 2006. *Frontiers of justice*. Cambridge, MA: Harvard University Press.
- _____. 2000. *Women and human development*. Edinburg, Cambridge: Cambridge University Press.
- _____. 1986. *The fragility of goodness*. Cambridge: Cambridge University Press.
- Rilke, Rainer Maria. 1984. *Letters to a Young Poet*. Trans. By Stephen Mitchell. New York: Vintage Books.
- Sachs, Jeffrey. 2005. *The end of poverty*. London: Penguin Books.
- Sen, Amartya. 1999. *Development as freedom*. Oxford: Oxford University Press.
- _____. 1997. *On economic inequality*. Oxford: Oxford University Press.
- _____. 1992. *Inequality re-examined*. Oxford: Oxford University Press.
- _____. 1993. Capability and well-being. In *The quality of life*, ed. Amartya Sen and Martha Nussbaum. Oxford: Oxford University Press.