Is it possible to retheorize ‘dignity’ and human development through refugees?

By:

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17 December, 2024

“No problems today are more acute, or more politically inflammatory, all over the world, than problems of asylum and migration. They involve human dignity at the most basic level.”

MARTHA NUSSBAUM, 2019: 229.

Refugees as a particularly vulnerable group have increasingly found their way into recent discussions in philosophy, public policy, law, judicial decisions, etc. In fact, the Global Compact on Refugees aims to present a preliminary version of the importance of refugees in contemporary ideas of human agency-based development. Building on this, I propose that deeper engagement through a refugee lens must underlie two interlinked conceptions that are informing law and policy on various rights issues, i.e., ‘human dignity’ and a human capability-based development theory, the Capability Approach (CA). These

conceptions are relevant since they have been reifying the way development is viewed to simultaneously address global issues and promote human agency. Yet, till now, even these two ideas are confronted by a (non)citizenship blind spot, particularly in relation to refugees. Thus, I wish to emphasise that the complementary understanding of dignity and CA needs to incorporate the category of 'refugees' to be fully coherent as theories of development. I particularly utilise Martha Nussbaum's foregrounding on dignity in her theory of the CA to highlight its relevance yet the need for further work to include the legally 'non-citizen' refugee who does not neatly fit into the idea of nation states and the closely connected citizenship paradigm.

Why is a theoretical focus on refugees necessary?

Theories of justice which aim to explain and address oppression and subjugation in our society, often come down to a rudimentary question - how can human lives be transformed from mere existential survival, to one where human existence signifies purpose and comprise of opportunities promoting autonomy to choose one's own fate? (Rawls, 1999; Dowrkin, 2011). It is desirable as an ideal, and indeed increasingly accepted in law and policy, that each human being is inherently worthy of being treated with dignity, and, that due to this shared ideal there is an 'overlapping consensus' to ensure a purposeful life, or, in other words, a life of human dignity for everyone. This normative consensus on human dignity entails an ethical requirement to come together to address fear, poverty, discrimination, violence; all of which force many human lives in our society to a condition of bare survival without meaningful opportunities.

In fact, based on such a broad notion of human dignity, historically marginalised groups suffering from institutionalised systemic discrimination, have found an inclusive language to promote their struggles against repression, and to gain respect in society (Baxi, 2006). The proliferation of the human rights movement is merely one example of the constructive utilisation of the notion of human dignity to reduce inequalities, suffering and violence in our societies; as we are now witnessing the extension of 'dignity' in movements, such as for animal and environment rights (ibid; Nussbaum, 2006). However, it is also true that in spite of developments on the ethical consensus on human dignity, the sheer number of people living their lives in abject marginalisation

continues to be high, which is unmistakeably reflected in the plight of refugees!

Human dignity and Refugees: an uncertain relationship?

A refugee represents a figure who by leaving her country in search of protection, seeks refuge in another country and irrespective of the length of her 'temporary' stay, under the nation state system will always be treated distinct from regular member of republics, i.e., the citizens. As a consequence of moving to another nation out of fear of persecution the refugee stands as a symbol of what Agamben preferred to term as 'bare human', who has been excepted from the cushion of citizenship in a state-centric world, but remains relevant for justifying the role of the (host) State itself (Agamben, 1998).

Realistically, it seems that the current predicament of refugees around the world is a complete disregard for the notion of human dignity encased under Article 1 of the Universal Declaration of Human Rights (UDHR). Hence, we are faced with the difficult question of who deserves our respect to be treated with dignity.

Collste tries to address this by encouraging a moral cosmopolitan view towards "others", beyond our immediate community, including the community of citizens. Yet, in terms of refugees, the cosmopolitan idea of 'human dignity' suffers from a significant theoretical gap. Article 13(2) and 14 of the UDHR provide the right to movement across borders and of asylum from persecution, thus incorporating an important Kantian notion of *hospitality*. Kant's idea directly speaks to the issue of whether refugee protection should only oblige host States to give temporary protection (for the duration of risk of persecution/harm) or also the opportunity to become part of the society of the asylum host state through citizenship. Kant, in line with Grotius, emphasised that it is not a matter of charity, but of right, that 'temporary sojourn' is extended to foreigners (Collste, ibid). Benhabib makes this point contextually relevant when she notes that "*the right of hospitality occupies that space between human rights and civil rights, between the right of humanity in our person and the rights that accrue to us insofar as we are members of specific republics*" (Benhabib, 2004).Thus, according to Benhabib, Kant's concept of 'hospitality' ends up tilting towards 'charity' with its focus on the citizen/non-

citizen divide leading to an amplification of the status of the State.

In other words, Benhabib highlights that the distinction between ‘right’ and ‘charity’ reinforces, first, the applicability of Kant’s notion of human dignity to refugees, yet their right only to temporary sojourn implies the existence of a State and its citizens, in the face of which the right is only of ‘temporary stay’. Second, the temporary sojourn is subject to violations of an extreme perceived violations to life and liberty, i.e., persecution, reflected even in the UDHR, which arguably diluting obligations of host countries to provide merely safe haven with no guarantees of a life with a decent standard of living.

Therefore, flowing from Article 14 of the UDHR, a separate notion of temporary ‘human dignity’ is exemplified for refugees, which also reflects in the 1951 Refugee Convention and its 1967 Protocol. In many ways such an outlook seems to be inspired by a Kantian emphasis on the temporariness of asylum and migration. Moreover, somehow in the perspective of temporariness, the hierarchy of rights is assumed as persecution has been interpreted as grave violations of first-generation rights but not economic, social, and cultural rights which may be equally important (Hathaway, 2005).

Moreover, despite the UDHR and the 1951 Refuge Convention and the 1967 protocol, it is clear that refugee outflows are neither temporary nor limited to Europe. In fact, the latest figures released by the United Nations High Commissioner for Refugees (UNHCR) for 2023 show that 117.3 million people forcibly displaced by the end of 2023, out of which around 50 million constitute refugees, asylum-seekers and stateless people in countries other than their own. Further, 75% of the world’s refugees are hosted by low and middle income countries, which makes it important to not forget about the refugees once they get refuge for global development. Presently, the refugee outflows due to the Palestinian crisis, the Ukrainian crisis, the various crisis in South Asia, etc., portray the urgency of integrating refugees with human development ideas.

Thus, for the refugees, both the hierarchy of rights and the ‘temporariness’ of human dignity, within the nation-state legal creations such as citizenship, foreigner, or even refugee itself, pose significant barriers to accessing the inherent universal version of human dignity.

CA to the rescue of human dignity?

It is here that I turn to the Capability Approach (CA). Capabilities Approach is primarily associated with the welfare economist, Amartya Sen, who defines it as "*an intellectual discipline that gives a central role to the evaluation of a person's achievements and freedoms in terms of his or her actual ability to do the different things a person has reason to value doing or being*". The underlying questions which CA asks is, what are people able to do and to be (or, relating to their capabilities), and what they are achieving (or, relating to their functionings). Equally for our purposes here, its fundamental underpinning in human 'dignity', specifically in terms of treating each person (being) as an end, and possessing an intrinsic worth, gives further impetus to its relevance to refugees.

Conceptually, the unique utility of CA lies in its focus on capabilities and functionings that enables it to circumvent barriers that often inflict human rights, prominently related to resources, rights vs. duties contrast, and subjective notions of happiness. Further, its deeper interest in people's circumstances makes it suitable to an interdisciplinary application, prompting Robeyns to term it as "*a rich, multidimensional approach" and "one of those rare theories that strongly connects disciplines and offers a truly interdisciplinary language*" (Robeyns, 2017; 8.18). In turn, its practical relevance lies in its ability to provide inclusive "*recommendations on how to organise society and choose policies that are often genuine alternatives for prevailing views*" (Ibid; 18).

Martha Nussbaum's version of CA builds on Sen's version by contextually applying this human-agency model to global social justice issues. The centrality of 'dignity' in her work, the boundaries of which she has been pushing even to non-human species, strongly indicates that Nussbaum's CA is designed to alleviate suffering and marginalisation prevalent in its many forms around the world today.

Nussbaum's CA prescribes a list of ten central capabilities which must be availed to each person, at least to a minimum threshold, if a society claims to be just. The essential capabilities which signify the idea of Nussbaum's human dignity are of *life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; and control over one's environment.* Under these broad and general classifications,

Nussbaum couches other entitlements, such as, political and material rights are included under the tenth capability, ‘control over one’s environment’.

Her list is a mix of rights, both civil and political as well as economic, cultural and social, which captures her conviction that there is no difference between the so-called first and second generation rights, and her versions employing them together without any hierarchy is an indicator of its superiority to rights language (Nussbaum, 2000: 97-100). In addition, all capabilities demand positive actions from the State and other entities, groups, people, etc. One of her justifications for this view is that even to secure civil and political rights, resources are required, including “*(t)o promote justice requires material aid… Any political and legal order that is going to protect people against torture, rape, and cruelty will need material support… There will need to be lawyers, courts, police, other administrative officers, and these will need to be supported, presumably, by a system of taxation*” (Nussbaum, 2019: 40). Apart from the practical justification, at a moral plane, Nusbaum finds it unreasonable to compare marginalisation in different measures, contexts and situations. According to her, “*(i)f humanity is owed certain types of treatment from the world, it would seem that it is owed good material treatment as well as respect and non-cruelty. If the world’s treatment doesn’t matter to humanity, then it would seem that torture, rape, and disrespect are no more damaging, no more important, than poverty*” (Nussbaum, 2019: 36-7).

In sum, Nussbaum presents her central capabilities list incorporating all entitlements irrespective of any differences within and beyond our borders as a fuller and broader notion of human dignity. Unlike the vacuous shells provided by Kant, running from the cosmopolitan philosophy strand from Cicero, and symbolised by the UDHR, Nussbaum does list out the essential entitlements for each human being and gives a more definite form to the idea of human dignity in addition to expanding its territorial scope. While doing this, she also extinguishes key hierarchies plaguing the human rights, particularly relating to hierarchy between rights. However, is Nussbaum’s CA relevant for refugees?

Relevance of Nussbaum’s CA to refugees?

Curiously Nussbaum has not elucidated much on refugees and it is only in one of her recent books, that she has specifically asserts that her version of the CA

with its ten central capabilities is equipped to address issues of asylum and migration:

"*we must confront the problem of migration: both refugees seeking asylum from persecution and war, and migrants seeking a better way of life.... Whatever the origins of the desperation with which people flee their homelands, we need to have something to say about it if we are to assess the contemporary viability of the cosmopolitan project. This is a huge philosophical issue*" (Nussbaum, 2019: 16).

Although Nussbaum's global principles do not include 'refugees' specifically, but the recent Global Compact on Refugees reflects a step, though a feeble one , in the direction of Nussbaum's global principles.

Further, Nussbaum's rejection of the orthodox view of 'reasoning' in a social contract forms the basis of including persons with disabilities, women, and even non-human species – that can also extend to people beyond national borders. With respect to refugees within a country, her focus away from the Kantian notion of temporariness lets even refugees, as foreigners, to seek protection and secure conditions of human flourishing (Nussbaum, 2019: 105). Therefore, at least conceptually Nussbaum seems to be able to provide a solid framework for taking up issues which might seem complex for vulnerable non-citizens such as refugees within the citizen-State legal and political grounding.

Yet, she is also clear that nation-States have a central place in her social justice theory, particularly when it comes to the "protective" entity with the primary responsibility for its people. In fact, Nussbaum even goes further to give vast latitude to the State in implementation of measures to ensure all her central capabilities are fulfilled in a just society. However, in situation when source countries from where refugees flee move away from any fulfilment of rights or capabilities, there is very little to be found which points towards a potential relation between accountability and material aid. The distinction brought in by the centrality of the State and its collateral classification under citizen/non-citizen thus remains inadequately addressed under Nussbaum's CA. It reminds one of Baxi's insistence on 'lived human rights' when he states, *"(t)here is no assurance that rights-integrity governance structures, normatively blueprinted by the language of human rights, may anywhere fully translate into prospects*

of lived human rights for all" (Baxi, 2006: 19).

Conclusion: human dignity and development with refugees in the conversation

Clearly 'human dignity' and human-agency based development theories such as Nussbaum's CA can benefit refugees can benefit, since these potentially aim to highlight the duties that other States and their citizens may have to the inhumane conditions of certain people in unstable countries, including towards people fleeing from the unstable countries and seeking refuge (see Crock, Mary et al, 2017).

However, the gaps emanating from the idea of nation states and citizenship will require an interdisciplinary inquiry particularly with theories in citizenship studies such as that of Scott, Isin, Benhabib, Bosniak, Jayal, etc., who question the centrality of the State, yet bring the focus back on the question of 'human dignity' in creative ways.

In concluding this post, I have sought to highlight the relevancy rather than the absolute applicability of 'dignity' to conceptions of human development, and in addressing a serious global problem resulting in refugee crisis. My aim has been to encourage a theoretical exploration of the 'margins', in this case, the margins of noncitizenship reflected in a refugee. While this has been my primary purpose, on a separate note I hope that contemporary juxtaposed versions of human dignity and the capabilities approach will continue to critically challenge the prevalent idea exclusionary rigid idea of 'citizenship' as the foundation of modern nation States. In doing so, we may in fact be able to retheorize ideas of dignity and human development through an incessant focus on "humans" rather than classifications such as citizen, refugee, etc.

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