

Chapter 2

The Rational Loving Citizen: Towards a True Interculturality

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Abstract According to Habermas, a requisite for the survival of a multicultural society is that its citizens, including immigrants, share a common political culture, an idea taken from the work of Rawls. Today's multicultural Europe demands a substantive and inclusive democracy (Michelman). A precondition of differentiated citizenship (Kymlicka) is a shared sense of civic purpose and solidarity. We cannot overlook the practice of civic virtues such as listening, dialogue and cooperation, in order to understand 'the other', if we accept the premise that we must respect all people of all races and cultures. Social unity does not only depend on shared values or shared principles of justice, it also depends on a shared identity. Minority rights are fundamental to the future of the global liberal tradition, and this includes the rights of racial minorities. However, liberalism should be complemented with a richer theory of human motivation. The liberal commitment to common citizenship reflects an overly legalistic notion that ignores broader social and cultural aspects. Based on compassionate reasoning, and given the relationship between emotions and the strong sense of identity of individuals and groups, this article argues that an essential condition for the development of a sense of civic virtue, solidarity and progress in recognising the processes of shared identities, is the removal of emotional barriers to the inclusion of 'the other'. We further suggest that our institutions must foster appropriate emotions in order to achieve a public culture of equality. Following Nussbaum's cognitive theory of emotion, we need political projects to limit the damaging effects of fear, envy, shame and disgust—the main obstacles to the growth of compassion and the normative potential of love, even in stable democracies. The damage can be seen in the jurisprudence of the ECHR concerning the disgust that is shown towards some racial groups such as Jews and people of African or Asian descent. Civil compassion should be strengthened and the propensity to projective disgust can be minimised through civic and community projects. The incorporation of emotion, however, does not transform morality into pernicious relativism. For example, if we agree that 'racism is bad', then we need to act accordingly, not only from a legal standpoint but also from a political and

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cultural one, because equality is not just a matter of good laws and policies. At the same time as we protect the rights of minorities in law (hoping this will influence other public emotions towards minorities), we should also consider the shaping of an emotional climate that could support and sustain good laws and institutions. Here we have an instrument that can attack liberal individualism and self-interest: the bonds and mechanisms that keep people together must be stronger than the attraction of egoism and self-interest. Moreover, the dangers that arise from individualistic emotions must be controlled by the rule of law and a vigorous critical culture.

2.1 Introduction

According to Habermas, a requisite for the survival of a multicultural society is that its citizens, including immigrants, share a common political culture, an idea taken from the work of Rawls.¹ Today's multicultural Europe demands a substantive and inclusive democracy (Michelman). A condition of differentiated citizenship (Kymlicka) is a shared sense of civic purpose and solidarity that can strengthen the public spirit of liberal democracies.² Habermas's proposal is a Kantian republicanism within the model of deliberative democracy. It incorporates a concept of citizenship that involves immigrants from a variety of cultural backgrounds and this makes it possible to include 'the other'.³ Deliberation must "prevent the marginalization of the self-understanding and worldviews of particular individuals or groups and, in general, foster a hermeneutic sensitivity to a sufficiently broad spectrum of contributions. Second, generalised reciprocal perspective-taking ('of each', 'jointly by all') requires, not just empathy for, but also interpretative intervention into, the self-understanding of participants who must be willing to revise their descriptions of themselves and others (and the language in which they are formulated)".⁴

We cannot overlook the practice of certain civic virtues such as listening, dialogue and cooperation, in order to understand 'the other, if we accept the premise

¹For an extensive commentary on the Habermas-Taylor discussion, see Elósegui (1997a) *Asimilacionismo, multiculturalismo e interculturalismo*. In *Claves de Razón Práctica*, 74: 24–33.

²Kymlicka (1995) *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Clarendon Press, Oxford, pp. 107–195. It is interesting to note that Habermas incorporated Kymlicka's ideas into his discussion, see *Multiculturalism: Does Culture Matter in Politics?*, in Elósegui (1997b) *Habermas y Rawls ante las sociedades multiculturales*. In *Revista de Estudios Políticos*, 98: 59–84, especially p. 74.

³Cf. Habermas (1996) *Die Einbeziehung des Anderen*, SuhrkampVerlag, Frankfurt. English edition: Habermas (1998) *The Inclusion of the Other*, in (eds.) Ciaran Cronin and Pablo De Greiff, *Studies in Political Theory* (trans. Massachusetts Institute of Technology), The MIT Press, Cambridge, Massachusetts, see Chap. 5: "On the Relation between the Nation, the Rule of Law and Democracy".

⁴*Id.* pp. 42–43.

that we must respect all people of all races and cultures⁵ (Taylor⁶). Social unity does not only depend on shared values or shared principles of justice, it also depends on a shared identity. It is increasingly clear that minority rights are fundamental to the future of the global liberal tradition, and this includes the rights of racial minorities.⁷

Liberals admit that citizenship is not only a legal status defined by rights and responsibilities, but it is, as Kymlicka writes, "... an identity, an expression of one's membership in a political community".⁸ Although Kymlicka sees this concern for the stability of liberal societies as excessive, there is no doubt that liberal societies need citizens to have a reasonably high level of restraint and mutual solidarity.

In any case, it is not sufficient to establish that, at least initially, the rights of minorities are consistent with liberty and justice, it is also necessary to prove that they are consistent with the long-term needs of a stable liberal democracy, and this includes the need for a shared civic identity which could maintain the level of commitment, accommodation and sacrifice that democracies demand.

Critics have shown that liberalism should be complemented with a richer theory of human motivation. There is nothing wrong with cultivating emotional motivation to improve actions, and it is true that loving citizens are likely to be much more resourceful in action.⁹ Moreover, some critics believe that the liberal commitment to common citizenship reflects an "... excessively legalistic understanding of citizenship which neglects the broader social and cultural aspects of membership".¹⁰

This article defends the idea that the elimination of emotional obstacles to the inclusion of 'the other' is necessary in order to raise the level of mutual solidarity as a means for progression, in recognition of the processes of shared identities.

⁵This text is being written as news is breaking with the attack against the French satirical weekly *Charlie Hebdo*, resulting in twelve dead and many wounded. Elósegui has developed ideas from the concept of 'intercultural republicanism,' consisting in educating everybody in democracy and citizenship. The democracy model of civic republicanism does not require social, cultural or religious homogeneity, but the acceptance and defence of common democratic values. It does not demand a uniformity that has often led to resentment. It should educate citizens in democratic skills that lead to respect. Whilst people may share other views on reality, it should be possible to discuss, in a climate of openness, understanding and mutual respect, the origin and foundation of various ethnic traditions, of cultural, religious and linguistic minorities, and develop the attitude of recognising other well-founded arguments, in order to enrich their own opinions and worldview. See Elósegui (2012) *El derecho a la identidad cultural en la Europa del siglo XXI*, Eunsu, Pamplona.

⁶Taylor (1995) *The Politics of Recognition*. In *Philosophical Arguments*, USA, p. 253: "...insisting on the universalisation of the presumption as a logical extension of the politics of dignity. Just as all must have equal civil rights, and equal voting rights, regardless of race or culture, so all should enjoy the presumption that their traditional culture has value".

⁷Cf. Kymlicka W (note 2), pp. 49–74 and pp. 107–130.

⁸*Id.* p. 188.

⁹Cf. Nussbaum (2001) *Upheavals of Thought: The Intelligence of Emotions*, Cambridge University Press, Cambridge (UK) and New York (USA), 2001, p. 392.

¹⁰Kymlicka W (note 2), p. 192.

2.2 From Instrumental to Compassionate Reason

The power which the Enlightenment trusted to release people from incomprehensible forces and enable them to realise their aspiration to happiness, not only failed, it made the aspiration unattainable.¹¹ Reason became an adversary for humans because, like social change, it only appeared to have authorised rationality in the Weberian sense; yet, it was (and is) called for in other undertakings such as the elimination of suffering and the promotion of genuine happiness.¹² The legacy of the Frankfurt School teaches us that we need an entirely human reason (a permanent theme of the western tradition), that is nothing if it is not rooted in feelings and emotions.¹³

Critical theory has exposed the debility of cold and insensitive reason. Moreover, theory itself recognises that it is immersed in practice.¹⁴ Practical interest, which guides the hermeneutical-historical sciences, is an interest not to dominate, but to understand the meaning. Emancipatory interest, meanwhile, is firmly located in liberation. If this is not the case, a critical theory only makes sense as a transformative reflection, suggesting from within, what it should be.

We are moving towards a compassionate and sentimental form of reason and, if we link critical theory with the requirements of an intercultural democratic society, it is obvious that an essential element to progress (on the basis of what unites us, rather than what divides us) is the elimination of emotional obstacles to the inclusion of ‘the other’. Shared identity implies an extension of the concepts of compassion and love, and it should not be forgotten that institutions shape the type of compassion that citizens learn and orient the object to which it is directed.¹⁵

The stability of modern democracy not only depends on accommodating ourselves to principles of justice, it also depends on the extent to which we are committed to exercising our citizenship and the degree of development of the practice of a virtuous citizenry.¹⁶ Without citizens who possess qualities that can

¹¹Cortina (1985) *Crítica y utopía: La Escuela de Fráncfort*, Cincel, Madrid, p. 37.

¹²*Id.* p. 89: “El triunfo de la razón subjetiva-instrumental supone el triunfo de la razón formal—de la capacidad para clasificar, deducir y concluir— y la derrota de la razón sustancial, que señala contenidos como valiosos”.

¹³*Id.* p. 21.

¹⁴Cortina A (note 11), p. 55: “La teoría es un momento de la praxis liberadora en cuanto permite tomar conciencia de lo que puede ser, paso imprescindible para una auténtica emancipación”.

¹⁵See Novales (2016) *Emociones adecuadas para la realización de la justicia en sociedades democráticas interculturales* (A propósito de la teoría cognitiva de la emoción de Martha Nussbaum). In *Estudios Thémata*, Sevilla, pp. 115–140. Paper presented at the ‘XI Congreso Internacional de Antropología Filosófica’, University of Castellón, 14–16 May 2014.

¹⁶Kymlicka W (note 2), p. 175: “Recent political events and events throughout the World—increasing voter apathy and long-term welfare dependency in the United States, the resurgence of nationalist movements in Eastern Europe, the stresses created by an increasingly multicultural and multiracial population in Western Europe, the backlash against the welfare state in Thatcher’s England, the failure of environmental policies that rely on voluntary citizen co-operation, etc.—have made clear that the health and stability of a modern democracy depends, not only on the justice of its basic institutions, but also on the qualities and attitudes of its citizens: e.g. their sense

achieve this goal, “the ability of liberal societies to function successfully, progressively diminishes”.¹⁷ In other words, in addition to procedural and institutional mechanisms that help balance the interests of all citizens, the stability of democracy needs “... some level of civic virtue and public-spiritedness”.¹⁸

2.3 Emotional Obstacles for Inclusion of ‘The Other’

2.3.1 *Nussbaum and the Cognitive Theory of Emotion*

Given the close relationship between emotions and a strong sense of identity among individuals and groups, a crucial factor for the development of a sense of civic virtue and solidarity is the elimination of emotional obstacles to the inclusion of ‘the other’. The circumstances in which we learn compassion are often circumstances in which human beings are hierarchically organised and divided; emotional factors tend to be well-established and not easy to eradicate. This is the reason why institutional intervention is vital for the removal of emotional barriers to including people that are ‘different’.¹⁹

(Footnote 16 continued)

of identity, and how they view potentially competing forms of national, regional, ethnic, or religious identities; their ability to tolerate and work together with others who are different from themselves; their desire to participate in the political process in order to promote the public good and hold political authorities accountable; their willingness to show self-restraint and exercise personal responsibility in their economic demands, and in personal choices which affect their health and the environment; and their sense of justice and commitment to a fair distribution of resources”.

¹⁷Galston (1991) *Liberal Purposes: Goods, Virtues, and Duties in the Liberal State*, Cambridge University Press, Cambridge, p. 220.

¹⁸Cf. Kymlicka W (note 2), p. 176, see also Macedo (1990) *Liberal Virtues: Citizenship, Virtue and Community*, Oxford University Press, Oxford, pp. 138–139.

¹⁹Nussbaum M (note 9), pp. 386–387: “The problem is that the psychological mechanisms by which human beings typically arrive at compassion—empathy and the judgment of similar possibilities—typically rest on the senses and the imagination in a way that makes them in principle narrow and uneven [...]. We can make the objection stronger by bringing in our own observations about shame and disgust. It is highly likely that people will learn compassion under circumstances that divide and rank-order human beings, creating in-groups and out-groups. The emotional factors that produce such divisions are too deep-seated to be easily eradicated. But they create boundaries to compassion that are also difficult to eradicate. Thus if we rely on compassion we may well reinforce hierarchies of class, race, and gender. Notice that this objection, unlike our first objection, is not exactly an objection to compassion itself: it does not say that people should not have compassion. It says, instead, that compassion requires an appropriate education in connection with a correct theory of concern; and that, even then, people so rarely extend their compassion evenly and appropriately that it would not be good to rely upon it too much. Just as we should concede that compassion needs a correct theory of the importance of various external goods, so too we should concede that it needs a correct view of the people who should be the objects of our concern”.

Nussbaum considers emotions as eudaemonist assessments and presents the self as constituted, at least in part, by its evaluative commitments to areas of the world that are outside it. This implies a division of emotions: (a) there are some emotions that expand the boundaries of the self, representing it as being partly made up of intense attachments to things and independent people—love and affliction as seen as paradigms of these emotions; in contrast, (b) some emotions tend to establish well-demarcated borders around the self, isolating it from contamination by external objects. This is true of the emotions of disgust and shame: “Disgust is paradigmatic of such an emotion. It still makes evaluative judgements about the importance of uncontrolled objects for the person’s own flourishing; but these judgments are typically negative, and the project of disgust is to keep them away. Thus disgust might be said to be the emotion of an unachieved and anxious Stoicism: the disgusted person still cares about mortality and the body, but is trying very hard to reach an undisturbed condition. The intense and excessive shame that I have called pathological shame partakes, as well, of this boundary-drawing character: although it contains an acknowledgment of the weakness and insufficiency of the self, it wishes to conceal that weakness and to restore a condition of omnipotent control over objects. Like disgust, it contains the judgment that weakness and need are bad things, to be kept at bay. And [...] shame and disgust are frequently linked to a hatred that seeks the total obliteration of the threatening object”.²⁰

Nussbaum’s neo-Stoic theory of emotion suggests that whilst compassion can be considered as a value that should be promoted by an intercultural democratic society, not all types of compassion should be accepted. The idea is compassion within the limits of reason; a compassion whose cognitive requirements are: (a) Seriousness: A belief or assessment that the suffering endured by the sufferer is serious because in emotion itself is implied a conception of human flourishing and what are the main traces in which human life can be found; (b) A belief that the person in question does not deserve the suffering—as Aristotle noted, undeserved suffering appeals to our sense of injustice and one is therefore more likely to experience compassion with regards to those who are generally considered as good, because it is easier to believe that they do not deserve the bad things that happen to them. Compassion is therefore necessary to establish a sense of responsibility and guilt²¹; (c) The ‘judgment of similar possibilities’: the belief that the chances of a person experiencing the same sort of suffering are similar to the possibilities of the person who is suffering. This judgment requires demarcation between those with which we are willing to share possibilities and those with which we are not.²² Here we have reached at the point where social and family learning play a very powerful role and where mistakes can easily occur; the people who are most likely to be seen

²⁰*Id.* p. 300.

²¹*Id.* p. 312, n. 27.

²²Rousseau (1762) *Émile ou De l’éducation*. Spanish edition: Rousseau JJ (1979) *Emilio o De la Educación*, Bruguera, Barcelona, p. 224, argues, in accordance with Aristotle, that the consciousness of one’s own weakness and vulnerability is a necessary condition for pity; if we lack these elements, we will demonstrate an arrogant severity.

as similar to us, or people we love, will be those who share our way of life—those who society has labelled as ‘similar’. As “the social barriers—of class, religion, ethnicity, gender or sexual orientation—prove recalcitrant to the imagination and this recalcitrance impedes emotion”,²³ in intercultural societies, it would be desirable public policies to encourage people to meet and understand those that are different, so as to make an equitable judgment on their similar possibilities, gaining a clear understanding of the meaning of suffering in the other person’s lives and being able to sympathize and commiserate with them.²⁴

But, is this really a question of the limitations of understanding? We would agree with Nussbaum that it is the ‘eudaemonist judgment’, not the ‘judgment of similar possibilities’ that is a necessary component of compassion. That is to say, for compassion to be stimulated, the suffering of another person should be considered as a significant part of their own scheme of objectives and goals. Indeed, the person who has compassion becomes vulnerable in the person of another person, as imagining one’s one similar possibilities can help the extension of one’s eudaemonist imagination.²⁵ Ultimately, what is important is shared vulnerability when faced with pain. On the other hand, my own benefit itself by thinking about shared vulnerability, can lead to the promotion of a selection of principles that will raise the minimum levels of society.²⁶ Recognition of an affinity on vulnerability is therefore important and it is frequently an indispensable epistemological prerequisite for compassion in human beings.²⁷ It is this affinity (or lack of it) what creates the difference between seeing people from other races as human beings whose suffering is important, and seeing them as distant objects whose experiences are of no interest. And the different forms of individualism do not appear to encourage us to think too much about others.

The judgment of similar possibilities is the reason why it is so common that people who do not wish to show any compassion (but want others to imitate them), depict those that suffer as entirely different creatures with entirely different possibilities. In *The Destruction of the European Jews*, Raul Hilberg describes the depth of the penetration of the Nazi discourse on Jews, used as a means to legitimise their mistreatment; they were ascribed non-human traits, represented as animals such as insects or vermin or as inanimate objects, ‘merchandise’ that had to be transported.

²³Cf. Nussbaum M (note 9), p. 317.

²⁴See Novales A (note 15), pp. 131–145.

²⁵Nussbaum M (note 9), p. 319: “But human beings have difficulty attaching others to themselves except through thoughts about what is already of concern to them”.

²⁶We could find the cause of partial and unreliable compassion towards people that are beyond our national, cultural or religious borders in the absence of any effective institutional structure that puts us all in a shared lifestyle: the judgment of *similar possibilities* helps the *eudaemonist* judgment that others (including others from distant and/or different cultures) are an important part of one’s own scheme of goals and projects and, in themselves, important as aims.

²⁷Nussbaum M (note 9), p. 319.

Disgust also played a role in the Holocaust, categorically separating the sufferers from their torturers.²⁸ This judgment of the different possibilities of ‘the other’ can be seen in both the published literature and sentences of Supreme Courts²⁹—they (not me) are animals; they (not me) smell bad, etc. The sentences of the European Court of Human Rights reference some of the fetid and stinking accusations to the Jewish people in some genocide behaviors.³⁰

²⁸*Id.* pp. 319–320, also see Glover (1999) *Humanity, a Moral History of the Twentieth Century*, Pimlico, London, 1999.

²⁹A sentence of 2009, July 23, from the Tenth Section of the Provincial Court of Barcelona, condemned the owners of the Kalki bookshop in Barcelona for various crimes, including the dissemination of genocidal ideas. Among the books that Kalki sold and distributed was ‘The International Jew. A World Problem’, by Henry Ford, (3rd edition revised and corrected by Guillermo Rodríguez Ruiz) published by Pensar Editores Colombia, on page number 358, lines 5–12 the book states: “..., obligando a nuestra juventud a tararear los cantos salvajes de los negros. Contestación: <<el jazz >> es hechura judía. Lo insípido, lo viscoso, lo contrahecho, el sensualismo animal: todo es de origen judío. Chillidos de monos, gruñidos de la selva virgen, y voces de bestia en celo, se combinan con algunas notas semimusicales y de esta forma el espíritu genuinamente judío penetra en las familias que en otros tiempos habrían repugnado indignadas tan estrafalarias costumbres”. Later, Sentence number 259/2011, of April 12 from the Spanish Supreme Court (Criminal court of the First Instance), resolved appeal number 1172/2010 and acquitted the defendants from the charges of which they had been found guilty. There was vote against from Andres Martínez Arrieta who, among other reasons, dissented because there were phrases that directly provoked hatred towards other races and justified genocide. For example, “*Los judíos son una raza pestilente, leprosa y públicamente peligrosa que merecen ser arrancados de raíz y destruidos antes incluso de su nacimiento*”.

³⁰Among other, the famous Sentence of the European Court of Human Rights (Section 3^a), 2013, March 5: *Varela Geis against Spain*, about the “Librería Europa” accused of crime of advocacy of ideas or doctrines justifying genocide. The Sentence núm. 235/2007, November 7 of the Spanish Constitutional Court, had condemned the plaintiffs not only for Holocaust denial, but because their conduct constituted incitement to discrimination and hatred against Jews that “should be eliminated as rats”. The bookseller claimed to the European Court arguing that his condemn for the crime of genocide justification violated his rights to freedom of thought and expression. The European Court has recently sentenced the Spanish State to pay to the plaintiff 8.000 euros as moral damage and 5.000 as expenses and legal costs.

In the description of the facts, the European Sentence declares: “De los anteriores libros, fueron incautados 17, 16 y 275 ejemplares. Los libros titulados *Informe Leuchter, fin de una mentira sobre el holocausto judío*, *El judío internacional*, *El mito del siglo XX*, *La política racial nacionalsocialista*, *Nosotros los racistas*, *El antisemitismo actual*, de los que se ocuparon 16 ejemplares, 117 ejemplares, 21 ejemplares, 308 ejemplares, 22 ejemplares y 255 ejemplares respectivamente, que se hallaban a la venta al público en la citada librería Europa, contienen análogas afirmaciones y valoraciones. Asimismo, todos los videos incautados, contienen inequívocas referencias textuales a la raza judía como grupo étnico al que hay que eliminar, destacando entre ellas la cinta titulada *El judío errante*, en la que se compara a dicha raza con las ratas, propagadoras de enfermedades por todo el mundo y a las que hay que exterminar sin contemplaciones”.

2.3.2 *Obstacles to Emotion: Fear, Envy, Shame and Disgust*

The ‘others’ must be respected, but respected for their otherness, so that they can be included in the community and feel a part of it. As Habermas comments, “The equal respect for everyone else demanded by a moral universalism sensitive to difference thus takes the form of a *non-levelling* and *non-appropriating* inclusion of the other *in his otherness*”.³¹

It is difficult to establish relations of mutual recognition between those who are different because there are harmful emotions that hinder the growth of civil compassion. There are many obstacles to the development of compassion and there are insidious poisons inherent the normative potential of love. In line with Nussbaum’s cognitive theory of emotion, we would specify fear, envy, shame and disgust.³² It is important to gain an understanding of these obstacles in order to devise political strategies that can minimise their undesirable effects. We need political projects that are aimed at containing the damage that is commonly caused by these emotions, even in stable democracies.³³ In Nussbaum’s words: “With such an understanding, leaders can prepare a much more efficient defence, strengthening specific vulnerable areas, rather than spreading resources around haphazardly. Of course, law is crucial. Laws and institutions protect us against the damage of bad civil passions, and law often precedes and guides the creation of decent sentiments. We certainly don’t want to wait until most people love each other before we protect the civil rights of the vulnerable”.³⁴

2.3.2.1 Fear

Fear is everywhere, for good and bad, and societies can shape it in many ways. Fear is necessary.³⁵ Fear is a form of heightened awareness, but, initially at least, it has a very narrow frame: one’s own body, and perhaps, by extension, one’s life and the

³¹Habermas J (note 3), p. 40. He surely includes the other “in her otherness”....

³²One source of difficulties is that in the philosophical tradition, different and connected terms have been translated and retranslated in very different ways, with very different nuances: *verbigratia*, *eleos*, *oiktos*, compassion, mercy, empathy, *piet *, *piti *, pity, sympathy, *mitleid* etc. See Nussbaum M (note 9), pp. 302–303, no. 10 and 12; Nussbaum (2007) *Radical Evil in Liberal Democracies: The Neglect of the Political Emotions*, in Thomas Banchoff (ed.) *Democracy and the New Religious Pluralism*, Oxford University Press, New York, pp. 171–202; Ortony et al. (1988), *The Cognitive Structure of Emotions*, Cambridge University Press, Cambridge.

³³Nussbaum (2013), *Political Emotions. Why Love Matters for Justice*, The Belknap Press of Harvard University Press, Cambridge, Massachusetts, London, England, p. 315.

³⁴*Ibid.*

³⁵Nussbaum M ‘Fear: A Narrowing Emotion’ (note 33), p. 320: “Fear is very useful, indeed necessary. It steers us away from danger. Without its promptings we would all be dead. Even in the political and legal realm, fear can be reasonable, giving good guidance. [...]; thinking of what we reasonably fear is a good guide to lawmaking. [...]”.

people and things connected to it. Fear is triggered by mechanisms that are rooted in evolutionary usefulness but are averse to learning and moral thinking. Fear could be reasonable, but it is also limiting “because of tendencies to intense self-focusing that derive from its biological origins, fear often hijacks thought powerfully, making it difficult to think about anything else but oneself and one’s immediate circle, so long as intense anxiety lasts”.³⁶

Our reaction to fear can be misguided in many different ways. In particular, “people may learn by association, to fear groups whom culture associates with stealth or hiding, or with being wily and sinuous: stereotypes used to demonise minority groups”.³⁷ Evidently, in ways that go well beyond evolutionary biology, we learn what is helpful and harmful from society. We then attach our fear mechanism to that knowledge, but whilst in every society, rhetoric and politics are based on ideas of what is dangerous, it is also true that our perception of danger is ‘constructed’³⁸; many sentences of European Courts on the right of asylum contain the word ‘fear’.

As a consequence, “a public culture that wants to encourage extended compassion needs to think as well about limiting and properly directing fear, for once it gets going, the good of others is all too likely to fade into the background”.³⁹ Fear is centrifugal; it dissipates the people’s potentially united energy. The declarations of our leaders can make a great deal of difference and bring people together around a common project.⁴⁰ To illustrate this tendency Nussbaum uses a variety of examples that range from the speeches of Winston Churchill⁴¹ to the designs of urban architecture.⁴²

³⁶*Id.* pp. 321–322.

³⁷*Id.* p. 321.

³⁸Aristotle refers to fear in *Rhetoric* II.5; and Nussbaum adds the contemporary example of new ethnic groups in Nussbaum (2012) *The New Religious Intolerance*, Harvard University Press, Cambridge, MA, Chap. 2.

³⁹Nussbaum M, ‘Fear: A Narrowing Emotion’ (note 33), p. 322.

⁴⁰*Id.* p. 323.

⁴¹*Id.* pp. 323–328.

⁴²*Id.* p. 328, in particular, see ‘Urban Architecture in Delhi and Hyde Park: How to Create Fear and How to Begin to Combat It’, pp. 328–338. P. 328, “Urban architecture creates ways of living, sometimes fostering friendship, sometimes reinforcing fear. There are always grounds for fear in cities: crime, the volatility of employment, the diversity of groups and languages. But architecture can do a great deal to exacerbate fear into open hostility or to assuage it, encouraging problem solving in a spirit of fellowship”.

2.3.2.2 Envy

Unlike absolutism, liberalism encourages envy and envy may even threaten justice.⁴³ Envy is a painful emotion that focuses on the good fortune or advantages of others. Good things must not be seen as important in some abstract or detached way, they must be important for the self and its core sense of well-being. Typically, envy involves some type of hostility toward the fortunate rival: the envious person wants what the rival has. Envy therefore creates animosity and tension at the heart of society and this may prevent society from achieving some of its goals. Envy is commonly experienced and it is often a cause of social distress.⁴⁴ The objective of envy has been defined as superiority, or non-inferiority with regards to a reference group or an individual.⁴⁵ Envy is different to emulation and resentment and it is a more harmful emotion.⁴⁶

Let us now turn to society. Rawls argues that in a society modelled on his two principles of justice there will still be hostile envy but its damage will not be intolerable. In his society, psychological and social factors contribute to assuaging some painful feelings of insecurity and make positional differences less salient. The visibility of distinction is also diminished by the sheer variety of organisations and occupations and the existence of competition in a number of dimensions offers constructive alternatives to envy.⁴⁷

Nussbaum envisages a similar society to Rawls. Laws and institutions would work to make basic entitlements guaranteed for everyone, and the educational and economic systems would make people feel that they have constructive alternatives. This society's institutional structure supports emulation and competition, without creating the sense of hopelessness and helplessness that can paralyse effort.

⁴³Nussbaum M 'Envy and Fairness: A Common Project' (note 33), p. 339: "Envy has threatened democracies ever since they began to exist. Under absolute monarchy, people's possibilities were fixed, and they might come to believe that fate, or divine justice, had placed them where they were. But a society that eschews fixed orders and destinies in favor of mobility and competition opens the door to envy for the prosperity of others. If envy is sufficiently widespread, it can eventually threaten justice, particularly when a society (like our hypothetical society) has committed itself to substantial redistribution in order to protect a threshold of well-being for all".

⁴⁴*Ibid.*

⁴⁵*Id.* pp. 340–341, see Miceli and Castelfranchi (2007) 'The Envious Mind, in Cognition and Emotion, 21, pp. 449–479.

⁴⁶Nussbaum M 'Envy and Fairness: A Common Project' (note 33), pp. 341–342: "Envy is different from: (a) Emulation that doesn't involve hostile thoughts toward the more fortunate person and doesn't involve a feeling of hopelessness and helplessness, bitterness and hostility as envy does, (b) Resentment, a moral emotion that involves a sense of injustice (by contrast, envy requires no such moral thought) [...]. Emulation and resentment are both healthy emotions in a decent society: the former encourages the individual to be better, and the latter encourages the society to be better. Envy has no such constructive function, and while it can spur individuals on to hard work and personal achievement, its rancor can indeed prove harmful". A great discussion about that difference between envy and resentment can be founded in Rawls (1971) *A theory of Justice*, Harvard University Press, Cambridge, MA, pp. 530–534.

⁴⁷*Id.* p. 344, See Rawls J (note 46), pp. 536–537.

Robust political and legal institutions also support constructive indignation and resentment as citizens are encouraged to express their real grievances.⁴⁸ It is hoped that a society that teaches its citizens that they are entitled to all the items on Nussbaum's list of capabilities, and behaves appropriately in regard to their guarantees, would generate a relatively small amount of envy, at least with regard to those things that are necessary to satisfy and sustain them. The inequalities that still exist (to the extent that, rightly or wrongly, they have been defined as being of secondary importance or as having limited tragic potential) will be less likely to become objects of envy, since implicit in the emotion is the idea that the object that is enjoyed by others has significant value.⁴⁹

This hypothetical society does not value only money—the political culture disseminates the message that there are many types of human achievement that have worth: friendship, literary and artistic expression, fighting for social justice, etc. In a society that appreciates a range of constructive accomplishments, hostile envy is diminished,⁵⁰ there is no linear ranking and people are able to take pride in a variety of lives. However, Nussbaum sounds a note of caution: “Still, such a culture remains prone to hostile envy, and therefore we need to ask what more can be done to support a culture of civil friendship that makes people less likely, at least, to be at odds with one another in this way. Envy attacks compassion in two ways: by narrowing the circle of concern and thus encouraging the ‘eudemonistic thought’ to focus on the self, or one’s own group, and by inhibiting the sense of similar possibilities and the empathy that usefully accompanies it, suggesting that the envied are ‘other’ or ‘the enemy’. What we need as an antidote, then, is a sense of a common fate, and a friendship that draws the advantaged and less advantaged into a single group, with a common task before it. Such friends should sense that the different groups are allies in the struggle, rather than adversaries. In a small homogeneous society, this sense of common fate can develop on its own, as a result of networks of connection and personal knowledge”.⁵¹

People usually forget their differences when reacting to a hostile challenge. Similarly, in young nations, citizens frequently construct a sense of friendship from their shared history of oppression: the memory of common suffering unites and gives shared purpose. Nevertheless, strategies for civic friendship that do not depend on charismatic leaders⁵² would be welcome.

To illustrate the wide range of more peaceful devices at the disposal of a nation, Nussbaum uses two examples of political theatre/rhetoric from leaders who gave cohesion to their societies through the guiding ideas of common work or common

⁴⁸Nussbaum M ‘Envy and Fairness: A Common Project’ (note 33), p. 344.

⁴⁹Nussbaum M (note 9), p. 423, n. 15: “Similarly, Rawls has claimed that in the society shaped by the two principles of justice, there will be no envy concerning the primary goods of life and their distribution”.

⁵⁰Cf. Nussbaum M “Envy and Fairness: A Common Project” (note 33), p. 345.

⁵¹*Ibid.*

⁵²*Id.* p. 346.

effort and goodwill: Franklin Roosevelt's Second Bill of Rights speech⁵³ and Gandhi's use of his personal lifestyle aimed at changing the behaviour of elites.⁵⁴ Nussbaum then considers a very different case, the creation, by Frederick Law Olmsted, of New York's Central Park as a 'People's Park' that could shape a person's sense of their interactions with others.⁵⁵

In any case, the core of the political problem of envy is the intergroup hostility and factionalism it encourages and strengthens. A great deal of (rhetorical) effort is needed to generate a spirit of civic friendship and common work.⁵⁶

2.3.2.3 Shame

Shame is a potent and painful emotion that responds to one's own failure to exhibit a desirable characteristic. Although shame is a universal human experience, some people and groups are more marked out for shame than others. Goffman identifies three types of stigmas: (i) stigmas concerning character traits; (ii) physical stigmas, and, (iii) stigmas of group identity. The same author goes on to examine the variety of strategies that stigmatised individuals use to deal with rejection and the complex

⁵³*Id.* pp. 350–351: "What is important is that the speech shows how one might forge a memorable and strongly emotive language to reposition social and economic issues in the American imaginary: the language of freedom, the language of war, and the language of a new Bill of Rights. All these ways of thinking and speaking reconfigure the political landscape. Instead of the feared and foreign 'socialism', he gives us cherished and familiar American liberty. Clearly it worked for a time, getting Americans to understand their heritage and their future in a new way".

⁵⁴*Id.* p. 355: "To the extent that the idea of a common work catches on, to that extent envy's hopelessness and helplessness are transcended in favor of constructive and useful activity".

⁵⁵*Id.* p. 346. On Central Park, p. 356: "In the mid-nineteenth century it had not yet occurred to city planners in the United States to create green spaces within the city for people to enjoy—largely because the elites had these opportunities anyway, and the needs of others were not taken into account. Or, perhaps worse, they were seen as mere working bodies, to whom elites did not attribute the wish for clean air, flowing water, woods, and grass. This asymmetry was an obvious occasion for envy. Up to a point the preference for rural green space is cultural". Also, p. 359: "As documents make plain, Olmsted was not suggesting doing nothing: preserving natural features required putting in a complex drainage system, removing boulders where roads needed to cross the park, and doing a lot of seeding and planting. But Olmsted made a case that was powerful at the time, and which is extraordinarily prescient seen in hindsight. What he was able to imagine was that the geology and topography that made Manhattan a specific place would ultimately be lost utterly to city life—and thus to the "people"—unless the park preserved them. Repeatedly, as the work went forward, Olmsted insisted that the real goal was not aesthetic, but public and human: [...]. Still, public space is of real importance. And we can easily see that New York without Central Park would have been a much poorer and more envy-ridden place. Envy is hardly removed by such generous public gestures, but perhaps they supply an escape valve that preserves the possibility of friendship".

⁵⁶*Id.* p. 351.

images of themselves that they project to others.⁵⁷ All societies have lists of stigmatised groups and, whilst they are not always the same, racial and ethnic minorities are almost always included.⁵⁸

The ‘normal’ group uses the emotion of shame against the excluded group. As Nussbaum explains: “Typically, in each of these cases, the dominant group characterizes itself as ‘normal’ and the divergent group as shameful, asking them to blush for whom and what they are. Given that members of the dominant group are themselves usually concealing something about them that society considers shameful, or are anxious about the possibility of coming to have such a trait, the infliction of shame on others conveys a feeling of psychological relief, keeping shame at bay and reinforcing the sense that one is ‘all right’”.⁵⁹

Many people do not internalise the meaning of what is good for the society in which they live; this may be due to a lack of education, a lack of affection, problems of cultural adaptation, general life difficulties, a complicated childhood, etc. In this context, religions can play a progressive role—they instil ideas about what is right and what is wrong and contribute to forge stronger identities in the members of that society. The shame inflicted on stigmatised minorities by dominant groups can often be intensely felt by the sufferers, even if they think there is nothing shameful about being themselves, as Nussbaum explains: “In part this transfer of shame results from the sheer power of culture; in part it results from the fact that the dominant group creates for minorities conditions that are truly humiliating and an offense to their dignity, so they feel a shame about those conditions that can easily spread to include the identity itself. Even when it does not—even when justified anger against injustice and an inner sense of their dignity preserves minorities from self-hatred—their lives may still be full of shame directed at the outer conditions of their lives with others”.⁶⁰

This constitutes a problem for members of non-stigmatised groups (or stigmatised by other causes) when they have relationships with people who are stigmatised: the latter will tend to project their sense of self-deprecation (self-disesteem) onto the former and this can create spurious situations and unfair behaviour towards members of the non-stigmatised group—as the bible says, “The just have to pay for the sinners”. A false self-concept and a spoiled identity can turn dignity into pride and conceit, and honour into arrogance and boasting, as a logical consequence of the complex self-images that members of stigmatised groups project onto others, as Goffman explains.

We can now see that humiliation is the active public face of shame: it is the hostile infliction of shame on others. So it is the combination of publicity with

⁵⁷Goffman (1963) *Stigma: Notes on the Management of Spoiled Identity*, Simon and Schuster, New York, p. 128 and ss.; Nussbaum (2004) *Hiding from Humanity: Disgust, Shame, and the Law*, Princeton University Press, New Jersey (Chap. 6).

⁵⁸Nussbaum M ‘Shame and Stigma’ (n. 33), pp. 359–360.

⁵⁹*Id.* p. 360.

⁶⁰*Id.* p. 361.

hostility that makes an invitation to feel shame into humiliation.⁶¹ Psychologists find the origins of shame very early in infancy: along with fear, it is one of the earliest emotions. It appears to respond to the overwhelming pain of helplessness of babies.⁶² But shame itself, as disgust, give rise to protective strategies: “Just as the disgust people feel about their own bodily fluids is diverted by projection onto the bodies of others—*they*, not *we*, are the ones who smell bad, who resemble animals—so too with shame. If the dominant group can successfully establish a social norm of the ‘normal’ and brand other, less powerful groups as shameful, they are thereby protected from the painful experience of facing their own inadequacies”.⁶⁴

Some people continue to demand the type of narcissistic control and specialness that is typical of small infants throughout their lives. Most people replace this behaviour with attitudes of concern, reciprocity and personal competence and this curtails the motivation to make slaves of others. Nevertheless, Nussbaum reminds us that shame never completely disappears for anyone “who is not stupid” as it is, in reality, “a rational response to things as they are”.⁶⁵

In terms of Nussbaum’s analysis of compassion, shame and shaming rupture: (a) The *eudemonistic* judgment, “...putting some people in one ‘circle of concern’ and others in a different one—and in a particularly lasting way, which is unlikely to yield easily to social healing”; (b) The judgment of similar possibilities; and, (c) The experience of empathy. Moreover, “...it can even infect the judgments of seriousness and non fault: when something bad happens to the shamed group, it seems less bad to the dominant group if they already see these people as base, quasi-animals, and they are more likely to believe that this bad fate is exactly what those low people deserve. Thus, many horrible and grotesque exclusions and crimes against minorities are not even recognized as crimes (lynching, marital rape, the exclusion of people with disabilities from schooling), because it is believed that the

⁶¹*Id.* pp. 361–362: “When people are ashamed of their failure to meet personal standards, they do not experience humiliation; nor does humiliation ensue if the invitation to shame is made in a loving and constructive manner, as when a parent (in a generous spirit) urges a child to feel shame about selfishness or laziness”.

⁶²*Id.* p. 362: “Infants sometimes experience a kind of blissful fullness or completeness that recapitulates prebirth experience; much of the time, however, they experience its absence, and have no skills to supply what they need. On the one hand, infants are encouraged by the life cycle and by parental attention to feel that they are omnipotent and the center of the universe, ‘His Majesty the Baby’, to use Freud’s phrase. But at the same time they are keenly aware (and the cognitive maturity of very young infants is increasingly understood) that they are physically helpless to bring about the bliss that they desire. Shame at the very condition of being a helpless baby is the result. It is a result of what one might call ‘narcissistic defeat’”. See Morrison (1989) *Shame: The Underside of Narcissism*, New Jersey, The Analytic Press, Hillsdale, 1989; Tompkins, Silvan, *Affect/Imagery/Consciousness*, vols. 1–2, New York, Springer, 1962–1963.

⁶³See Foucault (1997) *Il faut défendre la société*, Gallimard/Seuil, Paris.; Foucault (1999) *Les anormaux*, Gallimard/Seuil, Paris; Foucault (1971) *Nietzsche, la généalogie, l’histoire*, in *Hommage à Jean Hyppolite*, PUF, Paris, pp. 145–172; Foucault (1967) *Folie et déraison. Histoire de la folie à l’âge classique*, Plon, Paris.

⁶⁴Nussbaum M ‘Shame and Stigma’ (note 33), p. 362.

⁶⁵*Id.* pp. 362–363.

treatment is just right for the base nature of that group, or even that they ‘asked for it’ by being who they are”.⁶⁶

Shame impedes inclusive compassion by dividing people into mutually hostile groups and striking a blow at the very core of people’s sense of self, assigning to the shamed what Goffman calls a ‘spoiled identity’, a diminished status that is very likely to be felt psychologically as a lack of full self-esteem⁶⁷ which, in certain circumstances, can have terrible consequences, as it can be seen, for example, in some gender approaches, such as my critic to Habermas’s theory of communicative action or the phenomenology of contempt developed by Axel Honneth.⁶⁸

The deplorable and ubiquitous social shaming of minorities can be understood as an offshoot of social anxiety, “If, as seems true, we are all to some degree longing for an ideal condition of non helplessness that we never attain, and are consequently ashamed of our vulnerability, this does help explain why most societies stigmatize the aging and people with mental and physical disabilities, and why the stigmatization of other minorities frequently involves the imputation to them of a hyper-animal nature”.⁶⁹

Unconditional acceptance suggests that I recognise and criticise my own mistakes without considering myself as despicable and unworthy. My dignity is never at stake. It is one thing to accept that I need to change because I was wrong, but to condemn myself as a human being is something else entirely different. Healthy criticism is derived from love and not from self-deprecation. There is a tendency for members of groups with low self-esteem (caused by being labelled as objects of shame) to be self-critical and self-loathing, because their sense of identity, their selfhood, has been weakened.⁷⁰ Habermas contends that shame, self-punishment and internalised sanction cannot be explained rationally, and that is why it is so serious.⁷¹

⁶⁶*Id.* pp. 363–364.

⁶⁷*Id.* p. 363.

⁶⁸See Novales (2003) Observaciones a la teoría de la acción comunicativa de Habermas desde una óptica feminista, V Premio de Investigación Feminista “Concepción Gimeno Flaquer” del Seminario Interdisciplinar de Estudios sobre la Mujer de la Universidad de Zaragoza. In <http://wzar.unizar.es/siem/premio.html>; Lagarde y De Los Ríos (2000) Claves feministas para la autoestima de las mujeres, Horas y horas, Madrid, pp. 108–109; Daskal (1994) Permiso para querermme: Reflexiones sobre la autoestima ‘femenina’, Paidós, Buenos Aires; Honneth (1992) Integrity and Disrespect: Principles of a Conception of Morality based on the Theory of Recognition. In *Political Theory*, 20–2: 187–201; Honneth (1992) Integridad y desprecio. Motivos básicos de una concepción de la moral desde la teoría del reconocimiento. In Isegoría. Revista de Filosofía Moral y Política, Consejo Superior de Investigaciones Científicas, Madrid, 5: 86.

⁶⁹Nussbaum M ‘Shame and Stigma’ (note 33), p. 363.

⁷⁰Riso (2002) Cuestion de dignidad, Editorial Norma, Bogotá, ‘Conclusiones: Tres principios para contrarrestar la interferencia de la ansiedad social’.

⁷¹Habermas J (note 3), pp. 15–16: The *free rider problem* “has led to an interesting combination of the two empiricist strategies. A mental reservation concerning formally recognized norms is no longer possible once transgressions of norms are punished not by externally imposed sanctions but instead by the *internalized* sanctions manifested in feelings of guilt or shame. But the proposed explanation flounders on the *prima facie* difficulty of explaining self-punishing feelings in a rational manner. One cannot have a rational motive for ‘wishing to have’ inner sanctions of this

Although shame and guilt are similar in some respects (both are painful, inwardly directed emotions) shame is worse than guilt because it relates to actions—‘to do’—whilst shame relates to the condition of the self—‘to be’. An action cannot be undone but it can be excused or forgiven. What one feels about oneself, especially if it is an opinion that falls short of a desired ideal, can be hidden but cannot be repaired. Guilt suggests redemption and a constructive future; shame offers no such restitution and doesn’t offer any constructive advice.⁷²

Nevertheless, when it does not divide or stigmatise, shame can be a positive emotion that drives and motivates people to improve. As Nussbaum asserts that “shame is particularly likely to be healthy when it is collective, as when a society feels shame about some of its worst traits, such as sexism and racism (and, not coincidentally, its tendency to shame and degrade others, and to be indifferent to their suffering). Far more often, though, shame fractures social unity, causing society to lose the full contribution of the shamed”.⁷³

Law is obviously of crucial importance in limiting the damage caused by shame. When society decides that all citizens have the same rights, and it institutes mechanisms for enforcing equality, the pernicious effects of shame are mitigated. Nussbaum reminds us that “all societies can do a great deal to open spaces in which previously shamed groups can appear in public with full dignity”,⁷⁴ however, “... the baneful dynamics of social shaming are likely to persist, even in a world of equal rights, threatening good political principles and their emotional underpinning”.⁷⁵

We should contemplate and discuss ways that public society can palliate shame and prevent humiliation. Examples would include laws that protect people with disabilities or the elderly, political and legal measures taken to promote effective

(Footnote 71 continued)

kind. Apart from anything else, there are conceptual reasons why it cannot be ‘rational for me’ to accept the promptings of a bad conscience unquestioningly and at the same time make them the object of practical reflection, hence nonetheless to question them. When we act morally we do so because we take it to be right or good and not because we want to avoid inner sanctions. We call sanctions ‘internalized’ when we have made them our own. But the process of making them our own cannot itself be explained in a purposive-rational manner, at any rate not from the perspective of the person affected: for him the rationality of an action is not simply its ability to make a functional contribution to the regulation of the community as a whole”. See Tugendhat (1992) *ZumBegriff und zurBegründung von Moral*, in *PhilosophischeAufsätze*, Suhrkamp, Frankfurt am Main, pp. 315–333; Elster (1989) *The Cement of Society*, Cambridge University Press, Cambridge (United Kingdom), Chap. 3.

⁷²Nussbaum M ‘Shame and Stigma’ (note 33) pp. 360–361, see Taylor (1985) *Pride, Shame, and Guilt: Emotions of Self-Assessment*, Clarendon Press, Oxford, Chap. 4; Piers and Singer (1953) *Shame and Guilt: A Psychoanalytic and a Cultural Study*, Charles C Thomas publisher, Springfield, Illinois, Chaps. 1–2.

⁷³Nussbaum M ‘Shame and Stigma’ (note 33), p. 364.

⁷⁴*Ibid.*

⁷⁵*Ibid.*

equality (such as Spanish Organic Law 3/2007 on sexual equality) or laws defending ethnic and racial minorities in North and South America.⁷⁶

A decent society should recognise the needed status of all people as a basic social good. We should not allow the pretence (sometimes implied in interpretations of liberal social contract theory⁷⁷) that all citizens are independent and rational.

2.3.2.4 Disgust

Societies shape the emotion of disgust as an obstacle to compassion and solidarity. Disgust exists in all known civilisations and it is informally taught through diverse social mechanisms. Countries are very flexible in relation to the utilisation of disgust in their public policies and the emotion is clearly present in many laws, for example, in Spain, the current Criminal Code⁷⁸ uses expressions such as “particularly degrading or humiliating” (behaviour). Disgust is a primary reason for outlawing certain practices or configuring extenuating or aggravating circumstances. Judges commonly apply these considerations to cases of extreme disgust⁷⁹

⁷⁶Examples of American laws: “*Ley de Nacionalidad Indígena de 1924*”, “*Ley de Reorganización Indígena*” or “*Ley de Wheeler-Howard de 1934*”, “*Ley de Derechos Civiles de los Indígenas de 1968*”, “*Ley de Resolución de Reclamaciones Territoriales de las Personas Originarias de Alaska de 1971*”, “*Ley de Autodeterminación Indígena y de Ayuda a la Educación de 1975*” or “*Leyes de Protección de Menores Indígenas, y de Libertad Religiosa de Indígenas norteamericanos de 1978*”, or “*Ley de Reforma de la Certificación de Herencia de los Indígenas Norteamericanos de 2004*”. In addition: “*Ley Orgánica venezolana de pueblos y comunidades indígenas de 2004*” and “*Ley General de Derechos Lingüísticos de los Pueblos Indígenas de México de 2003*” or “*Ley chilena indígena N° 19.253 que establece normas sobre protección, fomento y desarrollo de los indígenas*” modified by Law N° 20.733, 2014 March 3rd.

⁷⁷Nussbaum M (note 9) p. 425.

⁷⁸Art. 180 “*Ley Orgánica 10/95 de 23 de noviembre del Código penal*”: Sexual assaults: “*serán castigadas con las penas de prisión de cinco a diez años para las agresiones del artículo 178, y de doce a quince años para las del artículo 179, cuando concurra alguna de las siguientes circunstancias: 1.ª Cuando la violencia o intimidación ejercidas revistan un carácter particularmente degradante o vejatorio. 2.ª Cuando los hechos se cometan por la actuación conjunta de dos o más personas. 3.ª Cuando la víctima sea especialmente vulnerable, por razón de su edad, enfermedad, discapacidad o situación, salvo lo dispuesto en el artículo 183*”.

⁷⁹Sentence of the Spanish Supreme Court 803/2010 (Court 2), of September 30th, referring to a crime of prostitution, paedophilia and corruption of minors, using children for pornography: “*Consecuentemente el comportamiento que se refleja en las imágenes, además de su componente sexual, el acusado y la menor están desnudos, tumbados en el suelo, y se besan y acarician—supone una situación escatológica que produce sentimientos de asco, repugnancia y es especialmente envilecedor para la menor por la sensación de humillación y sentimiento que produce. En este sentido las sentencias 1239/2000 de 5.7 y 1855/2000 de 4.12, aplicarán la agravación específica del n. 1 del art. 180.1 CP, en casos de agresión sexual, considerando conductas particularmente degradantes y vejatorias para la mujer, el orinar y defecar encima de ella*”. Nussbaum offers several examples in American Law: Nussbaum M (note 9) p. 423 and ss.; Nussbaum M (note 57).

and there are many instances of this approach in disputes that involve issues of race.⁸⁰

When we contemplate the specific cognitive content of disgust, its relevance to the law is less clear. If anger and outrage are based on actions that result in injury, then it seems reasonable that the law should aim to prevent and dissuade them; disgust, however, "... is based on judgements that are concerned with an imaginary contamination of the self. Aside from the problem that the fantasies implied therein are usually related to magic, and do not involve any genuine damage, if we seek to make these judgements a foundation for dictating laws, we come up against the fact that the more direct and appropriate solution to the sensation of being 'assured' by a person that we do not like is to ignore them, not restrict their liberties, let alone use violence against them".⁸¹

If disgust is not used as a basis for law, societies may discourage the harmful protective reactions that often accompany disgust by portraying groups that are subject to them in a positive light. In other words, a society concerned with justice should transmit progressive images of minorities and ensure that these groups are seen as being in positions of public trust.

However, if the foundations of disgust are the fear and loathing that people have toward their animal bodies and their own mortality, then a society that wishes to counteract its damage must go beyond dealing with the body and the anxieties that it incite in us.⁸²

⁸⁰Examples would be the depiction of the Jews or the *Dalits* (formerly 'untouchables' in India) as filthy creatures, insects or wretched bugs or insistence on the bad smell of black people or people from other races, groups or cultures. For example, Judicial Decree number 204/2015 February 5th, of the Spanish Supreme Court (Criminal Court, Section 1) rejects the legal appeal (Cassation number. 1521/2014) against the sentence of the Provincial Court of Madrid, Section 3^a, 2014, June 24th that condemned Jose Maria, as the author of "Blood Honour España", of promoting neo-Nazi ideology, encouraging hatred based on race, by publishing and distributing magazines at public events (art. 515.5^o in relation to art. 517.2 Criminal Code): "*También se intervinieron discos, destinados a su venta y algunos coincidentes con los ocupados en el local con canciones cuyas letras promueven la xenofobia tales como "Mis vecinos son apestosos turcos y en el parque de enfrente vaguea un negrata", "Te partiré la boca hasta que cruja", "Estamos hartos de tanta tiranía judía y si el país se hunde es por culpa de esta mezcla de razas", "Primero se mete el gas en la cámara, se sella, se colocan unas alcachofas y un desagüe, y acabado está el holocausto"*".

⁸¹Nussbaum offers several examples of American law. Cf. Nussbaum M (note 9) pp. 424–425; Nussbaum (1999) *Secret Sewers of Vice: Disgust, Bodies, and the Law*, in S. A. Bandes (comp.), *The Passions of Law*, New York University Press, New York.

⁸²Walt Whitman made this idea the fundamental principle of his art; Cf. Nussbaum M (note 9), p. 424.

2.4 The Incorporation of Emotion Does not Turn Morality into Pernicious Relativism

If, in seeking morality, humanity is also searching for a greater understanding of what leads us to commit ourselves to actions that can be considered as moral or immoral, emotion must be seen as a motivational force. We do not see better by closing our eyes; we do not hear better by putting our fingers in our ears; we do not understand reason (or respond to moral questions) better by ignoring emotion when it is always present. Acknowledging emotion as a moral influence does not mean we follow a stark relativism or justify immoral acts because they are rooted in emotion. Based on a vision of social welfare that does not depend on notions of objectivity, we may still discriminate against certain activities and behaviours because we see them as immoral. Emotional responses can be syntonetic (appropriate for the specific conditions and circumstances of a given situation).⁸³

The incorporation of emotion as a moral motive or identifier does not make reason irrelevant to morality and it does not morph morality into pernicious relativism. Rather, the working union of reason and emotion can far better inspire humanity's propensity to moral responses than clinging to their dichotomous relationship.⁸⁴

Oppenheim is of the opinion that because human beings cannot escape emotional influence and pure objectivity is illusory, it seems unconscionable to demand such things in the moral decision process.⁸⁵ In line with Justin Oakley, we would argue that instead of being encouraged by duty to suppress our capacities for sympathy and compassion, we should, in our quest for moral improvement, make attempts to cultivate emotional motives. Our beneficent actions would thereby be more appropriate and we would be more likely to have a developed awareness of the situations in which we are called upon to act beneficently. For example, if we

⁸³Oakley (1990) A Critique of Kantian Arguments against Emotions as Moral Motives. In *History of Philosophy Quarterly*, 7–4: 443.

⁸⁴*Ibid.*

⁸⁵Felix E. Oppenheim argues that all objectivists fall within two categories, intuitionists and naturalists. The intuitionists claim validity in their moral judgments on the basis of appealing to the intrinsic values of abstract ideas, while the naturalists believe that normative statements can be either empirically verified or derived by empirical laws. Criticism here is directed toward the derivation of an 'ought' from an 'is'. In comparing the objectivists and the relativists, again one finds an epistemological dispute rather than an ethical one. They squabble over what counts as valid or sufficient for the proposal of an 'ought'. Both the objectivist and relativist are seeking moral judgments as a basis for managing conduct. As Oppenheim notes, "... most arguments about 'what ought to be' turnout, upon closer analysis, to be disagreements as to whether x or y constitutes a 'better'; more effective means to bring the goal z, which both disputants tacitly agree ought to be pursued". Furthermore, the claim to pernicious relativism over-inflates our goal of justifying emotional presence in moral decision-making, and in refusing to address the core arguments relating to objectivity function more as a red herring than actual critique. Cf. Oppenheim (1955) In Defense of Relativism, in *The Western Political Quarterly*, 8–3: 413.

agree that ‘racism is bad’, we should behave accordingly, not only from a juridical point of view⁸⁶ but also from a political and cultural perspective.

2.5 Approaching a Conclusion: A Rational ‘Loving Citizen’

The removal of emotional obstacles to the admission and acceptance of ‘the other’ is a pressing task in which government and state institutions should be involved. We need a properly educated, compassionate citizenry and public policies and projects are essential to ensuring that this objective can be achieved.⁸⁷

2.5.1 ‘Loving Citizens’ and ‘Abstract Laws’

The social barriers of class, religion, ethnicity, gender or sexual orientation are recalcitrant to the exercise of imagination and this inhibits emotion. Therefore institutions should promote appropriate emotions for a public culture of equality and the elimination of impediments to the development of emotions such as fear, envy, shame and disgust.⁸⁸

For Nussbaum, all societies must guarantee their citizens the following fundamental human capabilities: life, physical health, bodily integrity, the use of the senses, imagination, thought, affiliation, and political and material control over the environment and the emotions.⁸⁹

⁸⁶To see how a cultural perspective interferes with juridical questions, we only need to look over the decisions of the Spanish Supreme Court and the European Court of Human Rights on Holocaust Negationism (for example, legal sentence 259/2011 of April 12th of the Spanish Supreme Court (Criminal Court, First Section), or the sentence of the European Court of Human Rights (Section 3^a), March 5th 2013 ‘Varela Geis against Spain’. Or sentences on discrimination against Gypsies: see the decision of the European Court of Human Rights (Section 3^a), December 8th 2009 and Legal sentence 311/2012 of May 7th from the Spanish Supreme Court, Civil Court, Section 1^a).

⁸⁷Nussbaum M ‘Planting Companionship’ (note 33), p. 377: “But thinking about the emotions is always good at some point, since good things lapse or are destroyed if one does not value them, and it is sometimes hard to remember that political equality is not just a matter of good laws and policies. Often it is at least as much a matter of the buildings one inhabits, the streets on which one walks, the way the light arcs down upon a neighbor’s face, and a glimpse of the green spaces that beckon down the block”.

⁸⁸See Novales A (note 15).

⁸⁹Nussbaum M (note 9), p. 417: “Emotions. Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one’s emotional development blighted by fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development”.

The creation of civil compassion should be encouraged and civic projects should be used to minimise the damage that can be caused by communal hate.⁹⁰ Walt Whitman believed in a spirit of civic love that carries people beyond suspicion and division to pursue common projects with heartfelt enthusiasm. But the ‘love of comrades’ must be no mere pallid sympathy or it will not have the power to unite people who, in daily life, are divided by self-interest, traditional stigma, and fear.⁹¹

The institutions of a good and decent society control the boundaries of fear and envy and protect citizens against hostile shaming. There is still much to do and there are many ways in which society can create an emotional climate that limits self-interested fear and envy and undermines the type of shame that stigmatises different classes of citizens.⁹²

Fear, envy, shame and disgust toward ‘the other’ can be assuaged by laws and judicial practice, for example, there are guarantees of basic rights such as the right of individuals and groups to respect and dignity. There are even limitations of basic rights, such as freedom of expression (for example, we do not allow the right to insult or to indulge in hate speech). Among the various theories that have discussed institutional interference with fundamental rights, Robert Alexy’s theory of proportionality and balancing is probably the most significant.⁹³

In its strictest sense, the principle of proportionality is identical to a rule that might be called the ‘law of balancing’: “This rule relates to the constitutional rights as principles. And it states: The greater is the degree of dissatisfaction, or prejudice, of a principle, the more important is to satisfy the other”.⁹⁴

In *The Theory of Fundamental Rights*, Alexy defends the existence of an argumentative burden for legal freedom and legal equality that coincides with the maxim *in dubio pro libertate*⁹⁵ which means that no freedom opposed to a legal or juridical equality principle could prevail, unless ‘stronger reasons’ could be adduced.⁹⁶

This could be interpreted as meaning that in the event of a tie (as opposed to a situation in which legal freedom or legal equality did not have equal weight but the former was smaller and priority would be given to the latter) the result should

⁹⁰Nussbaum M ‘Fear: A Narrowing Emotion’ (note 33), p. 320.

⁹¹Nussbaum M ‘Planting Companionship’ (note 33), p. 375.

⁹²*Id.* p. 377.

⁹³Alexy applies Habermas’s theory of rational practical discourse to legal argumentation; see Alexy (2008) *Teoría de la argumentación jurídica. La teoría del discurso racional como teoría de la fundamentación jurídica*, Centro de Estudios Constitucionales, Madrid.

⁹⁴Alexy (2009) *Sobre los derechos constitucionales a protección*, in Alexy (2009) *Derechos sociales y ponderación*, 2nd ed. Fundación Coloquio Europeo, Madrid, p. 58.

⁹⁵Alexy (1997) *Teoría de los derechos fundamentales*, in Díaz E (dir) (1997) *Colección el Derecho y la justicia*, Centro de Estudios Constitucionales, Madrid, p. 549.

⁹⁶*Id.* p. 550.

favour liberty and legal equality.⁹⁷ However, in the *Epilogue to the Theory of Fundamental Rights*, Alexy supports a different argumentative burden. In a tie, he states, if the prosecuted decision is ‘not disproportionate’ it should be declared constitutional. This means that ties would favour the action being prosecuted. In other words, according to Alexy’s epilogue, ties would not favour liberty and legal equality; they would favour the legislation and the democratic principle on which the competence of parliament is based. So, when there is a tie, the law should be declared constitutional, because it is within the range of action that the constitution offers to the legislator.⁹⁸

In formulating his theory of weight for balancing principles (interference can be mild, medium or severe), Alexy exemplifies a serious infringement of the right to honour with a case in which a paraplegic person is called ‘crippled’ in a press publication, and, to a small extent, this contributes to the satisfaction of the freedom of information.⁹⁹ Objectivity in balancing is based on the possibility of objectivity in practical reason.¹⁰⁰

A more individualistic judge will give general freedoms of action and specific freedoms the highest abstract weight and principles concerning the community will have less weight. If not, judges might act in accordance with a desire to achieve the construction, integration and defence of a community.¹⁰¹ It is possible to give greater abstract weight to the right to life or fundamental rights which have a connection with the democratic principle, for example, freedom of information, human dignity, privacy, physical integrity, or simply those rights that are established by the Constitution.¹⁰²

⁹⁷Consequently, if a measure affecting freedom or equality and the principles that support it did not have greater weight, the measure would be disproportionate and if it were a law it should be declared unconstitutional.

⁹⁸Alexy (2002) *Epilogo a la Teoría de los derechos fundamentales* (trans. Carlos Bernal Pulido). In *Revista Española de Derecho Constitucional*, 66: 44 ss.

⁹⁹See Alexy (2011) *La teoría principialista de los derechos fundamentales: Estudios sobre la teoría de los derechos*, Marcial Pons, Madrid; Alexy R (note 95).

¹⁰⁰García Figueroa A (2009) ¿Existen diferencias entre reglas y principios en el estado constitucional? Algunas notas sobre la teoría de los principios de Robert Alexy, in Alexy R (note 94) p. 364: “Un derecho fundamental tal como el derecho al honor puede tener un referente variable o relativo (a veces nos protege de ciertas lesiones y en otras no es así). Sin embargo, esto no significa que no exista objetividad en el ámbito de la aplicación de reglas procedimentales del discurso que controlen la aplicación de derechos fundamentales. ¿Qué hace tal objetividad posible? La posibilidad de objetividad en el ejercicio de ponderación descansa sobre la posibilidad de objetividad en la razón práctica”.

¹⁰¹Bernal Pulido (2003) *Estructura y límites de la ponderación*. In *Doxa. Cuadernos de Filosofía del Derecho*, Universidad de Alicante, Alicante, 26:25.

¹⁰²*Id.* pp. 23–24.

2.5.2 *The Constitution, Emotion and ‘Real People’*

Nussbaum’s analysis is not a study of the emotional consequence of good laws, it is more subtle and diffuse; it aims to ascertain how public strategies can help good laws by influencing the emotional climate of the public culture.¹⁰³

Constitutions are thought to be applied to ‘real people’ and societies are composed of imperfect individuals who strive for justice. Here, we are thinking about substantive democracies of ‘real people’.¹⁰⁴ According to Nussbaum, “ideals are real”: they condition our endeavours, our plans and our legal processes. Constitutions are idealistic documents in the sense that they are not always perfectly implemented and in the sense that they typically embody a nation’s deepest aspirations. But they are also real, for two reasons: (a) they provide a basis for legal action when the rights they guarantee are not delivered to a particular individual or group. Freedom of speech, the free exercise of religion, and equality before the law are all lofty ideals, yet they are also the basis for action and adjudication in the real world, for the education of real people, and for progress toward the amelioration of vexing social problems¹⁰⁵; (b) the ideal is real, in way that John Rawls clearly understood, and that is why Nussbaum’s thesis is so close to his: “if it is a good ideal, it acknowledges human life as it is, and expresses a sense of how real people are. Real people are bodily and needy; they have a variety of human frailties and excellences; they are, quite simply, human beings, neither machines nor angels. Who can say what constitution a nation of angels would make? Who can say what constitution would be best suited to a nation of elephants or tigers or whales? The nation we imagine is a nation of, and for, human beings (albeit in complex inter-relationships with other species), and its constitution is a good one only to the extent that it incorporates an understanding of human life as it really is”.¹⁰⁶

The ideal, then, is real, and at the same time, the real also contains the ideal: “Real people aspire. They imagine possibilities better than the world they know,

¹⁰³Nussbaum M (note 33) p. 316: “It relies on the thought that good laws rarely come into being or remain stable over time without emotional support. Thus, at the same time as we figure out how to protect the rights of minorities by law (expecting that this itself will influence public emotions toward them), we should also think about shaping the emotional climate so that it supports and sustains good laws and institutions [...] as Tagore and Whitman understood, we need to involve changing generations of creative artists who have the capacity to fashion new and arresting images”.

¹⁰⁴*Id.* p. 393: “Is it, however, more contentious, when we are thinking of non ideal societies arguing about and aspiring to justice. So often people are not satisfied at all with their nation as it is, and yet they are bound to it deep in their hearts. That’s the sort of love this book has tried to describe, embracing imperfection while striving for justice. Just as personal love and friendship are at their best when they are directed not at ideal images of the person, but, instead, at the whole person with flaws and faults (not, of course, without criticizing or arguing), so too with love of a city or country: it gets under one’s skin, is undeterred by imperfection, and thus enables diverse people, most of them dissatisfied with reality, but in many different and incompatible ways, to embrace one another and enter a common future”.

¹⁰⁵*Id.* p. 383.

¹⁰⁶*Id.* pp. 383–384.

and they try to actualize them. At times their pursuit of the ideal can go astray, as people try to transcend the limits of humaneness itself. We saw that a lot of difficulties for political life come from that type of self-repudiating aspiration. But not all pursuits of the idea have this doomed and counterproductive character. People who strive for this-worldly justice typically aspire to distant goals—prominently including theoretical goals—and are moved by them. That’s a large part of human reality, so any political thinker who rejects ideal theory rejects a lot of reality”.¹⁰⁷ The project being discussed in this paper is precisely concerned with real ideals and real struggle, the emotions on which it draws are real human emotions, and its psychology is a non-ideal and realistic human psychology.¹⁰⁸

Nussbaum’s proposal, though liberal, is a genuine attempt to confront the problems that realistic human psychology shows us, a psychology that is missing in Rawls; its ‘heroes’ are real people, and not just dreams.¹⁰⁹

From a different perspective, all love has aspects of the ideal, and political love is no different to parental or personal love. We must be careful because there are many ways in which ideals can deform love. In any case, “...the ideals that we are imagining are anchored in the reality of the human body and human psychology, so they simply reflect the undeniable fact that human beings want progress, beauty, and goodness”.¹¹⁰

¹⁰⁷*Id.* p. 384.

¹⁰⁸*Ibid.*

¹⁰⁹*Id.* p. 385: “This has not been a cynical book, but it has been a realistic book [...]. Martin Luther King Jr., Jawaharlal Nehru, Mohandas Gandhi, Abraham Lincoln, Franklin Delano Roosevelt—these people certainly could be called dreamers, and this is a partial truth. All, however, were also highly strategic and skilled leaders who turned dreams into workable realities, in part by using the beauty of ideals to motivate real people. Like them, this book is not pretending that we have already reached the promised land: it is a book of motion and struggle, and it is rooted in history. But history does contain surprising instances of productive dreaming, from the birth of the United States and of the Indian democracy to a wide range of struggles against prejudice and hate. So there is no need to apologize for the fact that beautiful dreams are central to this book, and there would be no reason, short of an ugly cynicism that is false to the complexity of history, to think that beauty spells unreality. Indeed, part of what this book is saying is that the real is more beautiful than the lofty unreal”.

¹¹⁰*Id.* pp. 384–385: “When we love people, we want to be good to them, and this typically means being better than we sometimes, even usually, are. Personal love, like political love, is threatened by narrowness, partiality, and narcissism, and love therefore involves a continual struggle. There are certainly many ways in which ideals can deform love—if, for example, one’s love for a child is conditional on the child not having the flaws that are typical of children, or if one’s love for an adult is conditional on that person’s being somehow beyond the human, an angel or disembodied spirit. So ideals can often endanger reality, or express a refusal of reality. To make love conditional on a human being’s not being human and mortal is bad. To want to extend the life span and to think that death is a tragedy is humanly aspirational. (Tragic festivals remind us of the finality and deep sadness of death; they do not express a refusal of the basic lot of human beings). The ideals that we are imagining are anchored in the reality of the human body and human psychology, so they simply reflect the undeniable fact that human beings want progress, beauty, and goodness. Any picture of the real that omits striving for something better brings an ugly and unhelpful kind of cynicism to political life, as it also does to adult love or the love between parents and children”.

Nussbaum rejects Comte's and Mazzini's proposals of a 'civil religion' as oversimplified, but she agrees with Mill and Tagore, defending, as Tagore did, the argument that "we cannot uproot particularism without uprooting love itself and depriving society of much of its energy for good". Tagore believes (and this might be the most profound proposal of all) that "the 'imperfect' situation was itself normatively valuable: all love has its roots in particular love of individuals, and thus a decent society will always contain uneven attachments, and a competition to promote the good of one's own loved ones that makes people rightly hesitate to support a common good with all their hearts".¹¹¹

So, to take a step forward: ideals are real; even if we do not attain them, they direct our search. What is our ideal of the 'good citizen'? Do we imagine this person as an impeccable, right-acting type of body snatcher or as someone who has the capacity for love?¹¹² This is no small matter since the inner world is relevant to normative assessment. A citizen with a rich inner life of imaginative and emotional effort is preferable to the dutiful individual, because the former is morally active, trying to see the situation clearly and without prejudice.¹¹³ This is an approach that is applicable to racism: compare a racist who behaves impeccably and dutifully to a racist who genuinely and sincerely engages in an inner effort to see the world in a less prejudiced, partial or biased way, even if they have not fully succeeded. The racist who is struggling to overcome prejudiced perceptions and reactions is superior to the one who merely acts impeccably.¹¹⁴ The same is true of citizenship; we should embrace the quirky, unpredictable humanity of the citizen who really feels and imagines.¹¹⁵

¹¹¹Nussbaum M "Planting Companionship" (note 33), p. 376.

¹¹²Cf. Nussbaum M (note 33), p. 394.

¹¹³*Id.* p. 395: "This inner moral effort makes a difference: M has been active, has done something morally valuable, even if nothing out in the world of action is different as a result. It is this same contrast that I have in mind in the political case. In one case, citizens might be like empty automata, with no feelings at all, or they might, like the early M, be dutiful and self-controlled, feeling the wrong things but doing all the correct things. Contrasted with both of these is a picture in which citizens are emotionally alive, really reacting to one another with political love, at least sometimes and in some ways".

¹¹⁴*Id.* pp. 395–396.

¹¹⁵*Id.*: "It seems clear that in the citizen case too, the citizen who really feels love of others is very different from the merely law-abiding dutiful citizen, in ways that make a difference to our analysis. Loving citizens are likely to be much more resourceful in action, but even if this is not the case—even if somehow or other the dutiful citizen were to do all the same things—we still should admire and prefer the citizen whose imagination and emotions are alive to the situation of the nation, and of its other citizens. As a political goal to strive for, the Tagorean/Whitmanian/Mozartian citizen is simply much more appealing than the inert dutiful citizen. [...]. Why, then, would we suppose that in one of our most important roles in life, that of citizen, an empty shell is all we need to be? We simply don't accept that picture as an attractive goal".

2.5.3 *Public Policies and Particularistic Love*

The problem is how to balance love's inherent particularism and partiality with the need to create and sustain policies that are fair to all. If purely abstract and principle-dependent sentiments are too tepid and without motivating content, and if a deeper and more powerful altruism has its roots in, and is modelled on, personal, particularistic love, then we have to determine in what way this love can support justice and not subvert it. Rawls did not enter this debate and Nussbaum attempted to complement it.¹¹⁶

The concept of 'political emotions' supported by Nussbaum welcomes a general perspective¹¹⁷ in the sense that it is not totalising and favours any comprehensive vision of life.¹¹⁸ However, it must also be particularistic in the sense that the best way to approach great political ideals is through deep personal attachments: the particular leads to the general. As Nussbaum says, "Political love exists in an uneasy oscillation between the particular and the general, in which the particular is never repudiated, but is seen in a way that promotes inclusiveness, and in which the general becomes motivationally powerful through its link to particular symbols and songs and sculptures. Principle-dependent emotions such as those envisaged by Rawls are thus reached by a route that tethers them to the particularistic imagination and to personal love, and these deep roots continue to infuse the principles even when we achieve them".¹¹⁹

The inherent dangers of bias in particularistic emotion are kept in check through the rule of law and a strong critical culture. They are also controlled by the way that political ideals are implemented in a particularistic manner. Some works of art encourage us to see common human predicaments and to reach out to others who are not like ourselves, "...and those are among the ones that a wise society will value most. Since I agree with Rawls in valuing sentiments directed to core political commitments, I have devoted particular attention to these 'bridges' and to the works of art that construct them".¹²⁰

¹¹⁶*Id.* pp. 385–386.

¹¹⁷*Id.* p. 386: "One important fact about the conception of political emotion defended here is not totalizing: it leaves spaces for citizens to have particular relationships with people and causes they love, in the part of their lives that is carried out apart from politics, under the aegis of whatever comprehensive view of life they favor, since the society I imagine is a form of political liberalism. The political is in that sense narrow, merely one part of what people are asked to care about".

¹¹⁸*Id.* p. 387: "The society we have imagined is heterogeneous. It contains different religions, different ethnic, racial, and sexual groups, and a wide range of political views. Respecting this heterogeneity, we have insisted, requires practicing politics in the spirit of Rawlsian "political liberalism", not building institutions or the shape of the public culture around a single dominant group and its ideas".

¹¹⁹*Id.* p. 386.

¹²⁰*Id.* p. 387.

2.5.4 Some Closing Observations

For the most part, society may be able to function without disgust, because that emotion seems unconnected to sources of positive good; society may even be able to do without the type of shame that pillories certain categories of people (it is closely linked to disgust), because it does not seem intrinsic to more constructive shame that encourages people to achieve the highest ideals of which they (and their society) are capable. On the other hand, fear for the safety of one's loved ones is something we would not want to eliminate—despite the fact that in a dangerous world, it can divide people and undermine constructive projects. Envy (not just its favourite cousin, emulation), as we have argued, should remain because competition and an interest in competitive goods is something that an honourable society cannot discourage without losing positive energy.¹²¹

Even though Nussbaum's position in *Political Emotions* is that stability is impossible without emotional involvement that contains particularistic and principle-dependent elements, we still need to analyze her argument as to *Why Love Matters for Justice*; it is an argument that rather than threatening Rawls's political liberalism, facilitates 'overlapping consensus'.¹²²

When Nussbaum ponders *Why Love Matters for Justice* she is clearly not suggesting that love is an uncriticised foundation for political principles. Neither is she saying that love can achieve anything good on its own, without argument and general norms, and she is certainly not alleging that love must be a constant experience. The notion behind *Why Love Matters for Justice* is that public culture cannot be languid and devoid of passion if valuable principles and institutions are to survive. There should be sufficient inclusive love, enough poetry and music, sufficient access to a spirit of affection and play which, in the attitudes that people exhibit toward one and other and the nation they inhabit, these experiences must not appear as lifeless and routine. The question we must ask ourselves is, what can an intelligent public culture do, in the pursuit of common objectives, to address the threat posed by specific types of fear, envy, shame and disgust, while retaining the positive roles played by variants of the same emotions?.¹²³ In particular, and given the diverse forms of alienation that exist "among racial minorities who have come

¹²¹Nussbaum M 'Planting Companionship' (note 33), pp. 376–377.

¹²²Nussbaum M (note 33), p. 393: "And now we see something that might not have been evident before: this project's demand for love, rather than ratcheting up the demands imposed by the political conception in a way that makes 'overlapping consensus' more difficult to achieve, actually ratchets the demands down, by imagining emotions that do not presuppose full agreement on principles and institutions or even agreement that these lack major flaws. Just as two people can be friends and even lovers when their religions, their political views, and their ultimate goals in life differ, so citizens in the society we are imagining, or many of them at least, can share the heterogeneous experiences we have described—at least some of those experiences, and some of the time. So what we're asking, when we ask whether these emotions are intrinsically valuable, is not as threatening to political liberalism as it might at first have seemed".

¹²³*Id.* pp. 319–320.

to feel that politics offers them little hope”, public artists and orators are needed to produce artworks, create rhetoric and fire a collective imagination “which honours the critical and introspective stance and finds a remarkable way to turn this very stance into community”.¹²⁴

Beyond the terror provoked by the idea of an emotion-driven politics,¹²⁵ the development of the concept of substantive democracy requires an affirmation that healthy democratic societies need citizens that are emotionally alert, not just “shells of people” who feel nothing in their hearts. We do not need genuine, real feeling, all of the time—as Nussbaum points out, we need enough people to feel enough, enough of the time, “...there are many types of love, and we are therefore imagining a family of sentiments, not just a single emotion”.¹²⁶

We now have a useful weapon to attack the exaggerated individualism that results from the application of liberal concepts.¹²⁷ The bonds that keep people together should be stronger than egoism and self-interest. We do not need to adopt the intrinsic content of values in order to have firm reasons to fight for a culture in which people do not ignore issues of concern and care for each other.¹²⁸ We do not

¹²⁴*Id.* p. 396.

¹²⁵In the USA, Nussbaum explains that this terror is derived from the Vietnam War. In Spain, where it is usual to ‘think with the guts’ (perhaps due to the absence of a developed civil society), when no more can be endured, we attempt to resolve conflicts by slamming the table; emotions are kept inside until this moment; this dynamic has been the same throughout Spanish history.

¹²⁶Nussbaum M (note 33), pp. 393–394: “What, then, are we asking? Let’s put the question this way. Suppose we had a society of liberal New Dealish body snatchers: people do all the altruistic things that we hope for, and sustain the nation’s institutions by exactly the same sorts of actions that might have been done out of real feeling—only they are not really feeling anything. They are just shells of people, feeling nothing in their hearts. It’s telling, in the movies on that theme, that the body snatchers betray their non-humanness by an inability to appreciate music, and particularly jazz, which demands a responsiveness to improvisation and eroticism that both Whitman and Tagore would have understood as hallmarks of the passionate citizen. In our experiment things are made more complicated by the fact that we have to concede that these people may be feeling many things in their personal lives they are not body snatchers all the way through—but it’s just a range of civic emotions that are mere form and show on their part, not sustained by real feeling [...]. Some people are more like body snatchers (just going through the emotions) than others, particularly in their civic lives. And even emotionally responsive people are fickle, with pockets of deadness and inattention. Moreover, there are many types of love, and we are therefore imagining a family of sentiments, not a single emotion”.

¹²⁷On the roots of modern individualism, see Weber M (trans. Luis Legaz Lacambra) (2009) *La ética protestante y el espíritu del capitalismo*. In Reus: Revista de Derecho Privado, Madrid; Shaw (1996) *Faith and Freedom: Can liberty survive without religion*. In *Liberty*, pp. 37–41; Laurent (1993) *Histoire de l’individualisme*, PUF, Paris; Lemieux (1992) *La soberanía del individuo. Ensayo sobre los fundamentos y las consecuencias del nuevo liberalismo*, Unión Editorial, Madrid; Palante (1909) *La sensibilité individualiste*, Alcan, Paris, 1909; ed. Folle Avoine, 1990; Hayek (1945) *The Road to Serfdom*, University of Chicago Press, Chicago; Constant (1816) *The Liberty of the Ancients Compared with that of the Moderns*. See also Hayek (1988) *The Fatal Conceit*, University of Chicago Press, Chicago; Lipovetsky (1983) *L’ère du vide. Essais sur l’individualisme contemporain*, Gallimard, Paris; Taylor (1982), *Community, Anarchy and Liberty*, Cambridge University Press, Cambridge.

¹²⁸Nussbaum M (note 33), p. 394.

have another opportunity, because behind moral judgments are moral feelings, and the obligatory force of moral norms is not based on preferences but on epistemic reason.¹²⁹

Today it has become clear that most immigrants want to integrate, and this is a process that must collaborate with resolute political action.¹³⁰ In short, we need an institutional commitment to the establishment of a public culture of equality together with the development of civil virtue and public spirit. Equality is not just a matter of good laws and policies that can implement the principle of non-discrimination. It is also the institutional definition of public spaces, the development of forums that offer a climate of freedom, openness and transparency,¹³¹ spaces in which we can share and discuss the contents and forms of expression of each culture. In this way, we will be able to comprehend the beauty and the historical memories of all citizens. Cultural models, customs, traditions and the wealth of cultures (literature, music, managing the *civitas*, etc.) could be known and debated by everyone. Members of different cultures will be able to learn and understand the essential factors of others and this could provide a framework for a quality life that is founded on tranquillity, beauty, affection, insight and authenticity—in one word, happiness.¹³² There are works of art that encourage us to contemplate common human predicaments and dilemmas; they incentivise us to attempt to understand others who are not like us, those that a wise society will value.¹³³

¹²⁹Habermas J (note 3), p. 16: “Moral feelings give expression to attitudes that imply moral judgments; and in disputes over the validity of moral judgments we do not limit our arguments to pragmatic reasons or preferences. Classical empiricism fails to account for this phenomenon because it excludes epistemic reasons. It cannot ultimately explain the obligatory force of moral norms in terms of preferences”.

¹³⁰Kymlicka W (note 2), pp. 176–181 and 193–195.

¹³¹Respecting, at least, the rules of the communicative reason, see Habermas (1984) *Theory of Communicative Action Volume One: Reason and the Rationalization of Society* (trans: Thomas A. McCarthy), Beacon Press, Boston, Mass; Habermas J (1987) *Theory of Communicative Action Volume Two: Live world and System: A Critique of Functionalist Reason* (trans: Thomas A. McCarthy) Beacon Press, Boston, Mass.

¹³²See Novales A, La efectiva ‘*No discriminación*’: Elementos para una cultura pública de la igualdad”, Paper presented at XXV Jornadas de Filosofía Jurídica y Política: ‘Nuevo Derecho, Nuevos Derechos’, UNED, Madrid, Abril, 2015.

¹³³As Nussbaum agrees with Rawls in assessing the feelings directed at the core of political commitments, she has paid particular attention to these ‘bridges’ and the artistic works that build them, see Nussbaum M (note 9), in particular, Chap. 5: “Music and Emotion”, p. 249 y ss.; Nussbaum (2005) *The comic soul: Or, this phallus that is not one*, in Pedrick V, Oberhelman S (eds) (2005) *The Soul of Tragedy: Essays on Athenian Drama*, University of Chicago Press, Chicago, pp. 155–180; Nussbaum M (1997) *Poetic justice: The literary imagination and public life* (Alexander Rosenthal Lectures), Boston, Mass.

As Nussbaum concludes in her latest work, nations need a lot of things, but they also need heart.¹³⁴

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¹³⁴Nussbaum M (note 33), pp. 396–397: “It will be said, and frequently too, that the demand for love made in this book is a tall order, and unrealistic given the present state of politics in more or less every country. But think what this objection really says. The objector presumably thinks that nations need technical calculation: economic thought, military thought, good use of computer science and technology. So, nations need those things, but they do not need the heart? They need expertise, but do not need the sort of daily emotion, the sympathy, tears, and laughter, that we require of ourselves as parents, lovers, and friends, or the wonder with which we contemplate beauty? If that’s what nations are like, one might well want to live elsewhere. Speaking of his imaginary republic, as yet not fully realized, Walt Whitman wrote that ‘America is only you and me’. We should aspire to nothing less”.

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