

**The Annual Hal Wootten Lecture 2011**

UNSW Faculty of Law

11 August 2011

**Not For Profit: Why Legal Education Needs the Humanities**

**Professor Martha C. Nussbaum**

Martha C. Nussbaum is Ernst Freund Distinguished Service Professor of Law and Ethics at the University of Chicago Law School. Professor Nussbaum is visiting the UNSW Faculty of Law to deliver the 2011 Hal Wootten Lecture.

The annual Hal Wootten Lecture was established in 2006 by the Faculty of Law in honour of founding dean, Emeritus Professor Hal Wootten. This annual lecture is a highlight of the Faculty's year and commemorates Hal Wootten's founding vision for the Faculty.

## **Not For Profit: Why Legal Education Needs the Humanities**

**Martha C. Nussbaum**

{H}istory has come to a stage when the moral man, the complete man, is more and more giving way, almost without knowing it, to make room for the ...commercial man, the man of limited purpose. This process, aided by the wonderful progress in science, is assuming gigantic proportion and power, causing the upset of man's moral balance, obscuring his human side under the shadow of soul-less organization.

Tagore, Nationalism (1917)

### **I. The Education Crisis**

We are in the midst of a crisis of massive proportions and grave global significance. No, I do not mean the global economic crisis that began in 2008. At least then everyone knew that that crisis was at hand, and many world leaders worked quickly and desperately to find solutions. No, I mean a crisis that goes largely unnoticed, a crisis that is likely to be, in the long run, far more damaging to the future of democratic self-government: a worldwide crisis in education. This crisis affects education at all levels, and it definitely affects legal education; studying the general issue, but focusing in particular on legal education, I shall argue that the broad humanistic vision of legal education promoted by your founding Dean Hal Wootten is needed more than ever in a time of increasing globalization. It is under threat, however, from a retrenchment in the humanities at all levels.

Today, radical changes are occurring everywhere in what democratic societies teach the young, and these changes have not been well thought through. Eager for national profit, nations, and their systems of education, are heedlessly discarding skills that are needed to keep democracies alive. If this trend continues, nations all over the world will soon be producing generations of useful machines, rather than complete citizens who can think for themselves, criticize tradition, and understand the significance of another person's sufferings and achievements. What are these radical changes? The humanities and the arts are being cut away, in both primary/secondary and college/university education, in virtually every nation of the world. Seen by policy-makers as useless frills, at a time when nations must cut away all useless things in order to stay competitive in the global market, they are rapidly losing their place in curricula, and also in the minds and hearts of parents and children. Indeed, what we might call the humanistic aspects of science and social science – the imaginative,

creative aspect, and the aspect of rigorous critical thought – are also losing ground, as nations prefer to pursue short-term profit by the cultivation of useful, highly applied skills, suited to profit-making.

Consider these three examples. They are all drawn from the US, but similar examples arise in Europe, in India (where most of my own development work has focused) – everywhere where politicians want education to produce national profit.

- In the fall of 2006, the United States Department of Education's Commission on the Future of Higher Education, headed by Bush Administration Secretary of Education Margaret Spellings, released its report on the state of higher education in the nation: [A Test of Leadership: Charting the Future of U. S. Higher Education](#). This report contained a valuable critique of unequal access to higher education. When it came to subject matter, however, it focused entirely on education for national economic gain. It concerned itself with perceived deficiencies in science, technology, and engineering – not even basic scientific research in these areas, but only highly applied learning, learning that can quickly generate profit-making strategies. The humanities, the arts, and critical thinking were basically absent. By omitting them, the report strongly suggested that it would be perfectly all right if these abilities were allowed to wither away, in favor of more useful disciplines.
- In the fall of 2009, in Britain, the Labor Government issued new guidelines for its Research Excellence Scheme, which will assess all individuals and departments in British universities. According to the new criteria, 25% of the grade for each researcher will be based on that person's "impact," meaning, basically, contributions to economic growth and success. The humanities and the arts will now be forced to become salesmen for a product, and they will be able to justify their contribution and their claim to funds only if they can demonstrate a direct, short-term economic impact. Since that time, several philosophy departments have been completely closed, some merged with social science, and all humanities programs severely curtailed. More recently, the Conservative government has eliminated all funding for the humanities.
- This fall SUNY Albany made drastic cuts in the humanities, completely closing classics, theater, and some languages, and severely cutting others. This followed similar, though less highly publicized cuts at U of Nevada and Arizona State.

Not to belabor the obvious, there are hundreds of stories like these, and new ones arrive every day, in the U. S., in Europe, in India, and certainly in Australia. Given that economic growth is so eagerly sought by all nations, too few questions have been posed, in both developed and developing nations, about the direction of education, and, with it, of democratic society. With the rush to profitability in the global market, non-technical abilities are at risk of getting lost: abilities crucial to the health of any democracy internally, and to the creation of a decent world culture and a robust type of global citizenship, capable of constructively addressing the world's most pressing problems. These abilities are associated with the humanities and the arts: the ability to think critically; the ability to

transcend local loyalties and to approach world problems as a "citizen of the world"; and the ability to imagine sympathetically the predicament of another person.

Why should one think that this general issue is pertinent to legal education? Lawyers are not only citizens – often leaders -- they are also, in their professional capacity, servants of all a democracy's citizens. Placed in a position of trust and great strategic importance, they must be able to understand and articulate the concerns of all parts of a diverse society. They also have a large role in securing social justice for previously marginalized and victimized groups. It was part of Hal Wootten's founding vision that the lawyer must be not a privileged acolyte of the wealthy classes, but a servant of all, and his vision was shaped in particular by Australia's long struggle to overcome a legacy of injustice to the indigenous aboriginal people. So we need to think about how legal education can sustain and improve its capacity to produce citizens of this wide-ranging and capaciously imaginative sort, citizens who, in Wootten's words, "live largely in the law."

To think about education for democratic citizenship we have to think, first, about what democratic nations are, and what they strive for. What does it mean, then, for a nation to advance? On one view, it means to increase its Gross National Product per capita. This measure of national achievement has for decades been the standard one used by development economists around the world, as if it were a good proxy for a nation's overall quality of life.

The goal of a nation, says this model of development, should be economic growth: never mind about distribution and social equality, never mind about the preconditions of stable democracy, never mind about the quality of race and gender relations, never mind about the improvement of other aspects of a human being's quality of life such as health and education. One sign of what this model leaves out is the fact that South Africa under apartheid used to shoot to the top of development indices. There was a lot of wealth in the old South Africa, and the old model of development rewarded that achievement (or good fortune), ignoring the staggering distributional inequalities, the brutal apartheid regime, and the health and educational deficiencies that went with it. We might also

think about Australia, where a high average GDP coexisted, over many generations, with the exclusion and oppression of the aboriginal peoples.

This model of development has by now been rejected by many serious development thinkers, but it continues to dominate a lot of policy making, especially policies influenced by the U. S. Many nations, and states within nations, are pursuing this model of development. Proponents of the old model sometimes like to claim that the pursuit of economic growth will by itself deliver the other good things I have mentioned: health, education, a decrease in social and economic inequality. By now, however, examining the results of these divergent experiments, we have discovered that the old model really does not deliver the goods as claimed. Achievements in health and education, for example, are very poorly correlated with economic growth. Nor does political liberty track growth, as we can see from the stunning success of China. So producing economic growth does not mean producing democracy. Nor does it mean producing a healthy, engaged, educated population in which opportunities for a good life are available to all social classes. Still, everyone likes economic growth these days, and the trend is, if anything, toward increasing reliance on what I've called the "old paradigm," rather than toward a more complex account of what societies should be trying to achieve for their people.

What sort of education does the old model of development suggest? Education for economic enrichment needs basic skills, literacy and numeracy. It also needs some people to have more advanced skills in computer science and technology, although equal access is not terribly important: a nation can grow very nicely while the rural poor remain illiterate and without basic computer resources, as recent events in many Indian states show. In states such as Gujarat and Andhra Pradesh, we have seen the creation of increased GNP per capita through the education of a technical elite who make the state attractive to foreign investors; the results of this enrichment do not trickle down to improve the health and well-being of the rural poor, and there is no reason to think that enrichment requires educating them adequately. That was always the first and most basic problem with the GNP/capita paradigm of development: it neglects distribution, and can give high marks to nations or states that contain alarming inequalities. This is very true of education: Given the nature of

the information economy, nations can increase their GNP without worrying too much about the distribution of education, so long as they create a competent tech and business elite.

After that, education for enrichment needs, perhaps, a very rudimentary familiarity with history and with economic fact – on the part of the people who are going to get past elementary education in the first place, who are likely to be a relatively small elite. But care must be taken lest the historical and economic narrative lead to any serious critical thinking about class, about whether foreign investment is really good for the rural poor, about whether democracy can survive when such huge inequalities in basic life-chances obtain. So critical thinking would not be a very important part of education for economic profit-making, and it has not been in states that have pursued this goal relentlessly, such as the Western Indian state of Gujarat, well known for its combination of growth-oriented policies with docility and groupthink in the schools.

I have spoken about critical thinking and about the role of history. But what about the arts, so often valued by progressive democratic educators? An education for short-term profit will, first of all, have contempt for these parts of a child's training, because they don't lead to increased GDP. For this reason, all over the world, programs in arts and the humanities, at all levels, are being cut away, in favor of the cultivation of the technical. But educators for profit-making will do more than ignore the arts: they will fear them. For a cultivated and developed sympathy is a particularly dangerous enemy of obtuseness, and moral obtuseness is necessary to carry out programs of enrichment that ignore inequality. Speaking of education in both India and Europe, Tagore said that aggressive nationalism needs to blunt the moral conscience, so it needs people who don't recognize the individual, who speak group-speak, who behave, and see the world, like docile bureaucrats. Art is the great enemy of that obtuseness, and artists are never the reliable servants of any ideology, even a basically good one – they always ask the imagination to move beyond its usual confines, to see the world in new ways. Thus Tagore's school, based on the arts, was a radical experiment; it is deeply unpopular today with politicians aiming at national success. So, educators for profit-making will campaign against the humanities and arts as ingredients of basic education. This assault is currently taking place, all over the world.

What would the law schools of a nation focused on the growth paradigm look like? They would be very likely to be narrow and doctrinal, looking at law from the inside, rather than thinking critically about it from the vantage point of a broader set of social goals and aspirations. And they would focus above all on producing lawyers who could readily serve the interest of corporate elites, rather than advocates for all of a nation's citizens.

Pure models of education for economic growth are difficult to find in flourishing democracies, since democracy is built on respect for each person, and the growth model respects only an aggregate. However, education systems all over the world are moving closer and closer to the growth model, without much thought about how ill-suited it is to the goals of democracy.

How else might we think of the sort of nation and the sort of citizen we are trying to build? The primary alternative to the growth-based model in international development circles, and one with which I've been associated, is known as the Human Development paradigm. According to this model, what is important is what opportunities, or "capabilities," each person has, in key areas ranging from life, health, and bodily integrity to political liberty, political participation, and education. This model of development recognizes that each and every person possesses an inalienable human dignity that ought to be respected by laws and institutions. A decent nation, at a bare minimum, acknowledges that its citizens all have entitlements in these and other areas, and devises strategies to get people above a threshold level of opportunity in each.

The Human Development model is committed to democracy, since having a voice in the choice of the policies that govern your life is a key ingredient of a life worthy of human dignity. The sort of democracy it favors will, however, be one with a strong role for fundamental rights that cannot be taken away from people by majority whim: it will thus favor strong protections for political liberty, the freedoms of speech, association, and religious exercise, and fundamental entitlements in yet other areas such as education and health. This model dovetails well with the aspirations pursued in the constitutions of India, South Africa, and many other modern democracies. The United States has never given constitutional protection, at least at the federal level, to entitlements in "social and economic" areas such as health and education; and yet Americans, too, have a strong sense that the

ability of all citizens to attain these things is an important mark of national success. So the Human Development model is not pie in the sky idealism: it is closely related to the constitutional commitments, not always completely fulfilled, of many if not most of the world's democratic nations.

People who care about this approach will naturally give a great deal of emphasis to the quality of legal education and the values imparted in it. And they will seek a legal education that is both international and comparative, studying different ways of realizing these goals in different nations. But this gets ahead of my argument: so for the moment let's simply pursue the general question.

If a nation wants to promote that type of humane, people-sensitive democracy, one dedicated to promoting opportunities for "life, liberty and the pursuit of happiness" to each and every person, what abilities will it need to produce in its citizens. At least the following seem crucial:

- the ability to deliberate well about political issues affecting the nation, to examine, reflect, argue, and debate, deferring to neither tradition nor authority
- the ability to think about the good of the nation as a whole, not just that of one's own local group, and to see one's own nation, in turn, as a part of a complicated world order in which issues of many kinds require intelligent transnational deliberation for their resolution
- the ability to have concern for the lives of others, to imagine what policies of many types mean for the opportunities and experiences of one's fellow citizens, of many types, and for people outside one's own nation.

Now that we have a sense of the terrain on which education works, we can return to the ideas I mentioned earlier, saying some things, quite tentative and incomplete, but still radical in the present world culture, concerning the abilities that a good education will cultivate. As I describe each ability, I will relate it to the structure of legal education.

Three values, I would argue, are particularly crucial to decent global citizenship. The first is the capacity for Socratic self-criticism and critical thought about one's own traditions. As Socrates argues, democracy needs citizens who can think for themselves, rather than deferring to authority, who can reason together about their choices rather than simply trading claims and counter-claims.

Critical thinking is particularly crucial for good citizenship in a society that needs to come to grips with the presence of people who differ by ethnicity, caste, and religion. We will only have a

chance at an adequate dialogue across cultural boundaries if young citizens know how to engage in dialogue and deliberation in the first place. And they will only know how to do that if they learn how to examine themselves and to think about the reasons why they are inclined to support one thing rather than another -- rather than, as so often happens, seeing political debate as simply a way of boasting, or getting an advantage for their own side. When politicians bring simplistic propaganda their way, as politicians in every country have a way of doing, young people will only have a hope of preserving independence and holding the politicians accountable if they know how to think critically about what they hear, testing its logic and imagining alternatives to it.

Students exposed to instruction in critical thinking learn, at the same time, a new attitude to those who disagree with them. They learn to see people who disagree not as opponents to be defeated, but, instead, as people who have reasons for what they think. When their arguments are reconstructed it may turn out that they even share some important premises with one's own "side," and we will both understand better where the differences come from. We can see how this humanizes the political "other," making the mind see that opposing form as a rational being who may share at least some thoughts with one's own group. TUCKER

The idea that one will take responsibility for one's own reasoning, and exchange ideas with others in an atmosphere of mutual respect for reason, is essential to the peaceful resolution of differences, both within a nation and in a world increasingly polarized by ethnic and religious conflict. It is possible, and essential, to encourage critical thinking from the very beginning of a child's education. Indeed, it has often been done: it is one of the hallmarks of modern progressive education, from Froebel, Pestalozzi, and Maria Montessori in Europe to Rabindranath Tagore in India, to Bronson Alcott in nineteenth century America. Because of the influence of these thinkers, the U. S. has long valued critical thinking in schools, to a greater extent than some nations.

Critical thinking is a discipline that can be taught as part of a school's curriculum, but it will not be well taught unless it informs the entire spirit of a school's pedagogy. Each child must be treated as an individual whose powers of mind are unfolding and who is expected to make an active and creative contribution to classroom discussion.

Let us now consider the relevance of this ability to the current state of modern pluralistic democracies surrounded by a powerful global marketplace. First of all, we can report that, even if we were just aiming at economic success, leading corporate executives understand very well the importance of creating a corporate culture in which critical voices are not silenced, a culture of both individuality and accountability. Indeed, both Singapore and China have recently conducted reforms to inject a great deal more in the way of active critical thinking into their education systems, because they feel it is essential to a healthy business atmosphere. Given their suspicion of truly open criticism, however, these experiments are on a very short leash, all criticism of the government being strongly discouraged; so the Socratic ideal is not likely to be realized.

But our goal, I've said, is not simply enrichment, so let us now turn to political culture. As we'll see in more detail later on, human beings are prone to be subservient to both authority and peer pressure; to prevent atrocities we need to counteract these tendencies, producing a culture of individual dissent. One critical voice can have large consequences. (Hal Wootten admired the novel To Kill a Mockingbird for its portrait of the good citizen as solitary dissenter.). By emphasizing each person's active voice, we also promote a culture of accountability. When people see their ideas as their own responsibility, they are more likely, too, to see their deeds as their own responsibility. That was the point Tagore made in Nationalism, when he insisted that the bureaucratization of social life and the relentless machine-like character of modern states had deadened people's moral imaginations, leading them to acquiesce in atrocities with no twinge of conscience.

Now to law school. It might seem that critical thinking is one thing every law school cultivates: after all, don't they all practice a version of "the Socratic method"? However, I think this appearance is quite deceptive. In a curriculum burdened with the need to teach basic doctrinal content – as is very much the case in Australia, more so than in the U. S., where state bar examinations perform much of that function – teaching active critical thinking is a challenge. Moreover, in a system increasingly oriented toward the business and corporate community, it is difficult to include critical thought about justice and inclusion. And yet, this sort of deep and wide-ranging critical thinking lies at the heart of the whole enterprise of training lawyers. Hal Wootten wrote, "Decision-making on the

basis of rational argument, integrity and a passion for justice are of the monopoly of the legal profession, but they are central to its values.” And he went on to emphasize that what we must produce is not just the clever reasoner, it is the person who can pursue justice even when advantage is on the other side, the person who really stands alone like Socrates, who can tell truth to power.

How can that deeper sort of critical thinking be taught? In every course, from criminal law to property to contracts, it can play a role, if basic core subjects are taught (as Wootten again put it) not only from the “inside,” but also from the “outside,” with historical perspective and a critical eye on the workings of the power structure. But because not all faculty are equally interested in social criticism or equally good at it, it is also valuable to have some specialized courses whose focus is social justice. For example, our basic 1L class “Elements of Law,” brilliantly taught by Ros Dixon, exposes entering students to a variety of critical and international perspectives, as well as to basic concepts of jurisprudence. I routinely teach Feminist Philosophy as a 1L elective, and I find that students are extremely relieved and gratified to have this historical and critical perspective after two terms of basic classes.

The Socratic mission of law schools won’t be adequately realized without interdisciplinary cooperation and strong partnerships between law schools and humanities departments in the rest of the university. (My own joint appointment in law and philosophy is an important aspect of what I’m able to contribute.) So law schools cannot afford to be isolationist: they must seek excellent humanities departments in the university as a whole, both because those departments make direct contributions to their mission and because they participate in university-wide decision-making about funding and priorities.

The second key ability of the modern democratic citizen, I would argue, is the ability to see oneself as a member of a heterogeneous nation, and world, understanding something of the history and character of the diverse groups that inhabit it. Knowledge is no guarantee of good behavior, but ignorance is a virtual guarantee of bad behavior. Simple cultural and religious stereotypes abound in our world, for example the facile equation of Islam with terrorism, and the first way to begin combating

these is to make sure that from a very early age students learn a different relation to the world. They should gradually come to understand both the differences that make understanding difficult between groups and nations and the shared human needs and interests that make understanding essential, if common problems are to be solved.

This understanding of the world will promote human development only if it is itself infused by searching critical thinking, thinking that focuses on differences of power and opportunity. History will be taught with an eye to thinking critically about these differences. At the same time, the traditions and religions of major groups in one's own culture, and in the world, will be taught with a view to promoting respect for one's fellow world citizens as equals, and equally entitled to social and economic opportunity.

In curricular terms, these ideas suggest that all young citizens should learn the rudiments of world history and should get a rich and non-stereotypical understanding of the major world religions, and then should learn how to inquire in more depth into at least one unfamiliar tradition, in this way acquiring tools that can later be used elsewhere. At the same time, they ought to learn about the major traditions, majority and minority, within their own nation, focusing on an understanding of how differences of religion, race, and gender have been associated with differential life-opportunities. All, finally, should learn at least one foreign language well: seeing that another group of intelligent human beings has cut up the world differently, that all translation is interpretation, gives a young person an essential lesson in cultural humility.

When we think about recasting legal education in order to cultivate this ability, we do not have to think far, because curricula in many nations are currently being transformed so as to incorporate much more international and comparative law, and clinical programs in international human rights add to the curricular development. But I would argue that this is not enough: we need to incorporate an international and world-history perspective in many if not most of the standard courses. It is one thing to study corporate law technically, learning the moves. It is a far richer thing to study it historically and critically, thinking about the role that corporations currently play in the global economy. Hal Wootten complained that law, when he was a student, "was taught to me as an introverted discipline

administered within its own parameters by an inward looking profession.” In today’s complicated world, lawyers can hardly afford to be inward looking in any subject, and this means that law faculty must draw on the resources of humanistic disciplines such as history, political philosophy, and religious studies. Once again, this means both hiring faculty with expertise in these areas and supporting those departments in the university as a whole.

The third ability of the citizen, closely related to the first two, is what I would call the narrative imagination. This means the ability to think what it might be like to be in the shoes of a person different from oneself, to be an intelligent reader of that person's story, and to understand the emotions and wishes and desires that someone so placed might have. The cultivation of sympathy has been a key part of the best modern ideas of progressive education, in both Western and non-Western nations. The moral imagination, always under siege from fear and narcissism, is apt to become obtuse, if not energetically refined and cultivated through the development of sympathy and concern. Learning to see another human being not as a thing but as a full person is not an automatic achievement: it must be promoted by an education that refines the ability to think about what the inner life of another may be like – and also to understand why one can never fully grasp that inner world, why any person is always to a certain extent dark to any other. We'll soon see that this ability gives crucial support to both critical thinking and world citizenship. It is promoted, above all, by instruction in literature and the arts.

The humanities and arts can cultivate students' sympathy in many ways, through engagement with many different works of literature, music, fine art, and dance. But thought needs to be given to what the student's particular blind spots are likely to be, and texts should be chosen in consequence. For all societies at all times have their particular blind spots, groups within their culture and also groups abroad that are especially likely to be dealt with ignorantly and obtusely. Works of art can be chosen to promote criticism of this obtuseness, and a more adequate vision of the unseen. Ralph Ellison, in a later essay about his great novel Invisible Man, wrote that a novel such as his could be "a raft of perception, hope, and entertainment" on which American culture could "negotiate the snags

and whirlpools" that stand between us and our democratic ideal. His novel, of course, takes the "inner eyes" of the white reader as its theme and its target. The hero is invisible to white society, but he tells us that this invisibility is an imaginative and educational failing on their part, not a biological accident on his. Through the imagination we are able to have a kind of insight into the experience of another group or person that it is very difficult to attain in daily life -- particularly when our world has constructed sharp separations between groups, and suspicions that make any encounter difficult.

Now this ability and the courses that cultivate it might seem quite remote from technical legal education and difficult to include in a legal curriculum, unless in elective courses such as "law and literature," which are fun for students but are difficult to link to the main emphasis of their training. Clinical education does of course greatly stimulate the narrative imagination, and thus Australian lawyers will ultimately get a valuable immersion in that sort of legal practice, but only after law school itself. And yet, it is quite important for law schools to produce lawyers who can occupy mentally the position of different groups in their society. There is no topic on which I find Hal Wootten's thoughts more stimulating. His own education, he reports, was utterly "non-inclusive." Law was "unconsciously taught as something catering for white middle class males, the reasonable men in the Clapham omnibus, in the days before it was filled by Pakistanis and professional women on their way to work." Of course the reader is expected to know that this hypothetical figure, the man on the Clapham omnibus, was used by Lord Devlin in order to argue in favor of the continued criminality of consensual relations between adults of the same sex: he said that where that man feels strong disgust, law may forbid the practice that arouses the disgust. So the attitudes of that blinkered figure were allowed, Wootten is saying, to dominate the vision of the young lawyer.

In the first Handbook for the Law School, by contrast, Wootten wrote: "A law school should have and communicate to its students a keen concern for those on whom the law may bear harshly, either because they cannot afford its services, or because it does not sufficiently recognize their needs, or because they are in some way alienated from the rest of society."

Wootten, then, is calling for what Ellison called for: a cultivation of the “inner eyes,” so that the lives of social “invisibles” will be seen clearly and with understanding. How can legal education cultivate that “keen concern,” those “inner eyes”?

To begin with, courses of all sorts can be taught with a keen eye to historical and social context and with the critical dimension of which we’ve already spoken, as students are encouraged to think about social justice and to see the legal system from outside as well as inside. The comparative and international dimension can also contribute to the work of seeing the hierarchies in one’s own society clearly. But I think that humanities scholars – historians, political philosophers, literary scholars – have a key role to play in these developments, because they are experts at enlivening the participatory imagination. Co-teaching is one very valuable way of taking advantage of the presence of such humanists in law schools. I co-teach a course on “decision-making” to first-year law students with a colleague who is an expert in game theory and decision theory. They choose the course, often, to gain these fashionable techniques. But then they also gain exposure to John Stuart Mill, Aristotle, Immanuel Kant, and a variety of literary authors who make the issue of perspective-taking come alive for them. We also do offer a wide range of law and literature courses, and we regularly hold conferences on law-literature topics, which bring distinguished people to campus to think about the imagination. One of our conferences, on Shakespeare and the Law, involved Justice Stephen Breyer talking with English professors, philosophers, and other judges about how the fictional world of the plays enriches the thought of a lawyer or judge. This year, we are planning a conference on “Manhood in American Law and Literature,” with the well-known author Joyce Carol Oates as our plenary speaker, that will investigate ways in which social stereotypes of masculinity affect legal thought at many levels. So, the cultivation of imagination can take place at many levels of the legal curriculum, infusing basic courses, creating elective courses, and generating extracurricular activities that lure students in.

There is a general observation to be made at this point, although perhaps it is clear from what I have said already: the humanities are not elitist. They are part of the mental equipment of every good

citizen and especially of every lawyer who is going to be good at serving citizens. In Australia I often encounter the idea that humanities are for privileged elites, and not part of general education for all. No doubt they have been viewed this way, and in Britain they long were taught this way. John Stuart Mill already complained in 1867, in his Rector's Address at St. Andrew's University in Scotland, that English universities teach the classics as a set of frills for gentlemen, rather than thinking about what every person should know as a preparation for citizenship and life – the approach he found in Scotland to a greater degree. But he did not conclude that the humanities should no longer be taught: he concluded that they should be taught differently, with an eye not to pluming oneself on one's knowledge of the great books, but with an eye to what one can do in life, how one can interact with others in a political community, how one can serve that community. The vision I've been defending here is essentially Mill's vision, and it means not taking a list of "great books" for granted, a practice that I've long criticized in the U. S., but, instead, asking what curriculum could bring a heterogeneous group of young citizens into a productive dialogue around the needs of the community – something to which, as I've argued here, the humanities make an invaluable contribution.

The U. S. used to teach humanities in the English way, as a set of plumes in the hats of privileged gentlemen (and I do mean men). But World War II produced a radical democratization of higher education, as all returning GI's had rights to university education given them by the GI Bill. Educators understood that they had to think afresh about the entire topic of the free society and what produced it. One of the most eloquent statements coming out of this period was the book General Education in a Free Society, written at Harvard by literary critic I. A. Richards and other humanities faculty. They ask how to educate people together, if they vary greatly in class, region, and prior preparation, and they come up with curricular proposals that still have merit today; they allocated one-third of the undergraduate curriculum to the humanities. As time went on, however, it was not enough to think about class: in the 1970's and after, people realized that an understanding of race and of the situation of women had to be incorporated into the curriculum; and, more recently the study of human sexuality has become a feature of curricula all around the country. Each of these developments has its analogue in legal education. So, in fact the humanities, far from being elitist, provide crucial tools

for understanding a nation's minorities and cultivating the critical capacities, and the "inner eyes," that can move people beyond the hierarchies they inhabit.

But, you may still be asking, why, really, do these things matter? Why is a humanistic agenda for education in general, and legal education in particular, so urgently important? At this point, we need to understand the problems we face on the way to making students responsible democratic citizens who might possibly implement a human development agenda. What is it about human life that makes it so hard to sustain egalitarian democratic institutions, and so easy to lapse into hierarchies of various types – or, even worse, projects of violent group animosity, as a powerful group attempts to establish its supremacy? Whatever these forces are, it is ultimately against them that true education for human development must fight: so it must, as I put it following Gandhi, engage with the clash of civilizations within each person, as respect for others contends against narcissistic aggression. We legal educators need to try to understand these psychological factors, both because lawyers are human and prone to the same deformations of desire and thought as are other people and because they have a special degree of responsibility and agency: as servants of a nation's citizens and upholders of justice and the rule of law, they must inhibit baneful tendencies and foster good ones.

The internal clash can be found in all modern societies, in different forms, since all contain struggles over inclusion and equality, whether the precise locus of these struggles is in debates about immigration, or the accommodation of religious, racial, and ethnic minorities, or sex equality, or affirmative action. In all societies, too, there are forces in the human personality that militate against mutual recognition and reciprocity, as well as forces of compassion and respect that give egalitarian democracy strong support.

What, then, do we know by now about forces in the personality that militate against democratic reciprocity and respect? First, we know that people have a high level of deference to authority: psychologist Stanley Milgram showed that experimental subjects were willing to administer a very painful and dangerous level of electric shock to another person, so long as the superintending

scientist told them that what they were doing was all right – even when the other person was screaming in pain (which, of course, was faked for the sake of the experiment). Solomon Asch, earlier, showed that experimental subjects are willing to go against the clear evidence of their senses when all the other people around them are making sensory judgments that are off-target: his very rigorous and oft-confirmed research shows the unusual subservience of normal human beings to peer pressure. Both Milgram's work and Asch's have been used effectively by Christopher Browning to illuminate the behavior of young Germans in a police battalion that murdered Jews during the Nazi era. So great was the influence of both peer pressure and authority on these young men, he shows, that the ones who couldn't bring themselves to shoot Jews felt ashamed of their weakness.

Related research demonstrates that apparently normal people can very easily be led to humiliate and stigmatizes others in a context where both peer pressure and authority operate. One particularly chilling example involves school children whose teacher informs them that children with blue eyes are superior to children with dark eyes. Hierarchical and cruel behavior ensue. The teacher then informs the children that a mistake has been made: it is actually the brown-eyed children who are superior, the blue-eyed inferior. The hierarchical and cruel behavior simply reverses itself: the brown-eyed children seem to have learned nothing from the pain of discrimination. Perhaps the most famous experiment of this type is Philip Zimbardo's Stanford Prison Experiment, in which he found that subjects randomly cast in the roles of prison guard and prisoner began to behave differently almost right away. The prisoners became passive and depressed, the guards used their power to humiliate and stigmatize.

Other research on disgust, on which I've drawn in writing a book on the role of disgust in social inequality, shows that people are very uncomfortable with the signs of their own animality and mortality: disgust is the emotion that polices the boundary between ourselves and other animals. In virtually all societies, it is not enough to keep ourselves free from contamination by bodily waste products that are in the language of psychologists, "animal reminders." Instead, people create subordinate groups of human beings who are identified as disgusting and contaminating, saying that they are dirty, smelly, bearers of disease, and so forth. There is a lot of work done on how such

attitude figure in anti-Semitism, racism, sexism, and homophobia. Similarly, shame also has a deforming power: when people are ashamed of need and helplessness, they tend to want to enslave others. As the great philosopher Rousseau noted in his book on education, all small children want their parents to be their slaves, and this tendency, unchecked by education, is a huge impediment to democracy.

What else do we know? We know that these forces take on much more power when people are anonymous or not held personally accountable. People act much worse under shelter of anonymity, as parts of a faceless mass, than they do when they are watched and made accountable as individuals. (Anyone who has ever violated the speed limit, and then slowed down on seeing a police car in the rear-view mirror, will know how pervasive this phenomenon is.) Second, people behave badly when nobody raises a critical voice: Asch's subjects went along with the erroneous judgment when all the other people whom they took to be fellow experimental subjects (and who were really working for the experimenter) concurred in error; but if even one other person said something different, they were freed to follow their own perception and judgment. Third, people behave badly when the human beings over whom they have power are dehumanized and de-individualized. In a wide range of situations, people behave much worse when the "other" is portrayed as like an animal, or as bearing only a number rather than a name.

In thinking how we might help individuals and societies to win what, following Gandhi, I would call the internal clash of civilizations in each person, we would do well to think about how these tendencies can be used to our advantage. Lawyers are agents of social accountability: so it is particularly important that they have an education that teaches them effective ways of raising a critical voice and that cultivates their ability to see the lives of citizens of many different kinds with understanding, respect, and sympathy.

The other side of the internal clash is each person's growing capacity for compassionate concern, for seeing another person as an end and not a mere means. We know now that children as young as one year old are capable of occupying the perspective of another person; usually, however, this ability is exercised in a very narrow sphere, toward the child's immediate circle. And at first it is

used manipulatively, to get what the child wants. One of the easiest ways to regain lost omnipotence is to make slaves of others, and young children initially do conceive of the other humans in their lives as mere means to their own satisfaction. But as time goes on, if all goes well, they feel gratitude and love toward the separate beings who support their needs, and they thus come to feel guilt about their own aggression and real concern for the well-being of another person. As concern develops, it leads to an increasing wish to control one's own aggression: the child recognizes that its parents are not its slaves, but separate beings with rights to lives of their own. Such recognitions are typically unstable, since human life is a chancy business and we all feel anxieties that lead us to want more control, including control over other people. But a good development in the family, and a good education later on, can make a child feel genuine compassion for the needs of others, and can lead it to see them as people with rights equal to its own. This cultivation of the "inner eyes" must continue through law school, because lawyers are crucial gatekeepers of a society's entitlements; if they don't have the right sort of concern and vision, everyone suffers.

Let's now step back and take stock. How are the abilities of citizenship doing in the world today? Very poorly, I fear. Education of the type I recommend is doing reasonably well in the place where I first studied it, namely the liberal arts portion of U. S. college and university curricula. Indeed, it is this part of the curriculum, in institutions such as my own, that particularly attracts philanthropic support, as rich people remember with pleasure the time when they read books that they loved, and pursued issues open-endedly. Now, however, there is great strain. In the New York Times, Harvard's President Drew Faust reports that the economic downturn has reinforced a picture that the value of a university degree is largely instrumental, and that university leaders are increasingly embracing a market model of their mission, in consequence cutting back the liberal arts.

Outside the U. S., many nations whose university curricula do not include a liberal arts component are now striving to build one, since they acknowledge its importance in crafting a public response to the problems of pluralism, fear, and suspicion their societies face. I've been involved in such discussions in the Netherlands, in Sweden, in India, in Germany, in Italy, in India and

Bangladesh. Whether reform in this direction will occur, however, is hard to say: for liberal education has high financial and pedagogical costs. Teaching of the sort I recommend needs small classes, or at least sections, where students get copious feedback on frequent writing assignments. European professors are not used to this idea, and would at present be horrible at it if they did try to do it, since they are not trained as teachers in the way that U. S. graduate students are, and come to expect that holding a chair means not having to have much to do with undergraduates. Even when faculty are keen on the liberal arts model, bureaucrats are often unwilling to believe that it is necessary to support the number of faculty positions required to make it really work. Meanwhile, in many nations politicians are imposing increasing demands for “relevance” to national economic goals before they fund departments, programs, and even individual scholars’ research. Britain has faced these demands since the Thatcher era, but they have recently been renewed with alarming emphasis, as philosophers, classicists, and humanists of all types are asked to demonstrate the economic “impact” of the studies they propose.

So the universities of the world have great merits, but also great and increasing problems. By contrast, the abilities of citizenship are doing very poorly, in every nation, in the most crucial years of childrens' lives, the years known as K through 12. Here the demands of the global market have made everyone focus on scientific and technical proficiency as the key abilities, and the humanities and the arts are increasingly perceived as useless frills, which we can prune away to make sure our nation (whether it be India or the U. S.) remains competitive. To the extent that they are the focus of national discussion, they are recast as technical abilities themselves, to be tested by quantitative multiple-choice examinations, and the imaginative and critical abilities that lie at their core are typically left aside. In the U. S., national testing (under the "No Child Left Behind" Act) has already made things worse, as national testing usually does: for at least my first and third ability are not testable by quantitative multiple choice exams, and the second is very poorly tested in such ways. (Moreover, nobody bothers to try to test it even in that way.) Whether a nation is aspiring to a greater share of the market, like India, or struggling to protect jobs, like the U. S., the imagination and the critical faculties look like useless paraphernalia, and people even have increasing contempt for them.

Across the board, the curriculum is being stripped of its humanistic elements, and the pedagogy of rote learning rules the roost. The Obama administration, under Arne Duncan, has announced its intention of expanding testing, and there is little sign of sensitivity to the problems it has created.

As for legal education, the future is not yet clear. Certainly the increasing focus on international and comparative law in law schools around the world is a healthy sign; and the increasing interdisciplinarity of many law schools is also promising, with appointments of Ph.D.'s from history, philosophy, and other humanities fields, as well as economists. but on the other hand one all too often sees an increasing domination of the curriculum by the demands of the corporate world. In India, for example, legal education is almost exclusively pre-corporate, and public law is barely taught. And everywhere the humanities – history, philosophy, literature – are always an embattled set of minority perspectives.

What will we have, if these trends continue? Nations of technically trained people who don't know how to criticize authority, useful profit-makers with obtuse imaginations, technically trained lawyers who don't know how to understand and have concern for the communities they serve. Tagore observed, studying the educational institutions of his time – that this sort of educational failure amounted to a “suicide of the soul.” What could be more frightening than that? Indeed, when we consider the Indian state of Gujarat, which has for a particularly long time gone down this road, with no critical thinking in the public schools and a concerted focus on technical ability, one can see clearly how a band of docile engineers can be welded into a murderous force to enact the most horrendously racist and anti-democratic policies such as that state's slaughter of more than 2000 Muslim civilians in 2002, egged on by officials of state and even national government. And yet, how can we possibly avoid going down this road?

Democracies have great rational and imaginative powers. They also are prone to some serious flaws in reasoning, to parochialism, haste, sloppiness, selfishness. Education based mainly on profitability in the global market magnifies these deficiencies, producing a greedy obtuseness and a technically trained docility that threaten the very life of democracy itself, and that certainly impede the creation of a decent world culture.

If the real clash of civilizations is, as I believe, a clash within the individual person, as greed and narcissism contend against respect and love, all modern societies are rapidly losing the battle, as they feed the forces that lead to violence and dehumanization and fail to feed the forces that lead to cultures of equality and respect. If we do not insist on the crucial importance of the humanities and the arts, they will drop away, because they don't make money. They only do what is much more precious than that, make a world that is worth living in, people who are able to see other human beings as full people, with thoughts and feelings of their own that deserve respect and sympathy, and nations that are able to overcome fear and suspicion in favor of sympathetic and reasoned debate.

[END]

---

Martha C. Nussbaum is Ernst Freund Distinguished Service Professor of Law and Ethics at the University of Chicago Law School and is visiting the UNSW Faculty of Law to deliver the 2011 Hal Wootten Lecture.