


2011

Profiting from Not for Profit: Toward Adequate Humanities Instruction in American K-12 Schools

Eli Savit

University of Michigan Law School, esavit@umich.edu

Follow this and additional works at: <http://repository.law.umich.edu/mlr>

 Part of the [Education Law Commons](#), [Entertainment, Arts, and Sports Law Commons](#), and the [Law and Society Commons](#)

Recommended Citation

Eli Savit, *Profiting from Not for Profit: Toward Adequate Humanities Instruction in American K-12 Schools*, 109 MICH. L. REV. 1175 (2011).

Available at: <http://repository.law.umich.edu/mlr/vol109/iss6/19>

This Book Notice is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

BOOK NOTICE

PROFITING FROM *NOT FOR PROFIT*: TOWARD ADEQUATE HUMANITIES INSTRUCTION IN AMERICAN K–12 SCHOOLS

NOT FOR PROFIT: WHY DEMOCRACY NEEDS THE HUMANITIES. By *Martha C. Nussbaum*. Princeton and Oxford: Princeton University Press. 2010. Pp. xv, 143. \$22.95.

*Reviewed by Eli Savit**

INTRODUCTION

Martha Nussbaum¹ describes *Not For Profit: Why Democracy Needs the Humanities*—her paean to a humanities-rich education—as a “manifesto, not an empirical study” (p. 121). Drawing on contemporary psychological research and classic pedagogical theories, Nussbaum convincingly argues that scholastic instruction in the humanities is a critical tool in shaping democratic citizens. Nussbaum shows how the study of subjects like literature, history, philosophy, and art helps students build essential democratic capacities like empathy and critical thought. Through myriad examples and anecdotes, *Not For Profit* sketches an appealing vision of what an ideal education should be in a democracy.

If Nussbaum’s goal were merely to lay out a set of academic first principles, *Not For Profit* would largely be a success. Yet because Nussbaum believes that policymakers’ singular focus on math, science, and technology education places the humanities in grave danger, she also wants her manifesto to serve as a “call to action” (p. 122). Unfortunately—although Nussbaum sketches a curricular ideal—she does not explain the precise actions that should be taken in pursuit of that ideal. Moreover, Nussbaum is unclear as to how her vision can be realistically implemented. Nussbaum does provide an adequate account of the *problem* she seeks to address: she persuasively argues that the humanities are threatened by policymakers’ increasing tendency to view education as a means to an economic end. Troublingly though, *Not For Profit* offers little in the way of a *solution*.

* J.D., 2010, University of Michigan Law School. Co-founder and Chairman of the Board, The Generation Project; Law Clerk, Honorable Carlos T. Bea, Ninth Circuit Court of Appeals, San Francisco, CA. Thanks to Kathrina Szymborski, and to Diana Cieslak, Gwen Stamper, and the rest of *Michigan Law Review* for their helpful comments and suggestions on various drafts of this Review. This Review is dedicated to all my former eighth grade social studies students at C.I.S. 339 in the South Bronx, who I know will make tremendous contributions to American democracy.

1. Ernst Freund Distinguished Service Professor of Law and Ethics, University of Chicago Law School.

Compounding these difficulties, Nussbaum shies away from discussing the impediments to implementing a robust humanities curriculum. *Not For Profit* effectively sidesteps issues of cost (pp. 117–19), as well as the persistent problems arising from educational inequality in the United States (pp. 134–38).

Nussbaum is ultimately more interested in sketching a platonic ideal of education than in discussing how *all* students can be prepared for democratic citizenship. In fact, Nussbaum does not give even a general sense of how much humanities instruction might be necessary to adequately prepare students for citizenship or how best to integrate humanities instruction into our education system. Nussbaum persuasively argues that policymakers' focus on math, science, and technology education places the humanities in a state of crisis, but she does not suggest how to address that crisis.

But if Nussbaum is correct in asserting that the humanities are at the heart of adequate citizenship education, an American legal framework already exists that supports—and perhaps compels—adequate instruction in the humanities for *all* students. American courts have long suggested that one of public schools' primary functions is citizenship preparation, and the connection between education and citizenship is also made explicit in a number of state constitutions. Moreover, in the aftermath of No Child Left Behind, policymakers appear to be moving gingerly toward a recognition that an adequate education consists of more than math and reading instruction. Educational inequality in America—combined with a severe budget crisis facing U.S. schools—makes it unlikely that Nussbaum's humanities-rich ideal will become the norm in American schools anytime soon. But if one can get past Nussbaum's particularly robust model of a humanities education, *Not For Profit* should serve as a compelling reminder of why the humanities are important for *all* American students. And, perhaps, if *Not For Profit* is thus contextualized, its arguments can serve as a rallying cry for the inclusion of adequate humanities education within the current American educational framework.

This Review proceeds in three parts. Part I summarizes *Not For Profit* and its novel and compelling arguments about the democratic potential of the humanities. Part II criticizes Nussbaum's failure to consider how her idealized system of education might be implemented, particularly given the legal, academic, and economic challenges in low-income American school districts. Finally, Part III attempts to make relevant *Not For Profit's* central thesis—that the humanities play a central role in shaping democratic citizens—by sketching a way in which the humanities can be implemented using America's current legal framework.

This Review is limited in scope, and three caveats are therefore in order. First, although Nussbaum describes the crisis in the humanities as a “global” problem (p. 1), this Review focuses primarily on humanities cutbacks in the United States. Second, Part I of this Review does not purport to offer a comprehensive critique of Nussbaum's theories on human development and psychology. Instead, this Review endorses *Not For Profit's* key arguments only to a limited extent: that Nussbaum's focus on human development—

and thus, the development of democratic citizens—offers new and useful arguments for advocates of humanities education.² Finally, nothing in this Review should be read to implicate the manner in which empathy, critical thought, or any of Nussbaum's other "democratic" capacities operate in nondemocratic countries. Such capacities are undoubtedly crucial for humanity as a whole, not just those people who live in democracies. *Not For Profit*, however, focuses exclusively on the humanities' role in democracies, and this Review does not expand upon the scope of the book.

I. A GLOBAL CRISIS: WHAT *NOT FOR PROFIT* SAYS

A. *The Problem*

Martha Nussbaum does not mince words. "We are," *Not For Profit* opens, "in the midst of a crisis of massive proportions and grave global significance" (p. 1). Across the world, Nussbaum continues, "the humanities and the arts are being cut away" (p. 2). And because instruction in the humanities fosters skills like empathy and critical thinking, countries risk "producing generations of useful machines, rather than complete citizens who can think for themselves" (p. 2). "The future of the world's democracies," Nussbaum writes, "hangs in the balance."³

Nussbaum's central observation—that the humanities have been de-emphasized at the primary, secondary, and university levels—rings true in the United States, although Nussbaum chooses to anecdotally highlight shifts in pedagogical *emphasis* rather than survey *actual* changes in instruction. She cites, for example:

- the economics-heavy tone of former Secretary of Education Margaret Spellings's report on higher education (p. 3);
- a conversation at Chicago's Lab School in which teachers "expressed anxiety" about "wealthy parents" demanding that "testable skills" be

2. Nussbaum's focus on democratic *capacities* stands in contrast to the focus of commentators who argue, for example, that a robust education in the humanities is important so that future voters will be well-informed. See *infra* note 11 and accompanying text.

3. P. 2. Nussbaum does not suggest that instruction in the humanities is the *only* way in which skills like empathy and critical thought can be developed. The development of so-called "democratic skills" also takes place outside the schoolhouse walls. For example, Nussbaum notes that "[m]ost of the traits that are my focus need to be nurtured in the family as well." P. 8. The "surrounding peer culture and the larger culture of social norms and political institutions" also help shape the skills Nussbaum sees as critical. P. 9. Moreover, Nussbaum does not contend that the humanities are the only *scholastic* subjects that help shape citizens. She notes that "science and social science, particularly economics, are also crucial to the education of citizens." P. 7.

But Nussbaum focuses on schools and colleges because "it is in these institutions that the most pernicious changes have been taking place." P. 9. She does not focus on science or economics instruction because "nobody is suggesting leaving these studies behind." P. 7. Thus, *Not For Profit* should not be read as an argument that instruction in the humanities is a logically *necessary* condition for the development of traits like empathy and critical thought. Instead, Nussbaum thinks the humanities are a particularly *effective* way for society to impart democratic skills, and she focuses exclusively on the humanities precisely because she thinks they are endangered.

taught to their children instead of “education for democratic citizenship” (p. 4);

- a symposium at a “prestigious U.S. university” on the future of liberal education that was cancelled because the university president “decided that a symposium on liberal education would not ‘make a splash’” (p. 5).

Nussbaum thus teases out one of her underlying themes: contemporary educators and policymakers are primarily concerned with providing students with “an education that promotes . . . economic growth.”⁴ And Nussbaum argues that the profit-maximization camp sees the humanities as a waste of educational resources. From a national perspective, countries promote science and technology education because these disciplines are seen as the best means of increasing a country’s core industries—and thus, its gross national product (pp. 14–23). From the perspective of an individual, instruction in science and technology is favored because these skills are seen as the most marketable. The humanities and the arts, on the other hand, are de-emphasized, because they “don’t look like they lead to personal or national economic growth” (p. 23). Thus, Nussbaum suggests that national policymakers are inclined to de-emphasize the humanities because they are concerned with the GDP bottom line. Policymakers’ antihumanities inclinations are compounded by the fact that voters do not demand robust instruction in the humanities for their children, because voters are concerned with their children’s *personal* earning potentials.

Nussbaum’s anecdotes certainly reflect a shift in *thinking* about education. And in the United States, these shifts in thinking apparently affect the instruction students *actually* receive. In the immediate aftermath of the 2001 No Child Left Behind law—which ties school funding to math and reading scores alone—36 percent of public school districts cut subjects like civics, history, and government, and 16 percent of districts cut arts and music.⁵ The recent economic crisis led to even deeper cuts to the humanities. Faced with significant state funding shortfalls, many public schools opted to cut back on humanities and arts,⁶ leaving subjects like math, science, and literacy largely untouched. This shift away from the humanities has hardly sparked a public outcry: indeed, a slim majority of Americans think it is a “good thing” if

4. P. 17. Nussbaum believes instruction in the humanities *can* help foster economic growth, but she views this point as secondary to her primary arguments about democracy and citizenship. P. 53.

5. CTR. ON EDUC. POLICY, CHOICES, CHANGES, AND CHALLENGES: CURRICULUM AND INSTRUCTION IN THE NCLB ERA 7 tbl.4 (rev. 2007), available at http://www.cep-dc.org/_data/n_0001/resources/live/07107%20Curriculum-WEB%20FINAL%207%2031%2007.pdf.

6. E.g., Winnie Hu, *In New Jersey, a Civics Lesson in the Internet Age*, N.Y. TIMES, Apr. 28, 2010, at A19, available at <http://www.nytimes.com/2010/04/28/nyregion/28jersey.html?fta=y> (discussing cuts in music and arts in New Jersey); Ray Long, *Quinn budget cuts hit schools, social services harder*, CHI. TRIB., Aug. 4, 2010, at A13, available at http://articles.chicagotribune.com/2010-08-04/news/ct-met-illinois-budget-cuts-20100804_1_quinn-budget-budget-cuts-social-services (discussing Illinois’s cuts to arts and foreign languages); Randi Weingarten, *When Teachers Are Slashed, the Children Pay*, HUFFINGTON POST, Aug. 8, 2010, http://www.huffingtonpost.com/randi-weingarten/when-teachers-are-slashed_b_674936.html (describing Ohio’s music, arts, and foreign languages cut).

increased emphasis on reading and math results in reduced emphasis on other subjects.⁷

Not For Profit thus identifies a de-emphasis of the humanities in education and policy circles—as well as among voters. At least in the United States, data indicate that students are *actually* receiving less instruction in the humanities than they have in the past. Nussbaum next shows why the de-emphasis of the humanities—and the corresponding cuts in humanities instruction—threaten the development of democratic citizens.

B. *Democracy, Development, and Domination: Why The Humanities Are Important*

At least in the United States, educational de-emphasis of the humanities has been apparent for some time,⁸ and Nussbaum is hardly the first commentator to note the humanities' decline.⁹ Thus, *Not For Profit's* most important contribution is its arguments—based partially on human development research—for *why* the humanities are so important. Human beings, Nussbaum argues, are born with dueling capacities and predilections, and successful democracies must use the humanities to develop those capacities that encourage mutual respect, personal accountability, and critical thought.

In *Not For Profit's* opening chapters, Nussbaum describes childhood development as a constant struggle between selfishness, shame, and xenophobia on the one hand, and compassion and understanding on the other. The human capacity for selfishness, Nussbaum thinks, begins at infancy, when “other people are not fully real; they are just instruments that either bring what is needed or do not” (p. 31). At the earliest stages of development, Nussbaum suggests, infants do not view people as other beings at all—they are simply conduits for food and material comfort. Thankfully, children soon begin to view other humans as more than means to an end. Humans quickly develop “positional thinking”—the ability to see the world from another’s perspective—which often goes hand-in-hand with a growing capacity for compassion and care (p. 36).

7. Chester E. Finn, Jr., Commentary, *Public Wants Reforms*, in William J. Bushaw & Alec M. Gallup, *Americans Speak Out—Are Educators and Policy Makers Listening?*, PHI DELTA KAPPAN, Sept. 2008, at 9, 10.

8. In the 1960s, American high schools regularly required students to take as many as three courses in social studies; today, many schools do not require even a single course. CARNEGIE CORP. OF N.Y. & CIRCLE: CTR. FOR INFO. & RESEARCH ON CIVIC LEARNING & ENGAGEMENT, *THE CIVIC MISSION OF SCHOOLS 14–20* (2003), available at <http://civicyouth.org/PopUps/CivicMissionofSchools.pdf> (documenting a steady de-emphasis of civic education requirements in the 1980s and 1990s); Charles N. Quigley, *Civic Education: Recent History, Current Status, and the Future*, 62 ALB. L. REV. 1425, 1431 (1999) (noting that thirty states do not require high school students to take civics or American government).

9. See E.D. HIRSCH, JR., *THE KNOWLEDGE DEFICIT* 68-80 (2006) (arguing American students' poor reading scores are a result of a lack of cultural knowledge); CTR. FOR CIVIC EDUC., *TALKING POINTS ON THE NEED TO RESTORE THE CIVIC MISSION OF SCHOOLS 2*, <http://www.civiced.org/pdfs/campaignToPromote/TalkingPoints.pdf> (last visited Dec. 12, 2010).

Yet from a young age, children also develop a sense of shame. Nussbaum sees shame as a dangerous feeling that can counteract human capacity for compassion and mutual dependency. From infancy, Nussbaum argues, shame is a “virtually universal response to human helplessness,” born of a young child’s inability to fulfill basic desires without adult help (p. 39). Shame can be dangerous—and antidemocratic—because a society that is structured to *accentuate* feelings of shame in one’s helplessness leads people to strive for the “myth of total control,” and to reject the “ideal of mutual need and interdependency” (p. 39).

Humans’ natural sense of disgust, on Nussbaum’s account, can also be pernicious. A child’s revulsion toward filth and bodily waste—while providing clear evolutionary advantages—can lead to “projective disgust” against concrete groups of people (p. 33). Nussbaum notes that children, from an early age, “project the properties of animality—bad smell, ooziness, sliminess” onto children they wish to stigmatize (p. 32). And because children learn from adults, they quickly pick up on both subtle and overt prejudices, and project this sense of disgust onto minority groups—for example, African Americans, Jews, homosexuals, or women (p. 33). This dehumanization of others, Nussbaum argues, inhibits feelings of compassion and sympathy toward people in that group.

These human predilections toward bad behavior present very real dangers, but Nussbaum argues that such dangers are hardly ineluctable. She surveys a number of historical and clinical examples of humans behaving badly—from the Stanford Prison Experiment to the bone-chilling behavior of conscripted Nazis (pp. 42–43)—and notes that “apparently decent” people have the capacity to discriminate and dominate (p. 42). But just because people have the *capacity* to act badly does not mean they will *actually* do so. In her survey of psychological and historical studies, Nussbaum finds three essential conditions that cause people to behave badly. First, “people behave badly when the human beings over whom they have power are dehumanized and de-individualized” (p. 44). Second, people behave badly when they are not held personally accountable for their actions (p. 43). Finally, people behave badly when “nobody raises a critical voice” in opposition to bad behavior (p. 43). Therefore, societies should seek to strengthen citizens’ sense of personal accountability, their capacity for critical thinking, and their ability to recognize the humanity of others (p. 44).

These three capacities—empathy, accountability, and critical thought—are, for Nussbaum, especially critical in democracies, where citizens are asked to make decisions based on a wide variety of local and global issues (pp. 27–28). In democracies, citizens bear the ultimate responsibility for maintaining institutions that promote “equal respect and the equal protection of the laws” (p. 28). And in democracies—even liberal democracies that carve out some protections for minorities—majorities (or supermajorities) ultimately rule, leaving minorities vulnerable to stigmatization and denigration (p. 28). Thus, it is particularly important for democracies to develop citizens’ sense of personal accountability, their capacity for critical thought, and their ability to recognize the humanity of different individuals. Only by developing these

capacities, Nussbaum argues, can democratic societies prevent majorities from behaving badly with the imprimatur of legality.

On Nussbaum's account, the easiest way for societies to develop these democratic capacities is through a "basic education" that is rich in humanities instruction (p. 44). For example, societies can instill a respectful recognition of other individuals by providing an education rich in history, geography, economics, and culture (pp. 86–87). Students should "spend a disproportionate amount of time on their own nation and its history," but in a pluralistic democracy, an adequate education should familiarize students with the various ethnic, religious, gender, and social groups *within* their country (p. 91). And because the interconnected nature of modern global society requires an understanding of other countries' traditions as well, Nussbaum argues that all students should learn the "rudiments of world history," which must be taught in a "rich and nonstereotyped" way (p. 89). On Nussbaum's account, all students should also take at least one foreign language. For Nussbaum, learning a foreign language is necessary to fully facilitate mutual recognition, because it teaches students how "another group of intelligent human beings has cut up the world differently [and] how all translation is imperfect" (p. 90).

Yet democratic societies should not merely be concerned with *what* subjects are taught, they should also ensure such subjects are taught *properly*. A child's capacity for critical thought, Nussbaum believes, can best be encouraged by philosophical instruction that makes ample use of Socratic pedagogy. People who "fail to examine themselves," Nussbaum argues, are likely to be swayed by "moving rhetoric" and "bad arguments" (p. 50). Citizens who are not used to questioning, in other words, are more likely to fall sway to malevolent influences. But if students are trained to constantly re-examine and defend their positions—a hallmark of Socratic pedagogy—they are likely to engage in constant reflection and analysis when making democratic decisions. Moreover, because Socratic questioning requires individuals to take ultimate responsibility for their own arguments, Socratic pedagogy "promote[s] a culture of accountability" (p. 54).

Literature and the arts also play a key role in Nussbaum's model for citizenship development. Nussbaum argues that mere factual knowledge about the world and the ability to think critically do not, by themselves, foster democratic citizenship. Effective citizens also need what Nussbaum calls "narrative imagination," which means "the ability to think what it might be like to be in the shoes of a person different from oneself" (pp. 95–96). Narrative imagination comes naturally to children—in early years, children often role-play, imagining themselves as animals, other children, or objects (p. 99). In later years, though, the narrative imagination must be *developed*, and here, arts and literature are key. Exposure to theater, poetry, literature, and visual arts, according to Nussbaum, helps students see the world through the eyes of another, and can help obviate harmful stereotypes about members of minority groups. Nussbaum cites Ralph Ellison's *Invisible Man* as the type of novel that can help citizens understand what it might be like to be stigmatized on the basis of race (p. 107), and suggests texts should be

chosen depending on “what the student’s particular blind spots are likely to be”—in other words, which subgroups students are likely to feel prejudiced toward (p. 106).

Ultimately, *Not For Profit*’s major contribution is not in the problem it identifies, but in its explanation of why this problem should concern us. Many commentators have decried schools’ pruning of the arts and the humanities. But unlike, for example, E.D. Hirsch, Nussbaum is not particularly concerned with ensuring that students obtain core factual knowledge about historical people, places, and events.¹⁰ Nor is Nussbaum’s central argument that citizens must be taught how the democratic system of government works—a position advanced by former Supreme Court Justice Sandra Day O’Connor.¹¹ Instead, Nussbaum argues that instruction in the humanities can help develop the fundamental human *capacities* needed for effective democratic participation. Equally as importantly, Nussbaum shows how robust instruction in the humanities can undermine people’s *harmful* capacities to stigmatize others, dominate, and discriminate—or to blindly follow majoritarian whims.

II. AN INCOMPLETE CALL TO ACTION: WHAT *NOT FOR PROFIT* DOES NOT SAY

Not For Profit’s major weakness is not what it says, but what it leaves out. Nussbaum’s essential thesis is that an education that includes robust humanities instruction can ensure citizens are cognitively and temperamentally prepared to participate in democracy. But Nussbaum gives no hints as to what, precisely, a *minimal* education for citizens should entail or how her vision might be implemented in American schools. Instead, she broadly sketches a vision of her *ideal* humanities-based education, all but ignoring the fact that her ideal is not plausible for a large segment of citizens.

First, *Not For Profit* seems to operate on the assumption that *all* students will inevitably move from primary to secondary to postsecondary (college) education, and that postsecondary education is necessary for effective citizenship. “When students reach college,” Nussbaum writes, “they *need* to develop their capacities as citizens of the world with greater sophistication” (p. 91; emphasis added). To adequately prepare for citizenship, college students must develop a robust understanding of economics, history, politics, and philosophy that builds upon “earlier grounding” in primary and secondary school (p. 92). Nussbaum also argues college students need instruction in Socratic thinking to fully develop their “capacities for citizenship and respectful political interaction” (p. 56).

But, of course, not every student goes to college. In fact, only about 50 percent of high school graduates ever set foot on the campus of a four-year

10. See, e.g., HIRSCH, *supra* note 9, at 8–9, 77–79.

11. Seth Schiesel, *Former Justice Promotes Web-Based Civics Lessons*, N.Y. TIMES, June 9, 2008, at E7 (quoting O’Connor as stating that “[k]nowledge about our government” is key “to preserving a robust constitutional democracy”).

college.¹² White students are more likely than blacks or Hispanics to matriculate *and* to graduate from college once they enroll.¹³ And rising college costs consistently outstrip inflation—the real cost of tuition and room and board at four-year colleges has more than doubled over the past three decades.¹⁴ If a college education is really necessary for good citizens, about half of Americans are necessarily ill-prepared for citizenship. Those less-prepared citizens are predominantly black, Hispanic, and of lower socioeconomic status. It is a disturbing thought, and one that Nussbaum does not address.¹⁵

Moreover, *Not For Profit* ignores a very real debate on whether students even *should* even be going to college. Charles Murray, for example, argues that *fewer* students should be going to college, because only about 10 percent of American students actually have the intellectual ability to understand college-level material.¹⁶ Specifically, Murray argues that the vast majority of people cannot understand college-level history, art, economics, psychology, philosophy, or literature¹⁷—the very subjects Nussbaum claims are crucial to citizenship. Murray may be wrong, of course, but Nussbaum does not even *address* the question of students' college preparedness. And if Murray *is* right that only a small percentage of Americans can actually master college-level work, *and* we take Nussbaum's idealized vision of education-for-citizenship seriously, it means only about 10 percent of American citizens are actually able to function fully *as citizens*. The implications for equality are troubling, yet Nussbaum simply ignores the issue.

Finally, Nussbaum fails to consider how her humanities-rich ideal might be implemented within the current American legal framework. K-12 schools in the United States are subject to No Child Left Behind, which ties federal funding to student achievement on math and literacy exams.¹⁸ Because schools are effectively *required* to show academic gains in math and literacy, the resources that can be dedicated to the humanities are limited. Again, the problem is exacerbated for minorities and low-income students. Schools in districts with high minority or socioeconomically disadvantaged popula-

12. CHARLES MURRAY, *REAL EDUCATION* 67 (2008).

13. Mary Beth Marklein, *Minority enrollment in college still lagging*, USA TODAY, Oct. 30, 2006, http://www.usatoday.com/news/education/2006-10-29-minority-enrollment_x.htm.

14. Dep't of Educ. Statistics, *Table 334: Average undergraduate tuition and fees and room and board rates charged for full-time students in degree-granting institutions, by type and control of institution: 1964-65 through 2008-09*, NAT'L CENTER FOR EDUC. STAT., http://nces.ed.gov/programs/digest/d09/tables/dt09_334.asp (last visited Dec. 5, 2010).

15. Nussbaum hints at the fact that not every child goes to college once, noting that the "lives of children who grow up knowing that they will go on to university and even postgraduate education are utterly different from the lives of children who in many cases do not get a chance to attend school at all." P. 11. She then states—implausibly, for a book that deals with both primary and postsecondary education—that inequitable distribution of postsecondary education "is not . . . the topic of this book." P. 11.

16. MURRAY, *supra* note 12, at 70.

17. *Id.* at 70-73.

18. No Child Left Behind Act of 2001, 20 U.S.C. § 6311 (2006).

tions are most likely to be “designated for improvement” under No Child Left Behind,¹⁹ meaning that they must concentrate on math and literacy tests or risk government intervention. Schools facing tremendous pressure to succeed on math and literacy tests are unlikely to spend precious resources on instruction in foreign languages, philosophy, and the arts.²⁰ Thus, if instruction in the humanities is really key to the development of citizens, socioeconomically disadvantaged groups face additional hurdles on their road to effective citizenship—potentially leading to further marginalization. In light of these challenges, Nussbaum does not address how a robust humanities curriculum could be *equitably* implemented in the United States.

The challenge of equitable implementation is compounded by the fact that there is no legal obligation for educational resources in America to be equally distributed. In *San Antonio Independent School District v. Rodriguez*,²¹ the Supreme Court held that education is not a fundamental right, effectively foreclosing any possibility that school-funding equality could be enforced through the Fourteenth Amendment to the United States Constitution. State courts have not been much more receptive to lawsuits seeking equal funding for schools. In *Robinson v. Cahill*,²² for example, the New Jersey Supreme Court rejected a suit seeking equal distribution of educational resources under the state constitution’s equal protection clause. The court held that equal protection could not cover school funding, because “the equal protection clause may be unmanageable if it is called upon to supply categorical answers in the vast area of human needs.”²³

Thus, informed American readers may be frustrated when considering how to implement *Not for Profit*’s ideal vision of a humanities-rich education. Nussbaum does not discuss how her vision might be funded. She all but ignores legal frameworks that encourage schools to cut the humanities in the first place. She assumes away substantial issues about access to college, as well as issues regarding college preparedness. But she claims that the humanities are vitally important for democracy. Indeed, she suggests that a humanities-rich education is the best way to prepare citizens for democratic participation. So, if *Not For Profit* really is meant as a “call to action,” it leaves open the vexing question of *how*, precisely, action can be taken.

19. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-08-380, NO CHILD LEFT BEHIND ACT: EDUCATION ACTIONS COULD IMPROVE THE TARGETING OF SCHOOL IMPROVEMENT FUNDS TO SCHOOLS MOST IN NEED OF ASSISTANCE 31 n.29 (2008), available at <http://www.gao.gov/new.items/d08380.pdf>.

20. In theory, some low-income schools attempt to integrate aspects of the humanities—for example, history and literature—into literacy courses. However, because of testing pressures, the actual instruction in these so-called “combined” courses often tends to focus on reading skills. See CTR. ON EDUC. POLICY, *supra* note 5, at 8–9 (quoting Chicago school officials who “try” to fit in thirty minutes a day for history and social studies as saying “our major focus is in reading and math,” and Escondido Union, California school officials as saying their district unsuccessfully “tri[es] to integrate . . . social studies standards at the same time [as] . . . literacy” (internal quotation marks omitted)).

21. 411 U.S. 1, 37 (1973).

22. 303 A.2d 273, 282 (N.J. 1973).

23. *Robinson*, 303 A.2d. at 283.

III. TOWARD ADEQUATE INSTRUCTION IN HUMANITIES: ANSWERING *NOT FOR PROFIT*'S CALL TO ACTION

Not For Profit provides an important development-based argument for the humanities' vital role in shaping democratic citizens. But Nussbaum sketches an idealized vision of education that is untenable for a wide swath of American students. If *Not For Profit* is to serve as an urgent call to action—instead of merely an academic statement of first principles—its central arguments must be massaged to fit within the rubric of adequacy that dominates the American educational landscape.

Adequacy, generally defined, has long been the animating legal and policy principle in American education. From a legal perspective, state courts have been more receptive to lawsuits alleging the *inadequacy* of school funding than to suits alleging *inequality* of school funding. In *Rose v. Council for Better Education*,²⁴ the Kentucky Supreme Court held that its state constitution required a “proper and an adequate education”²⁵ for all students, which, in turn, required adequate funding.²⁶ A number of states' high courts have explicitly adopted *Rose* in interpreting their own constitutions,²⁷ while other state courts have independently interpreted state constitutions as requiring adequate educational funding.²⁸ And because all fifty state constitutions contain a provision requiring the state legislature to fund a system of public education,²⁹ claims regarding the *adequacy* of school funding can theoretically be made nationwide.

Adequacy is also the animating principle behind most major national education initiatives. The stated purpose of the No Child Left Behind law—which continues to dominate the K-12 educational landscape—is to ensure that “all children . . . reach, *at a minimum*, proficiency on challenging State academic achievement standards and state academic assessments.”³⁰ Although President Obama has called for raising minimum education standards, he has not called for a major overhaul of No Child Left Behind's fundamental framework.³¹ Instead, President Obama has promised to “make

24. 790 S.W.2d 186 (Ky. 1989).

25. *Rose*, 790 S.W.2d at 190.

26. *Id.* at 197.

27. *E.g.*, *McDuffy v. Sec'y of the Exec. Office of Educ.*, 615 N.E.2d 516, 554 (Mass. 1993); *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353, 1359 (N.H. 1997); *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997); *Abbeville Cnty. Sch. Dist. v. State*, 515 S.E.2d 535, 540 (S.C. 1999).

28. *E.g.*, *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 330 (N.Y. 2003).

29. Eli Savit, Note, *Can Courts Repair the Crumbling Foundation of Good Citizenship? An Examination of Potential Legal Challenges to Social Studies Cutbacks in Public Schools*, 107 MICH. L. REV. 1269, 1291 (2009).

30. No Child Left Behind Act of 2001 § 1001, 20 U.S.C. § 6301 (2006) (emphasis added).

31. President Barack Obama, Remarks by the President to the Hispanic Chamber of Commerce on a Complete and Competitive American Education (Mar. 10, 2009) (transcript available at http://www.whitehouse.gov/the_press_office/Remarks-of-the-President-to-the-United-States-Hispanic-Chamber-of-Commerce/).

No Child Left Behind live up to its name.”³² Adequacy—not equality, and not excellence—thus is still very much the driving force behind most education policy initiatives.

Because adequacy, not excellence, is the framework within which the American education system operates, any revitalization of the humanities in American schools will have to be far more modest than Nussbaum’s proposals. Educators, policymakers, and (potentially) litigants will have to identify a fundamental core of the humanities that is *necessary* to shape democratic citizens—something Nussbaum fails to do in *Not For Profit*. Most obviously, any policy decisions or legal claims meant to implement humanities will have to target grades K-12, where the government has the most control over education. Moreover, given the reality that only about half of Americans ever set foot in college, focusing on grades K-12 is the best way to ensure that *all* citizens receive some core instruction in the humanities.

Within K-12 schools, a more limited humanities curriculum than the one Nussbaum proposes may well be viable, and could have the effect of shaping better citizens. Budgetary realities—combined with schools’ need to achieve academic proficiency in science, math, and literacy—mean that any core minimum of humanities instruction will almost certainly be more limited than the comprehensive system *Not For Profit* proposes. And, assuming Nussbaum is correct about the humanities’ impact on citizenship, a more limited education in the humanities will probably produce citizens who are less prepared for democracy than Nussbaum would like. Thankfully, though, the traits Nussbaum claims humanities instruction can promote—empathy, accountability, and critical thinking—are not binary states. So, although a minimally adequate humanities curriculum may not shape *ideally* empathetic, accountable, and critical-thinking citizens, it will shape democratic citizens who are *more* empathetic, accountable, and capable of critical thought. Ultimately, even a minimally adequate humanities curriculum can confer a substantial benefit on American democracy.

It is beyond the scope of this Review to provide a comprehensive blueprint for the substance an adequate education in the humanities should include. But there are several ways in which a basic K-12 humanities curriculum—consisting of instruction in literature, the arts, history, and philosophy—can be implemented in American schools. First, advocates for the humanities could embrace No Child Left Behind’s testing and accountability framework, and seek to include the humanities as a tested subject in early grades. Nussbaum herself is deeply skeptical of standardized tests because she believes they are unable to measure such skills as “critical thinking . . . sympathetic imagining . . . and the skills involved in world citizenship” (p. 134). Moreover, she worries that “[t]eaching to the test . . . produces an atmosphere of student passivity and teacher routinization” (p. 134). But at least one group has concluded that the benefits of testing outweigh the risks of teaching to the test. In 2007, the National Council for the Social Studies (“NCSS”) issued a position statement urging the federal gov-

32. *Id.*

ernment to reform No Child Left Behind to include the core social studies disciplines of history, civics, geography, and economics.³³ The NCSS noted the concerns of some social studies educators that student achievement could not be fairly measured by standardized tests.³⁴ Yet the NCSS concluded that “if it isn’t tested, it isn’t taught,” so the benefits of testing social studies outweighed the costs.³⁵

Alternatively, advocates for the humanities could seek the humanities’ inclusion in the Common Core standards—a set of math and English standards created by the National Governors’ Association that will likely be adopted in forty-eight states and the District of Columbia.³⁶ The Common Core standards were created to fix a perverse side effect of No Child Left Behind’s nod to federalism: although No Child Left Behind tied federal funding to students “passing” math and literacy tests, the law allowed states to create standards for those subjects—and the required passing test scores.³⁷ To remove states’ incentive to dilute standards and tests, the Common Core standards were created as a set of rigorous cross-state standards. Notably, the English standards also include standards for literacy instruction within history and social studies. Currently, the standards in history and social studies deal primarily with reading, writing, and research. A representative 6–8 grade history standard requires students to “[g]ather relevant information from multiple print and digital sources.”³⁸ But the standards could be expanded to require substantive content in the humanities as well. A future version of the Common Core standards, for example, could require middle school students to study at least one foreign country, require twelfth graders to read *Invisible Man*, and expand on the existing standards that promote critical thinking skills.³⁹

Finally, adequate instruction in the humanities could, in theory, be mandated by state courts, particularly if a strong nexus can be shown between

33. Position Statement, Nat’l Council for the Soc. Studies, Social Studies in the Era of No Child Left Behind (May 2007), available at <http://www.socialstudies.org/positions/nclbera>.

34. *Id.*

35. *Id.*

36. Cf. *Common Core State Standards Initiative: NGA and CCSSO Comment on CCSSI Governance Suggestions*, COMMON CORE ST. STANDARDS INITIATIVE, <http://www.corestandards.org/articles/9-nga-and-ccsso-comment-on-ccssi-governance-suggestions> (last visited Dec. 5, 2010). As of December 5, 2010, forty states and the District of Columbia had adopted the Common Core standards. *Common Core State Standards Initiative: In The States*, COMMON CORE ST. STANDARDS INITIATIVE, <http://www.corestandards.org/in-the-states> (last visited Dec. 5, 2010).

37. See *Common Core State Standards Initiative: Frequently Asked Questions*, COMMON CORE ST. STANDARDS INITIATIVE, <http://www.corestandards.org/frequently-asked-questions> (last visited Dec. 5, 2010).

38. COMMON CORE STATE STANDARDS INITIATIVE, COMMON CORE STATES STANDARDS FOR ENGLISH LANGUAGE ARTS & LITERACY IN HISTORY/SOCIAL STUDIES, SCIENCE, AND TECHNICAL SUBJECTS 66 (2001), available at http://www.corestandards.org/assets/CCSSI_ELA%20Standards.pdf.

39. The Common Core standards arguably promote critical thinking in their current form. A representative writing standard requires seventh graders to “[s]upport claim(s) with logical reasoning and relevant evidence, using accurate, credible sources and demonstrating an understanding of the topic or text.” *Id.* at 42.

the humanities and democratic citizenship. In school-financing cases, a number of state courts defined an “adequate” education as encompassing a civic dimension. In *Rose*, for example, the Kentucky Supreme Court required schools to provide students with the opportunity to attain “sufficient knowledge of economic, social and political systems,” and to “appreciate [their] cultural and historical heritage.”⁴⁰ The New Hampshire Supreme Court held that its state constitution required “broad exposure to the social, economic . . . and political realities of today’s society.”⁴¹ And New York’s highest court held that the state’s constitutional education provision is fashioned to allow public school graduates to “function productively as civic participants.”⁴² Moreover, a number of state constitutions explicitly tie public education to civic participation. The education provisions in Idaho, Minnesota, and South Dakota’s constitutions, for example, declare the “stability of a republican form of government” depends mainly on the “intelligence of the people,”⁴³ while six other constitutions declare education essential to the preservation of the rights and liberties of the people.⁴⁴ If a group of litigants could show that the humanities are necessary to the civic purpose of education, a court might theoretically require schools to provide adequate instruction in the humanities—and require adequate funding for such instruction.

CONCLUSION

Because *Not For Profit* does not provide a blueprint for action, it is unlikely that it will ultimately serve as the “call to action” that Nussbaum envisions. But *Not For Profit*’s ideas about the relationship between humanities and democracy are intriguing and provocative. If Nussbaum is correct that the humanities offer a particularly effective way of developing core democratic capacities, the United States would be ill-advised to further de-emphasize humanities instruction.

Implementation of idealized visions is never easy, and the challenges facing the American education system make the implementation of Nussbaum’s vision particularly difficult. Yet there are legal and policy avenues through which a core of humanities instruction might be ensured for all

40. *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 212 (Ky. 1989).

41. *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353, 1359 (N.H. 1997).

42. *Campaign for Fiscal Equity, Inc. v. State*, 655 N.E.2d 661, 666 (N.Y. 1995).

43. IDAHO CONST. art. IX, § 1 (West, Westlaw through the end of the 2010 Second Regular Session of the 60th Legislature); MINN. CONST. art. XIII, § 1 (West, Westlaw through laws of the 2010 Regular and First Special Sessions); S.D. CONST. art. VIII, § 1 (West, Westlaw through end of the 2010 Regular Session and Supreme Court Rule 10-03).

44. CAL. CONST. art. IX, § 1; ME. CONST. art. VIII, pt. 1, § 1 (West, Westlaw through the 2009 Second Regular Session of the 124th Legislature); MASS. CONST., ch. V, § 2 (West, Westlaw through amendments adopted November 1, 2010); MO. CONST. art. IX, § 1(a) (West, Westlaw through the Nov. 4, 2008 General Election); R.I. CONST. art. XII, § 1 (West, Westlaw through chapter 319 of the January 2010 session); TEX. CONST. art. VII, § 1 (West, Westlaw through the end of the 2009 Regular and First Called Sessions of the 81st Legislature).

American students. Properly contextualized, then, the ideas at the core of *Not For Profit* can be a valuable weapon in the arsenal of those who advocate for the humanities in the legal and political arenas.

