

*Martha Nussbaum*†

Unlike most of my colleagues, since I joined the Law School in 1995, I got to know Bernie only when he was already eighty years old. For the next twelve years I always looked forward to running into him when I entered the building each day. His vigor, curiosity, and courtliness both astonished and delighted me. He would doff his hat and say, “Professor Nussbaum, I believe,” and we would walk together to the elevator—at which point Bernie usually headed for the stairs and I (coming from my morning run, I hasten to add in self-justification) took the easy way up.

One day in around 2001, I ran into Bernie on the way to the Quad Club for lunch, and said apologetically, “I’m sorry, Bernie, I have to walk fast, because I am late to meet someone.” And I began to stride on ahead of him. “Oh,” said Bernie, “do you think I can’t keep up with you?” And, very soon, it was *I* who was struggling to keep up with *him*, as we race-walked along University Avenue. This episode evidently tickled him, since Jean tells me that he repeated it to her with relish.

Even in his last few years, when his failing eyesight made walks to the Quad Club more difficult, we often walked there together, arm in arm. He would say that he was happy to see me because otherwise he would have had to walk all the way around to Woodlawn to cross by the traffic light, since Jean and his doctor insisted on that unless someone was walking with him. The idea that he might be driven to the Quad Club, or even stop going altogether, never entered the picture.

Until his final illness, undaunted by the vision problems, he was learning all the new voice-op technologies, and he never stopped taking pleasure in conversation. In those last few years, I knew that I had to greet him vocally, so I would say, “Good day, Professor Meltzer,” and he would turn in my direction and say, “Good day, Professor Nussbaum,” and remove his hat.

Thinking about Bernie gave me hope about the later years of life. The sheer joy in life and talk that he radiated until the very end was profoundly moving and more than a little exemplary, though exemplary is the last thing he would ever have wanted or tried to be. He went to more or less every work-in-progress workshop, and he always had some excellent question to pose. He came to the office every day,

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and he loved seeing his colleagues. He would stop by my office to bring me articles on some topic from my work that we had discussed, and later we would run into one another in the stacks and chat about it.

Importantly, too, the later years of Bernie's life gave him time to think again about international justice, revisiting his wartime and postwar experiences and writing about the philosophical and legal issues they raised.

Twice, in 2001 and 2004, Bernie came to the class on decisionmaking that Douglas Baird and I teach to talk about his experience heading the Foreign Funds division of the State Department during the Second World War. Baird and I like to use historical examples of difficult decisionmaking to show the complex interrelationships between people's thought processes and the social context in which they are working. So we asked Bernie to talk about his plan to rescue the Romanian Jewish children. This was an idea that Eleanor Roosevelt and various Jewish groups had, that somehow funds could be directed to bribe the Romanian guards to release around a thousand children who would otherwise be killed. Bernie's job was to devise a plan to get that money to the guards without risk that it would fall into the hands of the Axis powers. He worked out a plan, it was acceptable to Morgenthau at Treasury—but then, Breckinridge Long, an anti-Semite who was in charge of refugee affairs in the State Department and who had Roosevelt's ear, vetoed the plan. The children died.

Bernie discussed the whole episode with calm and detachment, with deep regret for the loss of the children's lives, but without any trace of personal resentment. Students sat in rapt attention, hearing an unwritten piece of history. And they asked him all sorts of questions, which he answered gently, modestly, reflectively, with neither vanity nor anger. Asked whether he thought that Long's attitude to him was related to the fact that Bernie was only the second Jew in the State Department, Bernie shied away, saying that he didn't know how far that came into it. Asked how he personally felt as a Jew dealing with these events, he said, "You'd have to psychoanalyze me to find out."

We often talked about Nuremberg, and in 2003 he gave a memorable presentation on "Victors' Justice" at our law and philosophy workshop when our topic was "War." His description of his interview with Göring sticks with me: the man, he said, had "the charisma of evil." Having been in the midst of crafting Nuremberg's new approach to international justice and responsibility, he later had some hesitations, wondering how fair it was for the winners to impose judgment on the losers in a manner that held them to international standards not previously in force and public. Just having him there to speak about his life was amazing, being in the presence of a living part of the

history of one of the world's darkest hours out of which emerged some of its most promising legal developments.

I often told Bernie that he should write his memoirs, and there was even a graduate student who, having heard him in the law and philosophy workshop, volunteered to be his amanuensis, taking down his experiences. For a long time, Bernie hesitated. He wasn't sure, he told me, that his life had enough in it as a whole to warrant a memoir. Then finally, one day, he told me that he had decided against the plan. The interesting bits about the war had already appeared through interviews he gave for books about other, more major figures, and he thought large parts of his life were simply uninteresting. I doubted this, and I doubt it still. There is a fine book to be written there, a book that would tell us a great deal about the War, about justice after war, about labor law, and about Chicago. Also, importantly, about what it is to have an old age that is happy and that brings happiness to others.

This book I have in mind needs to be written by a narrative artist, who could get onto the page Bernie's sui generis combination of quickness and insight, toughness and sparkle. Quite a few writers of fiction have dealt well with the *unhappiness* of old age, not least the aging Philip Roth in the recent *Everyman*. Few indeed, however, have dealt with the happiness of old age, its capacity for wit, serenity, and generosity. (The only novelist I can think of who did it really well is John Galsworthy in *The Forsyte Saga*.) Such a writer would also need to have a delicate sense of social distinctions in order to capture the complexities of Bernie's generation, as Jews made their way into leading roles in American life, not without friction. (Again, Galsworthy had what it takes, though he never wrote about Jews.)

So, would a Jewish Galsworthy, learned in the law, curious about the history of international accountability for crimes against humanity, please step forward?