
Clarity of style makes this book an asset not only to legal philosophers but to anyone who, like Nussbaum, is interested in assessing the role that the two emotions of disgust and shame should play in the law. Nussbaum’s own conclusion is straightforward: they should play no role. One apparent kind of exception is the appeal to disgust in nuisance law (e.g., your neighbour’s activities emit disgusting odours that spoil the enjoyment of your property). The exception is only apparent because such appeals are ultimately appeals to the *actual harm* (the spoilt enjoyment) occasioned by some activity or other. Disgust should never directly function as a criterion determining what should be legally prohibited, or as an alleviating or aggravating consideration in sentencing. Hence, for example, the disgust that the average heterosexual man would feel at the thought of gay sex should not be a reason to make any such activity illegal; and the fact that A killed B out of disgust for B should not be a reason for alleviating A’s punishment. In the case of shame, Nussbaum does not so much talk about these two types of function, i.e., make an activity illegal or alleviate/aggravate a punishment, but rather concentrates on the desirability of shaming penalties such as the obligatory wearing of a shirt stating ‘I am on felony probation for theft’ for a man convicted of larceny and the obligatory display of bumper stickers reading ‘Convicted D.U.I.’ (‘Driving Under Influence’) for convicted drunk drivers.

Should we agree? In a nutshell, Nussbaum’s argument goes as follows: disgust and shame should be excluded from the law because they diminish or destroy human dignity and equal respect or the equal worth of persons. Political liberalism is built on these values. Hence, disgust and shame should not be allowed to play any role (see p. 321). In her own words:

> Human beings are deeply troubled about being human—about being highly intelligent and resourceful, on the one hand, but weak and vulnerable, helpless against death, on the other. We are ashamed of this awkward condition and, in manifold ways, we try to hide from it. In the process we develop and teach both shame at human frailty and disgust at the signs of our animality and mortality. Both disgust and primitive shame...are associated with forms of social behavior in which a dominant group subordinates and stigmatizes other groups... Given the ubiquity of this stigmatizing behavior and its very deep roots, it seems likely that disgust and shame provide bad guidance for law in a society committed to equal respect among persons... We have found fault with disgust and shame as bases for law simply by thinking about human dignity and the equal worth of persons. (pp. 336-38)

There are at least five ways to reject or dismiss this argument. (1) Those who do not adhere to political liberalism as understood by Nussbaum will not be engaged by the argument. (2) One may disagree that political liberalism is what Nussbaum understands it to be (i.e. Rawls’s political liberalism). (3) One may challenge as too vague the notions of human dignity, equal respect and/or the equal worth of persons. (4) One may be rather perplexed by the psychoanalytic stories concerning our
being troubled by our mortality and animality aimed at supporting the conclusion that disgust and shame are bad for human dignity and its affiliates. (5) Even if these psychoanalytic stories were correct, one may challenge the conclusion that it is thereby always wrong for a state to violate someone’s human dignity and its affiliates. In what follows I will make some remarks on the last three points, beginning with (4).

Nussbaum is aware that her analyses of disgust and shame though ‘based on experimental and sociological data, also prominently’ invoke ‘psychoanalytic materials, and many people do not have a high regard for psychoanalysis’. She goes on: ‘To the extent that I use these materials here, however, I invoke them as persuasive forms of humanistic interpretation that people with an interest in human life may accept without accepting the claim of psychoanalysis to be a science’. Donald Winnicott, on whose psychoanalyses Nussbaum particularly relies, ‘saw analysis as closely linked to poetry and literature, a mode of imaginative understanding’. Nussbaum uses psychoanalytic materials ‘as stories about the human condition by perceptive and humanly wise people’ (p. 342). It is legitimate to wonder here what exactly is to be ‘humanly wise’ and by what method one is to agree that someone fits this description. If the work of someone like Winnicott is to be likened to art, Nussbaum should perhaps appeal to the judgement of art critics. Nussbaum’s stance on the role of psychoanalysis is ambiguous. By reading the previous 341 pages, one would have thought that the theses concerning our being troubled by animality and mortality had, rather than a mere aesthetic role, the status of empirical claims confirmed by experimental and sociological data. If these theses were not understood as being verifiable and scientific, then it is hard to understand why they should deserve the centrality they have in this book. Without them Nussbaum could not explain why disgust and shame is allegedly dangerous to human dignity, and hence that it should be banned from the law.

This takes us to (3) and (5). What are human dignity and its affiliates and are they absolutely inviolable? Nussbaum takes it that the notions of human dignity, equal respect for, and equal worth of, persons have in common the idea that persons are not merely means but also ends in themselves and should thus be treated accordingly (see p. 328). We may all understand the claim that human beings are choosers of ends. To say that they have inherent value \textit{qua} choosers of ends or \textit{qua} human beings, however, is a different story, one that needs philosophical elucidation. Legal documents such as the Universal Declaration of Human Rights and the national constitutions it inspired provide none. Kant tried to provide some but his argument was clearly metaphysical. That is not in itself a problem but will not do for someone like Nussbaum who claims that human dignity ‘is affirmed as a moral part of the political doctrine, not as a metaphysical idea’ (p. 343). Understood in this moral rather than metaphysical way, human dignity may be embraced even by ‘religious conceptions that regard the human being as not worthy of respect’ (p. 343). So, for Nussbaum, on the political arena, we should treat human beings as worthy of equal respect. It is highly doubtful, however, that a purely political agreement on any substantive notion of human dignity could be reached (as Nussbaum suggests with her endorsement of Rawls’ Political Liberalism), or that any dissent to it would simply be unreasonable (e.g. what would a Utilitarian like Hare say to such a proposal?). Granting both doubts, however, why think that human dignity confers some sort of political inviolability? If it did, how would we explain the (at least apparent)