



DISGUST, SHAME AND LAW: A CRITICAL REVIEW OF NUSSBAUM'S HIDING FROM HUMANITY

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Abstract

Martha C. Nussbaum's Hiding from Humanity: Disgust and Shame in the Law is an ambitious book that argues disgust and shame are fundamentally unreliable for legal judgment. She explains how emotions work inside the legal system, especially criminal law. Her main idea, put in her "cognitivist" terms, is that while emotions like compassion or anger might help law make sense of harm, disgust and shame do not work in the same way. She calls disgust almost "magical," because it's irrational and full of odd ideas about purity or strength. In the end it projects our fears of death and animal life onto other people, usually vulnerable groups. Shame, similarly, is described in what she names its "primitive" version, where it comes out of a childish wish to be all-powerful and then flips into putting others down or even aggression. In this review the author weighs up her arguments, evaluating how realistic they are in practice, how far they apply across cultures and whether the person/act distinction she relies on is effective. The author also looks at the criticism that her approach is overly idealistic or utopian. Finally, the author suggests how her ideas are useful in India today, where caste discrimination and online shaming remain significant issues and make her arguments feel very relevant right now.

Keywords: *Disgust, Shame, Criminal Law, Liberalism, Human Dignity, Emotion*

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I Introduction

MARTHA C. Nussbaum's *Hiding from Humanity: Disgust, Shame and the Law* is an influential work that seeks to shake up the way we think about law and emotions. It came out in 2004 and has been pretty influential, especially because Nussbaum, who teaches Law and Ethics at Chicago, goes straight at the question of whether feelings like disgust and shame should be shaping criminal law or public policy at all.

This is significant for criminal law because the whole system is about deciding what counts as crime, who is guilty and what punishments should be given. These things always get tangled up with how society feels. Nussbaum demonstrates how shame and disgust have shaped law in areas like obscenity, sodomy, provocation defences in murder cases and also the rise of public shaming punishments.

II The Peril of Projection: Disgust in Criminal Law

Nussbaum spends a lot of time on disgust because she sees it as deeply rooted in the history of law. She argues it's the hardest emotion to get rid of and the hardest to subject to rational criticism. This is why she contends disgust is not a safe guide for legal reasoning.

The problem persists when disgust moves into criminal law. Nussbaum critiques judges and scholars who say it's fine to use disgust when deciding which acts to criminalise. She says that's a big mistake because it doesn't really protect anyone from harm. Instead, it protects social prejudices. So, for example, the banning of consensual homosexual sex

wasn't about safety but about people being grossed out by it.¹ Obscenity law works in the same way. Instead of explaining what actual harm is being done, the law just reacts to people's disgust and calls that morality.² That kind of law, she argues, ends up being a weapon against minorities, who are already carrying the weight of stigma.

III The Pitfalls of Exposure: Shame and Punishment

Both in older times and now, courts have sometimes ordered offenders to wear signs, sweep the streets or have their names printed in newspapers instead of sending them to prison. Supporters contend this is cheaper and potentially beneficial for the community. But Nussbaum firmly rejects it. She argues that shaming punishments contradict the idea that all citizens deserve equal dignity. If you humiliate someone, you basically turn them into a public joke or a target for ridicule, which is not what punishment in a democracy should achieve.³ On top of that, she warns these penalties easily turn into mob justice, lack consistently and can push offenders further away rather than rehabilitating them.⁴

One of her key points is the difference she draws between shame and guilt. Guilt, she says, is tied to actions. You can feel guilty for stealing, lying or hurting someone. And guilt might lead to repair, apology or forgiveness. Shame, however, is about the whole person. To feel shame is to be told that you are defective, not just that you did a bad thing. This is

¹ Martha C. Nussbaum, *Hiding from Humanity: Disgust, Shame and the Law* 149-152 (Princeton University Press, New Jersey, 2004).

² *Id.* at 138-146.

³ *Id.* at 227-237.

⁴ Naomi Horrox, "Book Notes: Hiding From Humanity: Disgust, Shame and the Law, by Martha C. Nussbaum" 42(4) *Osgoode Hall L.J.* 699 (2004).

really important for the law because, in her view, guilt-based punishment keeps the door open for reform, while shame closes it off and blocks reintegration into society.⁵

IV Critical Engagements and Liberal Ideals

Nussbaum's arguments are strong, but not everyone agrees with her. There's been a lot of debate over whether her proposals are even doable in practice, if they apply across cultures and also whether her person/act split works properly in actual law. Critics often point out that her approach sounds too utopian, perhaps too neat compared to complex reality.⁶ Others argue that emotions, including disgust, have evolved for protective reasons or they show shared moral instincts, so it is too simplistic just to dismiss them as irrational.⁷ Nussbaum's reply is fundamentally that even if emotions have a function in survival, this does not mean they give us the right moral standards for law. She insists that law must be justified publicly, not grounded in feelings that mark out some people as polluted or inferior.

Furthermore, her book mostly looks at Western liberal societies, even if she does mention other contexts here and there. In many places honour and shame are not side issues but central to how social life works, including family rules, gender expectations and rituals. Consequently,

⁵ *Supra* note 1 at 207-209.

⁶ James Q. Whitman, "Making Happy Punishers" 118 *Harv. L. Rev.* 2709 (2005).

⁷ Daniel Kelly and Nicolae Morar, "Against the yuck factor: On the ideal role of disgust in society" 26 *Utilitas* 153 (2014).

trying to exclude shame out entirely could look like ignoring or even trampling over cultural values.⁸

Even so, her bigger aim is clear: she places psychology at the centre of liberalism. She contends that a society that actually values dignity and equality cannot survive if disgust and shame dominate. These emotions breed stigma and exclusion, which, she says, undermines equal citizenship. She links herself to John Stuart Mill's harm principle, which says liberty should only be limited to stop harm to others. However, she adds that disgust and shame have often been used as pretexts for limiting freedom, by labelling acts or people as "polluting" even when no harm is really shown.⁹ By calling out these purity fantasies, she strengthens Mill's principle. And her idea of society is not repression but acceptance: admitting we are mortal, animal, vulnerable and trying to live with that. The hope, at least how she frames it, is that instead of domination, we move towards interdependence.¹⁰

V Contemporary Resonance: The Indian Context

Nussbaum's ideas are highly relevant when looking at India today. The legal and social system there is still contending with colonial leftovers, caste divisions, religious differences and the aspirations of the Constitution. Her point about disgust being used as a way to exclude people fits sharply with caste discrimination. Article 17 banned untouchability, which was a significant step against disgust-based exclusion. But in practice, challenges remain. Segregation and violence

⁸ John Deigh, "The Politics of Disgust and Shame" 10 *Journal of Ethics* 390 (2006).

⁹ *Supra* note 1 at 335-340.

¹⁰ *Supra* note 1 at 17.

are still there and Dalits or manual scavengers are often treated as if they themselves are dirty or polluted. This lines up precisely with Nussbaum's idea that disgust is about projecting fears of death and the body onto already marginalised groups.¹¹

Shame also causes significant problems in Indian society, especially around women's freedom and sexuality. Actions like honour killings, moral policing and stopping inter-caste or inter-faith marriages are often defended in the name of family or community honour. Consequently, individuals are subjected to public shaming.¹² The courts have tried to move more towards dignity rather than honour, for example in protecting sexual assault survivors or upholding the right to marry across caste or religion.¹³ Nevertheless, shame continues to shape how laws are enforced. Nussbaum's warning about shaming is highly pertinent, especially with the rise of digital shaming. Social media and even state policies that put out lists of loan defaulters just end up adding more stigma.¹⁴

Other Indian laws also show the role of disgust. For over 150 years Section 377 of the Penal Code criminalised same-sex relations, until the Supreme Court finally struck most of it down in the *Navtej Singh Johar* case.¹⁵ This was a clear case of disgust being written into law. There are also obscenity rules which are tied to feelings of revulsion rather than to any clear harm. Recently the courts have started talking more about

¹¹ *Safai Karamchari Andolan v. Union of India*, (2014) 11 SCC 244.

¹² *Lata Singh v. State of U.P.*, (2006) 5 SCC 475.

¹³ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.

¹⁴ Thom Brooks, "Shame On You, Shame On Me? Nussbaum on Shame Punishment" 25 *Journal of Applied Philosophy* 322 (2008).

¹⁵ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

“constitutional morality” instead of “social morality,” especially in LGBTQ+ and privacy cases. That shift aligns closely with what Nussbaum advocates: a legal order built on dignity, not on shame or disgust.¹⁶

VI Conclusion

Nussbaum’s *Hiding from Humanity* functions as both a warning and a strategic plan. It serves as a warning because she demonstrates that disgust and shame, when they enter legal reasoning, do not protect society but weaken it. It is a plan because she sketches how a more inclusive order could work.

Her broader aim is to ground liberalism in a deeper sense. She picks up Mill’s harm principle, which sounds straightforward that liberty can only be limited to stop harm but she adds psychology to it. She shows how disgust and shame often pretend to be reasons for limiting freedom when actually they’re just feelings of revulsion dressed up as arguments. By uncovering that trick, she makes Mill’s idea stronger.

In the end, her book doesn’t just criticise, it really tries to give a map for a different society. A society that admits we are mortal and dependent, not pure or untouchable. She contends that if law is serious about dignity, it must resist these emotions and instead promote respect and empathy. This is especially pressing in plural countries like India, where caste, honour and social stigma remain powerful. There, her ideas about rejecting disgust and shame are not abstract, they’re urgent, tied to human rights and constitutional morality.

¹⁶ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.