



From Disgust to Humanity: Sexual Orientation and Constitutional Law

Martha C. Nussbaum

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A distinguished professor of law and philosophy at the University of Chicago, a prolific writer and award-winning thinker, Martha Nussbaum stands as one of our foremost authorities on law, justice, freedom, morality, and emotion. In *From Disgust to Humanity*, Nussbaum aims her considerable intellectual firepower at the bulwark of opposition to gay equality: the politics of disgust.

From Disgust to Humanity: Sexual Orientation and Constitutional Law Details

Date : Published February 1st 2010 by Oxford University Press, USA

ISBN : 9780195305319

Author : Martha C. Nussbaum

Format : Hardcover 209 pages

Genre : Philosophy, Law, Politics, Nonfiction, Lgbt, History, Feminism

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From Reader Review From Disgust to Humanity: Sexual Orientation and Constitutional Law for online ebook

Hadrian says

It is a sadly familiar sight to see those in favor of discriminating against LGBT people use the 'gross out' tactic in using arguments. Phil Robertson's arguments about human anuses are only a recent example. Other arguments I have heard involve imaginary monsters of feces, disease, blood, or child molestation.

Nussbaum characterizes the legal history of discrimination and legal rights by describing the 'politics of disgust'. It is not an appeal to rationality, but a visceral fear of 'contamination' or 'defiling'. She notes the history of such arguments, noting that they were used by racists against Africans or Jews, against the segregation of women, or those in India who defend the caste system. In all of these cases, the appeals to disgust were largely used to dehumanize other persons, and provide a legal basis to deny them rights.

Her counter-argument is largely derived from J.S. Mill's brand of classical liberalism, in that other human beings have the right to act so long as they do not harm another. On top of this, she adds the importance of 'empathy', in understanding the experience of other human beings. This does not require a total destruction of traditions, but instead an attempt to further embody the modern American ideal.

I would further add the normative influence of the media in this regard, as it shows homosexuals in a less hateful light, and that any past arguments about a 'public morality' are now moot. As a further example, recent polling demonstrates that if a person has an LGBT relative or close friend, they will thus be more inclined to support LGBT rights. Once it becomes a more human issue and less of an abstract boogeyman, then it will be easier to drum up political support.

I would add the strong caveat that this book is already partially out of date even though it is only three years old - the case of *United States v. Windsor* last year and the repeal of DOMA are already considered major milestones. (I might also add *Holingsworth v. Perry*). Despite this, Nussbaum's reasoning is still sound. It is a legal backing and a call for freedom from fear.

Neil says

Excellent discussion of the need for rational underpinnings of laws that dictate public OR private morality. A little too polite on the question of religious motivation for disgust-based anti-sex laws, but considering she's arguing for a modern secular reading of the Constitution (which is the only one that makes sense in 2012), she more than proves her point. Read this if you want to have solid, well-informed arguments for why prohibiting any-gendered marriage is unconstitutional.

Paul Rhodes says

This book simply confirmed what I already knew, namely that the liberalism of John Stuart Mill is simply moral relativism.

Laurelei says

2.5

Interesting argument and background; however, I was not sold on the liberal approach to dismantling homophobia.

Adam Lowy says

A brief, dense work of extreme importance in these dark days of othering and hypocrisy. Nussbaum, an essential legal philosopher, argues that disgust, often used as justification to limit freedoms and rights for sexual minorities, is a culturally influenced, inconsistent and untrustworthy sensor. Her explication of various Court decisions and her demonstrations of the misuse of disgust to mask bigotry is powerful and relevant to so much of our daily lives in these times. Empathy, true empathy, towards others in authentic moments of self-expression, their sexual behavior, surely must be a goal to strive for. This striving leaves disgust as a relic of past prejudices.

This book needs to be read!

DoctorM says

A concise and clear essay about the issues underlying efforts to stigmatise gay people and deny same-sex marriage. Nussbaum derives her arguments from her longer "Hiding From Humanity"--- the argument that popular emotions of "disgust" are used to tag others as unclean, contaminating, and subject to legal disabilities even where the others' acts and attributes do no concrete harm. Nussbaum lays out the pre-rational roots of so much anti-gay feeling (fear and loathing of bodily substances--- blood, semen, faecal matter and a consequent view of gay male sex as inherently contaminating and disgusting) and applies John Stuart Mill's analysis of whether the state should be able to regulate or prohibit acts that involve only consenting parties. A good analysis of recent privacy law, as well as of key decisions (Romer, Lawrence) that have advanced the cause of gay equality.

While the analysis of the psychology of disgust could've been longer, and while Nussbaum does lose some focus at the end, her argument that "disgust" as such, without concrete harm to the non-consenting, is no viable basis for law, is well-taken.

!Tæmbu?u says

KOBOBOOKS

?? Xin-Xin says

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Amanda says

"sex toys threaten health far less than the sale of soft drinks and candy." (184)

jordan says

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Into the vitriolic debate about homosexuality and society, esteemed philosopher Martha Nussbaum's "From Disgust to Humanity: Sexual Orientation and Constitutional Law" arrives like a breath of well reasoned air. Combining rigorous logic, thorough research, and humanity, Nussbaum examines our legal tradition to explain how the insidious notion of "disgust" is offered as a basis to deny rights to the "unworthy." Few will read her history of invectives used to demonize "the other," whether black, Jewish, or immigrant by association with disease, bodily fluids, odor, germs, and excrement, without feeling a chill. Examining the legal status of homosexuality, she contrasts the views of two British thinkers. Philosopher John Stuart Mills, "abhor[ed:] the tyranny of public sentiment over personal choice," and thought government had no place in regulating the activities of equal, competent, consenting adults. In opposition to Mills, she offers Lord Patrick Devlin, a British judge and Neo-Burkian, who opposed ending the legal sanction against homosexuality arguing that the state can and should use force to encourage social solidarity and enforce a common morality. Devlin saw sodomy laws as just and necessary, setting bounds on what is acceptable; according to Nussbaum, Mills would have seen them as nothing less than an assault on liberty. And though at times casting Devlin against Mills can feel like an intellectual middleweight taking a beating from Mohammed Ali, one's sympathy quickly passes. //From Disgust to Humanity// explores the jurisprudential history of our "right to privacy," explaining cogently how the justices grounded it in the Constitution. In matters of privacy in general and homosexuality in particular, she demonstrates how jurists are divide followers of Mills and Devlin. In the case of the latter, arguments always track back to disgust, homosexual being "others" and "deviants," engaging in behavior that exists only in deranged fantasy. Thinkers such as Justice Scalia and Leon Klass, Chair of the Bioethics Council under President Bush, both of a Devlinian bend thinking disgust as a basis for sound ethics, receive an intellectual drubbing. Nussbaum continually beats them with a simple question: given their views of homosexuality, how can they claim they wouldn't have felt the same way in 1967, when the Supreme Court in *Loving v. Virginia* invalidated miscegenation laws, at a time when an overwhelming number of Americans thought interracial marriage wrong and unnatural? Against various arguments as to why homosexuals should not enjoy their fellow citizens' rights to marriage and intimacy, Nussbaum brings an irresistible vanquishing logic, wielding Equality and Liberty as

her foil. In places she demonstrates a sharp sense of humor, as when she muses about why legislators (doubtless mostly men) seem so often preoccupied with gay male sex, but are inclined to give lesbianism a pass. Yet more thrilling than Nussbaum's rhetorical skills and the soundness of her argument, is how she weds both to an appeal to our basic and essential humanity, to reject the hyperbolic language of hate and oppression in favor of recognizing the essential rights with which we are all endowed.

Ms. Online says

DISGUST, PROPAGANDA, AND SAME-SEX MARRIAGE

Reviewed by: Maya Schenwar

In her groundbreaking new book, *From Disgust to Humanity: Sexual Orientation and Constitutional Law*, political philosopher Martha Nussbaum distills the true scariness of “disgust” propaganda.

Nussbaum gives the example of the 1993 treatise “Medical Consequences of What Homosexuals Do,” by Paul Cameron, firebrand founder of the anti-gay Family Research Institute, in which he revealed the “horror story” of “fecal sex.” He claimed that “80 percent of gays” ingest “medically significant amounts of feces” on a regular basis, and also tend to “eat or wallow in it.”

Cameron and his allies—in other anti-gay groups and in legislatures across the country—can’t get enough of such descriptions, associating gay sex acts with feces, urine, blood, vomit, and other indelicacies that make for unpopular dinner-party discussion. The lurid imaginings of these folks may seem a marginal oddity, just a small, eccentric fish paddling in the sea of propaganda that washes over Americans on a daily basis. But this fish has some mean fangs. In the early 1990s, Cameron directed the effort to pass Colorado’s Amendment 2, a sweeping initiative banning anti-discrimination protections for gays and lesbians. He spoke of gay people drinking blood, ingesting urine and traveling to the U.S. from all parts of the world to “participate in this biological swapmeet.” The measure passed.

Disgust is a dangerous weapon. According to Nussbaum, we must understand its workings if we hope to comprehend how prejudice and discrimination have been hard-wired into this country’s legal system. The book examines the insidious use of disgust to achieve political goals and outlines a framework for rooting out disgust and growing a “politics of humanity” that grants liberty, justice and respect to all. Her book makes the most hard-and-fast case for the legalization of same-sex marriage I’ve heard yet—doubters will have a hard time conjuring up a comeback for this one.

Although the use of disgust-laden, anti-gay propaganda may not surface as blatantly these days as it did in 1992, it still undergirds the opposition to equal rights for LGBT Americans, Nussbaum writes. National figures are no longer sermonizing about “fecal sex” (at least not in public), but the imagery of contagion, perversity and moral pollution plays a key role in standard anti-equality arguments. We’re all born with a gag reflex. Humans have a natural aversion to fetid, squirmy things such as excrement, worms, maggots and festering wounds. Disgust propagandists like Cameron associate a group of people with this bodily reaction, driving others to distance themselves from that group—to wall it off, to quarantine it.

Jews were once painted as contagious, homeless wanderers who must be separated from the rest of European society. “Untouchables” in India were portrayed as filthy and unfit to marry into other castes. Nowadays, undocumented immigrants in Arizona are depicted as leprosy-laden, food-tainting drug traffickers, and are sprayed with Lysol by xenophobic protesters. The politics of disgust turns people into contaminants.

In order to combat the likes of Cameron and the armies of “ewwwww,” Nussbaum proposes a “politics of humanity” that replaces projective disgust with sympathy. The basic idea isn’t radical; in fact, the same moralizers who profess a politics of disgust in the courtroom probably profess the art of love-your-neighbor-as-yourself around the kitchen table. However, Nussbaum’s formulation goes beyond neighborliness – after all, we often choose our neighbors. She envisions a framework in which we move beyond stigmatization by way of “historically and socially informed imagining,” working to sympathize with the estranged group’s humanity.

Both Nussbaum and the Constitution advise us to go forth and pursue happiness – and to let others do the same. We can only hope that the courts, the state legislatures, the White House and the American people will come to agree.

Vincent Li says

An excellent volume, well reasoned arguments. In short Nussbaum argues that "disgust" in the average person is not enough to legislate on. She argues that we should move from disgust to humanity which is a respect for people to choose their own means of living and a deep sympathy in imagination of what others experience. Don't let the readability and shortness of the book deceive you, it's packed with broadness in subject and depth in treatment. Nussbaum discusses the psychological roots of disgust (an evolutionary aversion to possible carriers of disease but also a psychological aversion of being reminded of our animal nature), and tells us of the difference between primary disgust and projective disgust. She shows how the latter has been used historically to justify subordinating unpopular minorities. Her solutions tend to parallel Mill, to only legislate behavior that affects others and directly legislate those behaviors. She discusses the requirements for nuisance laws (causation, imposition, primary exposure) as a method for identifying behavior that affects others. Nussbaum summarizes the major cases in the area, and lays out the arguments both legal and historical. I found interesting her analogy to the colonial conception of "conscience" which developed out of religious freedom. Conscience was the idea that people be free to choose their beliefs even if (at the time) one really believed that such beliefs would damn that person to hell. In her detailed discussion of case law she makes some interesting observations. Nussbaum argues that there is some confusion over the meaning of "private" vs "public" (private as in private behavior, or related to the home, or non-commercial...etc) in the cases, which creates all types of issues. She also argues that heightened scrutiny does not actually require the three commonly seen requirements (political powerlessness, immutability, history of discrimination) to be met, that those are only common indicators of the existence of a categorization scheme and the irrelevance of these categories. It's also interesting to note that in many ways this book is outdated. She calls for the repeal of DOMA, so the book is pre-Windsor. It's interesting to note how quickly the legal landscape (in a post Hodges world) has changed. Hard to say I agree with everything that she has to say, but it's a good guide for someone looking for well reasoned legalistic argument over the slogan throwing that's commonly seen.

Dale says

While a little dry at times this is a really good look at the disgust that underpins attempts to deny equal rights to gay people. Highly recommended reading.

Emilio PÆsano says

an important, powerful work... the framework is accessible, her critique is exacting, and her responses are prescient... essential reading

Stephen says

Excellent
