# CHAPTER 6

## MILK, ADULTERATION, DISGUST: MAKING LEGAL MEANING

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This chapter explores an infamous Israeli consumer scandal involving adulterated milk, a scandal resulting in a high-profile class action that kept courts and public opinion engaged for over a decade. Consumers' arguments about the emotions that the milk awakened in them challenged existing legal theory and doctrine, pushing the judiciary to search for ways to conceptualize and assess such claims. This case provides a rich opportunity to examine the intersection between milk, emotions, morality, and law. The basic facts of the case are the following: Tnuva, the biggest and oldest dairy company in Israel, secretly added silicon to its UHT (long-life) milk as a way to prevent it from foaming. Managers of Tnuva were convicted of knowingly violating food quality regulations, but when it came to monetary damages, consumers could not show any harm to their health, since the tainted milk was sold for a short time, and the quantity of silicon ingested per consumer were minuscule. The class action plaintiffs, therefore, had to conceptualize their damage differently. They argued that their unwitting consumption of the contaminated milk infringed upon their autonomy and instigated a strong sense of disgust. In a binding ruling that will be described below, the Supreme Court of Israel recognized both autonomy infringement and disgust as torts, and Tnuva was ordered to pay hefty damages.

In the analysis that follows we suggest that the fact that the case involved *milk* and a national milk manufacturer was central to the judges' readiness to recognize disgust as harm. The judicial recognition of disgust as a compensable harm is far from self-evident, and has drawn much criticism by Israeli legal scholars. More generally, the career of disgust in legal thought has been paved with ambivalence. On the one hand, it is undeniably central in the human repertoire of emotions, and thus not only worthy of recognition, but also, as William Miller (1997) has argued, essential in teaching us about a given society's core values. On the other hand, as Martha Nussbaum (2004) observed, disgust tends to operate as a conservative force that affirms social boundaries and fixes power relations, justifying xenophobia, sexism, homophobia, ableism, speciesism, and other systems of ideology that create unjust, violent, and divided societies. Indeed, disgust is a complex emotion, which has universal-visceral dimensions as well as ethical and culturally specific dimensions. Our exploration will ask how the law should cope

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33838.indb 99 06/06/2017 14:21

with this disgust, and what we can learn from the fact it was prompted by milk that failed to provide what was expected of it.

Part I reviews the Tnuva silicon affair and the litigation that followed, focusing on the disagreement among the Supreme Court justices on whether disgust should be legally recognized as compensable harm. Part II examines how contemporary research on disgust explicates the various dimensions of this emotion. Applying the theoretical framework on disgust to the case at hand, Part III shows that the justices in the Tnuva case recognized two dimensions in the disgust consumers experienced by the tainted milk: an essentialist-physical dimension and a moral-cultural dimension. This recognition of the dual nature of disgust shaped the judicial readiness to compensate for disgust. Part IV asks what the Tnuva silicon affair can teach us about the appropriate place of disgust in law.

## I. Mixed feelings: *Tnuva v. Rabi*

In August 1995, Israeli news headlines made an announcement that most Israelis were shocked to discover: For eighteen months, Tnuva, a dairy manufacturer enjoying a unique status on which we will elaborate later, had used silicon in its 1 percent UHT milk. The addition of silicon to milk was a cheap way of preventing the milk from foaming, the alternative involving an expensive piece of machinery that the company did not want to buy. Foaming made it difficult to seal the milk cartons and was probably also bound to arouse negative reactions in consumers (incidentally, this story raises the question why consumers would object to foam in their milk cartons, but would expect and even require milk foam when they order their latte or cappuccino). State regulations strictly forbade adding silicon to milk.[1] For other dairy products, small amounts of silicon were allowed, but Tnuva had used ten times more silicon than the maximum allowed for those other products.

Tnuva had concealed its actions, resorting to dubious strategies such as using industrial silicon meant for cleaning in order to avoid raising the suspicion of silicon supplies, who may have been tipped off by large orders (Rabi v. Tnuva 2008). In the process, the safety of silicon's human consumption remained unchecked. When the news broke, Tnuva lied in its advertisements, claiming it had never added silicon to its milk (Tnuva v. Rabi 2003; Tnuva v. Rabi 2011; *Haaretz* 1995).

The affair led to the criminal conviction of several Tnuva high-ranking managers for violating consumer laws and production regulations and for misleading advertisements. In the civil terrain, a plaintiff named *Taufik Rabi* (hereinafter: *Rabi*) filed a class action in the name of milk consumers. The District Court and the Supreme Court approved the class action, despite Tnuva's fierce objections—the central one being that consumers had experienced no harm. Indeed, absent physical damage to their health, plaintiffs had to turn to other arguments to describe the harm that they had suffered. They claimed that their autonomy was infringed, a recognized tort under Israeli law (Daaka v. Carmel 2003), and that they suffered feelings of disgust, for which they should be compensated. They declared feeling anguished, having experienced "a sense of disgust, disregard, deceit, fear and anxiety of the many potential health hazards involved in the presence of a



33838.indb 100 06/06/2017 14:21

forbidden substance in an essential everyday commodity," as well as breach of trust in Tnuva and food producers in general (Tnuva v. Rabi 2003: 694–5).

Writing for the majority (Justice Levin concurring and Justice Procaccia in dissent), Justice Miriam Naor found that the damage alleged by the plaintiffs, which she defined as the infliction of "negative sensations and sensations of disgust," was legally recognizable under Israel's tort law's recognition of non-monetary damages. She noted that Tnuva misleading its customers could amount to an infringement of their autonomy, even if the only harm suffered was the consumption of a substance they did not intend to consume. The opinion does not elaborate on the precise relationship between the harm to autonomy and the harm of experiencing disgust. Still, it does establish that even a consumer's knowledge that his or her autonomy was infringed upon eating something he or she did not intend to eat, can, in and of itself, provoke painful sensations, including disgust (Jacob 2012; Keren-Paz 2007). As Justice Naor stated,

> If one wants to consume only kosher food, and *post factum* learns that the food presented deceptively is not kosher, one will feel a sense of disgust and an infringement of one's autonomy … Indeed, he who does not keep kosher could [allegedly] say to the keeper of kosher: nothing happened if you ate non-kosher food; no damage was inflicted upon you. But this is not the worldview of he who wishes to keep kosher.
>
> Tnuva v. Rabi 2003: 682

The Court's reference to disgust caused by unknowingly eating non-Kosher food as a primary example of the type of disgust worthy of compensation, is telling. Kosher rules are granted high importance in Israel, culturally and legally. Respect for kosher expectations is prioritized in every public institution. University cafeterias, military kitchens, theater and museum restaurants—are all kosher, as mandated by law and reinforced by convention (The *Kashrut* (Prohibition of Deceit) Law, 1983; The *Kasher* Food for Soldiers Ordinance of 1948; Barak-Erez 2009: 2497; Mazie 2006: 146–7). In the supermarket, every food item is labeled not just for whether it is kosher (and it usually is, as non-kosher food stores are distinct), but also for the kind, or degree, of the kosher observance involved in its production. Over the Passover week, when Jewish law forbids eating bread, vendors in Jewish towns are not allowed to sell it. Moreover, Israel's Supreme Court recently ruled that only state-authorized "kosher supervisors" could accord the label "kosher." Grass-root organizations, which emerged due to dissatisfaction with the state service and offer alternative kosher supervision to restaurants, are prohibited from using the term "kosher" (Gini v. The Central Rabbinate 2016). Kosher, then, is never a standalone dietary preference or religious obligation: it involves collective practices and a communal effort, all designed to respect a deeply personal dietary choice. For Justice Naor, selling milk tainted with silicon is analogous in its severity to breaking the trust involved in selling non-kosher food to a kosher eater.

Importantly, Justice Naor clarifies that not every case of disobeying manufacturing regulations or misreporting the content of a food product will justify a lawsuit (Gilead 2012; Klement and Procaccia 2014):



33838.indb 101 06/06/2017 14:21

> My approach does not imply that any case of diversion from mandatory standard or of false reporting on the content of food would justify a claim for damages. There can be many cases where slight diversion from one standard or another, even regarding food, would not establish a personal suit nor a class action. A claim lacks justification when the harm is *de minimis* . . . But the present lawsuit is not insignificant on its face. The misleading information that Tnuva advertised following the publications about silicon in its milk can allegedly indicate that Tnuva itself realized that there was considerable public objection to the addition of silicon to milk.
>
> Tnuva v. Rabi 2003: 684

Although the opinion does not specify how to draw the line between a legally recognizable harm and one that is not, we think the answer lies in the kind of disgust that plaintiffs experience. We suggest that what motivated the judges to grant legal recognition to plaintiffs' claim was that their disgust had ethical and cultural dimensions having to do with the cultural meaning of the milk. Justice Naor writes further:

> The non-monetary damage claimed by the plaintiff is characterized in the sense of disgust stemming from the fact it was silicon, with all the associative baggage accompanying this substance. In my opinion, damage of this kind is on its face compensable.
>
> Tnuva v. Rabi 2003: 682

Justice Proccacia's dissent maintained that absent physical or monetary damages accompanying the disgust claim, it should remain an extra-legal matter. According to this view, since the criminal case against Tnuva's managers established that there was no medical hazard in using the silicon—plaintiffs' emotions cannot amount to anything that is legally meaningful. The only cases that would warrant compensation are those in which the ingredients or characteristics of the product have special significance for the consumer. For example, when the product is falsely presented as kosher, organic, vegan, or fat free, and the consumer makes a principled choice to buy kosher, organic, or fat free food. If a consumer's preference is based on religion, worldviews, vegan values, or caloric constraints, abusing these preferences would cause compensable harm. Damage of this kind would be part of the ordinary course of affairs and a direct result of the defendant's tort. Plaintiffs, says Justice Procaccia, should have a demonstrable, well-defined preference to purchase a product with clearly articulated characteristics in order to seek damages from the manufacturer for failing to inform consumers about the product's qualities. Learning that one's milk contained silicon provokes emotions that are not principled enough to be legally recognized. Justice Procaccia is concerned, then, with the idiosyncrasy inherent in a plaintiff's disgust claim. The law should not enter amorphous and ambiguous emotions. Harms should be communicable, or capable of being expressed and grounded in rational arguments. They should be externally validated propositions, as opposed to a visceral reaction that is only testified by the body. A plaintiff is worthy of the law's attention if she



33838.indb 102 06/06/2017 14:21

can state, "I am a vegetarian," "I keep kosher," or "I am on a diet." Claims that are more subjective and difficult to formulate as rational propositions should remain outside the realm of law (Tirosh 2005). Disgust that is not grounded in the knowledge that I ate something that contradicts my principles is an emotion that is personal, hard to communicate, and does not involve logic. Disgust is expressed in a powerful physical response, often uncontrollable and hard to harness. It is a feeling that precedes explanations and nullifies them. According to Procaccia, the contours of the damages alleged by the class action plaintiffs are "narrow and shrouded in mist," (Tnuva v. Rabi 2003: 697). She therefore seeks to constrain legal analysis to areas of clarity and higher analytical and empirical certainty. The next section lays out the origins of the emotion of disgust, a survey that will enable us to fathom the complexities of the Court's recognition of this emotion.

## II. Disgust: Between nature and culture

The theoretical discussions and empirical data with regard to disgust reveal a complex emotion in which nature, culture, body, and soul are intertwined. In this section, we will examine disgust from the point of view of the essentialist approach which sees disgust as a universal bodily reaction to a dangerous object trying to penetrate the body, as well as from the approach that focuses on the effect that moral or cultural conceptions have on our view what is disgusting and what is not.

### *The essentialist approach to disgust*

According to the essentialist approach, disgust is a physiological-biological feeling whose function is to reject objects that threaten the body or that could contaminate it (Case, Repacholi, and Stevenson 2006). Disgusting objects are thus objects that can defile or pollute the body, or transfer diseases to it. They represent death and stir up death anxieties. Disgust is both an emotion and a sensation; it is therefore a powerful mechanism to cope with threats of contamination and defilement. Disgust brings with it unequivocal physical signals—nausea, distortion of the body and face, repulsion, and physical distancing. Some scholars think that disgust is mainly an oral defense; a bodily reaction to prevent dangerous object from entering the body through the mouth (Rozin, Haidt and McCauley 2008: 758–9). Disgust is not only elicited by oral contact, but more generally by any penetrative attempt, thus every contact with hazardous materials can initiate it (Nussbaum 2004: 88). Social psychologists claim that disgust originates from our need to distance ourselves from our animalistic nature. This is why we are disgusted by feces, urine, semen, and menstrual blood (Rozin and Fallon 1987: 28, Rozin, Haidt and McCauley 2008: 760, Chapman and Anderson 2012: 63). Another aspect of our animality that disgust serves to suppress is our temporal fragility: the fact that we are living organisms doomed to decay and death. Disgust helps us avoid thinking about life as an organic process (Miller 1997: 48–50).

But disgust extends beyond the spheres of hazards to the body, death anxiety, or our animality to the sphere of social exclusion. It can be invoked in response to unknown



33838.indb 103 06/06/2017 14:21

people, to people from a lower social status, or to those who are considered immoral or outlaws. Here, disgust works to preserve a certain social order and often reflects conservative ideas that sometimes reinforce classist, racist, sexist, homophobic, anti-Semitic, or speciesist ideas.

### *Disgust: The moral-cultural approach*

Even essentialists would admit that the idea of disgust does not surrender to a coherent theoretical or universal framework. A sterile cockroach will still disgust us although it carries no threat of physical contamination. To the opposite, poisonous mushrooms will not prompt disgust although they are extremely dangerous to our body (Nussbaum 2004: 93). Additionally, essentialists would concede that different things disgust different people from different cultural backgrounds (for example grasshoppers or frogs, which are coveted foods in some cultures and prompt aversion in others) (Kelly 2011: 43; Miller 1997: 10–11; Elwood and Olatunji 2009: 99). To take this insight one step forward, if death anxiety is the basis for core disgust then we must keep in mind that death is treated and conceived differently in different cultures.

The moral-cultural approach observes that objects are conceived as morally flawed, and, correspondingly, immoral acts will be considered disgusting (Miller 1997: 180; Nussbaum 2004: 102). Research shows that disgust plays a major role in the formulation of moral judgment (Schnall et al. 2008: 34). To be disgusted by an immoral act means that one is judging that act in a very powerful manner, combining physical and moral-ideological aspects. In terms of physical reaction, there is no way to distinguish between disgust provoked by feces, corpses, or semen ("core disgust"), and disgust motivated by moral notions (*contra* Bloom 2004; Nabi 2002). Just like disgusting objects, disgusting immoral people are subject to a chain of contamination that begins with them and corrupts anything or anyone in contact with them (Rozin and Nemeroff 1990: 207; Rozin, Haidt and McCauley 2008: 760). The moral judgment that underlies disgust, whether originating in a physical object, a person from a certain social group, or a moral act, sheds light on one of disgust's key traits—the sense of hierarchy that accompanies it. To be disgusted by something or someone means to put oneself in a higher position than the disgusting object or person. The hierarchy that accompanies disgust is different from the hierarchy associated with contempt. Feelings of supremacy accompany both disgust and contempt, but in contrast to contempt, disgust reveals the disgusted person's weakness since the disgusting person has an enormous power over his physical and emotional reactions. In other words, the disgusting person has power because he or she can contaminate the disgusted person and produce in the latter strong, unwanted, and involuntary physical reactions.

There is an important connection between food, culture, and disgust. Beyond its essential role in survival, food has obvious cultural significances and social functions (Rozin, Haidt and McCauley 2008: 759–60). Food can be disgusting not only because it is dangerous or rotten but also due to cultural, social, or moral norms. Interesting in this context is the use of phrases borrowed from the language of food to describe moral or



33838.indb 104 06/06/2017 14:21

esthetical judgment, such as "palatable" or "distasteful." Certain cultures develop taboos around certain foods. Take for example pork or seafood, which are not kosher according to the dietary laws of Judaism, or cow meat for Hindus. Exposure to these foods can be disgusting for those who refrain from eating them. But it is never religion alone that prompts a disgust reaction to non-kosher foods. A religious Jew who finds out that the rice he has just eaten was not tithed will not feel disgusted, and if he does, it would not be to the degree he would feel if he found out that he has just eaten pork. The strong significance of pork in Jewish culture plays a deeper role than the knowledge that halachic rules were not kept.

Another classic illustration of the strong connection between food, disgust, and culture is Mary Douglas' account of the Leviticus dietary laws. In her seminal book, *Purity and Danger*, Douglas (1966: 54–8) claimed that the Israelites' dietary laws did not restrict eating certain foods because they were disgusting or could defile their eaters, but because they did not fit into the cultural categories used to classify animals. In other words, the restrictions were not connected to the specific character of a certain animal but to the ability to place it within a known category. The kosher rules, Douglas claimed, represented the will of lawmakers to understand and control the world by confining it to a certain order—dietary laws represented the Israelites' holiness, their distinction. Against this backdrop, the most threatening animals are those that appear to be part of one category but are actually part of another. Douglas also argued that the order reflected in the dietary laws of the Israelites is connected with the way the lawmakers imagined the "right" social order. For Douglas (1966: 115, 125), bodily rituals, dietary laws, and slaughtering rituals represented not only an "external boundary" between the Israelites and other nations, but also the social hierarchy within Israelite society itself. Douglas later modified and nuanced her claim, but the connection she made between the borders of the body and the borders of the community is insightful nonetheless. Her work suggests that anxiety over what enters the body can also reflect anxiety for the integrity of the "body politic." After all, when accepting the cultural and moral aspects of disgust, the greatest danger is the social exclusion of those deemed disgusting because they challenge imagined and allegedly strict boundaries between the sexes, the races, and other axes, and do not fit into pre-existing models of appearance or behavior.

At this point it is worth noting Julia Kristeva's work on abjection. Kristeva points out that the disgusting object is not only what disrupts order but also what is subversive. Take feces for example: it is supposed to symbolize the separation between what is alive and what is dead, one of the things that is shed by a person in the process of life, but at the same time it is marked as part of the person, he recognizes death inside him. On the cultural aspect of disgust, Kristeva claims that a person who objects morality, or even praises that he disrespect the rule of law, is not disgusting, but rather what disgusts us is exactly the subversive element—when someone or something is immoral but does not reveal its true intentions, when the immorality is dark and conspirative (Kristeva 1980: 10–12). Disgust, to sum up, is a unique emotion. It has primordial origins, it involves feelings of defilement, uncleanness, death anxiety, and anxiety about our fragile existence. At the same time, it is culture-dependent and could be altered, diminished, and amplified



33838.indb 105 06/06/2017 14:21

by time, place, and society. It is hard, almost impossible, to separate core disgust and moral-cultural disgust because they are intertwined and influence each other. What kind of disgust was felt by *Rabi* when he claimed that he was anguished, sensing "disgust, disregard, deceit, fear and anxiety . . ." as well as breach of trust in Tnuva and food producers in general (Tnuva v. Rabi 2003: 694–5) when he discovered that he drank Tnuva's silicon-infused milk? What was the effect of the cultural and moral dimensions of disgust on his physical sensations, and should he have been compensated for these sensations? These questions are addressed in the next section.

## III. Dimensions of disgust in *Tnuva v. Rabi*

What does it mean to say that the Court validated *Rabi*'s experience of disgust? What is the nature of the disgust that earned judicial recognition? A consumer finds out that he put in his body a synthetic, foreign substance that he did not intend to drink and that is unworthy of drinking. He feels disgusted. At first glance it seems that this is disgust in its most basic and primary form—visceral disgust, almost devoid of moral value and cultural meaning. We suggest, however, that there is more at stake. Judges in the majority recognized the disgust at play not merely as the result of unintended insertion of foreign substance to one's body, but also as involving a food of a special kind, and a food producer of a special nature.

### *Food, milk and emotion*

In its usage of silicon, Tnuva not only mislead consumers by making them believe that what they drank corresponded perfectly with the stated content on the package, but it also desecrated the very concept of milk—a food which is the paradigm of purity, giving, whiteness, and innocence.

Milk is our first food, and as such its status is primary and foundational. Breastfeeding is understood as a site of deep physical and emotional intimacy between mother and newborn (Sutherland 1999: 1). The iconic image of the act of breastfeeding functions in culture as the essence of altruistic giving, so much so that Jesus is often portrayed as a breastfeeding woman, to signify his limitless giving (Sutherland 1999: 11–12) and selfless caring (Salmon 1994: 252; Maillet this volume). Lady Macbeth complains that her husband was "too full of the milk of human kindness," which prevents him from killing his rivals (Shakespeare [1623] 1993). A breastfeeding baby has not yet fully entered the social order.

It is not surprising that nature and science are simultaneously invoked in discourses on milk, both in relation to breastmilk (Sutherland 1999: 8) and in relation to industrial milk (DuPuis 2002: 42). Milk cartons feature peaceful cows in green meadows, as if all farmers had to do is to avoid interfering with nature taking its course. At the same time, milk is presented as a product of cutting-edge technologies and scientific advancement that guarantee hygienic and contamination-free conditions, and careful monitoring of



33838.indb 106 06/06/2017 14:21

factors such as fat and calcium percentage (Nimmo this volume). Presenting industrial milk as pure, safe, essential, and healthy relies on associating it with breastmilk, while downplaying the differences between them—one is meant for babies and the other is marketed as good for all age groups; one is produced by the human body for human consumption and the other is produced by animals for human consumption (DuPuis 2002: 46). Stressing milk's whiteness also serves to reinforce this image. Israeli culture privileges white as more beautiful, cleaner, more benevolent and more civilized (Leong 2013). Light Western European hair and skin color, for example, are associated with *Ashkenazi* identity (*Ashkenazim* are Jews who immigrated to Israel from Europe) and contrasted with the blackness of *Mizrahi* identity (of Jews that immigrated to Israel from North African and Arab countries). This color contrast is part of a rich symbolic structure that serves to sustain the social, cultural, and material repression of Mizrahim in Israel (Erakat 2015; Shohat 1999). The whiteness of milk contributed to its status as a superior food. This systematic branding of milk encourages consumers to suspend their usual suspicions and defense mechanisms, taking a momentary pause in the safe and reassuring pre-market stage, when cold marketing calculations were not yet full-blown.

Enters Tnuva, selling milk which contains silicon. Consumers' distress was not only caused by unknowingly consuming silicon, but also, and perhaps most importantly, by a deep disturbance in the basic order of things. The dissonance between consumers' unreserved trust in this milk as pure, nourishing. and maternal, and the betrayal they suffered when they discovered that the milk they consumed was in fact a fluid that was contaminated not only by silicon but also by lies and greed, was enormous. As mentioned above, foaming would have been preventable by using a new machine, but silicon was a cheaper solution.

*Rabi*'s disgust was both visceral and cultural-ethical, a physical response to ingesting a substance that does not belong in the body and a moral response to Tnuva's unsettling the place of milk in the symbolic order. We propose that this latter dimension of disgust played an important role in the judicial willingness to recognize *Rabi*'s harm. The fact that the disgust claim pertained to milk justified judicial action that other, less culturally loaded, foods would have been less likely to justify.

The case we focused on thus far was the preliminary procedure that determined whether the class action should be approved and examined on its merits (Tnuva v. Rabi 2003). In the later case that examined the merits and ruled that Tnuva should pay a hefty sum in compensation (Rabi v. Tnuva 2008), Judge Binyamini in the Tel-Aviv District Court focused on the cultural properties of milk, reinforcing our analysis of the cultural dimensions of disgust that played a role in this case. To substantiate its argument that no real harm was done to consumers who drank the adulterated milk, Tnuva conducted a consumer's survey. It asked customers what their response would be should they find out that there is an undisclosed additive in their soy oil. Responses suggested that consumers would hardly be bothered, leading Tnuva to ask the Court to use this analogy to conclude that no shock was caused to milk consumers. Judge Binyamini objected to the comparison between milk and soy oil, castigating Tnuva for downplaying the meaning of milk and devoiding it of its rich cultural significance. "Soy oil is not drinking milk, and the silicon



33838.indb 107 06/06/2017 14:21

was inserted to the milk not as an additive, but to prevent foaming—and in severe circumstances . . ." (Rabi v. Tnuva 2008: para. 73). Milk, he continued, "is supposed to be as pure and as natural as possible" (para. 81), and "natural and pure" (para. 78). Discussing the origins of disgust, Judge Binyamini declared that:

> Emotions of disgust, disappointment, fraud, hurt, disregard etc. . . . are not necessarily related to health risks, but to the fact that silicon was inserted into the milk, contradictory to law and to manufacturing rules, and while this fact was hidden from the authorities and from consumers.
>
> para. 17

The moral and visceral dimensions of disgust are understood here as being intertwined. Tnuva's fraud, especially because it pertains to a food such as milk, induces moral outrage not just because silicone was used in manufacturing the milk, but also because this fact was hidden. It is almost impossible to find in the opinions of all the judges who reviewed this case a discussion of disgust as mainly physical and devoid of a moral dimension. Although the Supreme Court did not interrogate the meanings of disgust, the District Court explicitly recognized that the expected purity of milk and consumers' high faith in Tnuva were aggravating factors in the harm experienced by consumers.

### *The ethos of Tnuva*

When an investigative journalist exposed Tnuva's usage of silicon, the country was shaken. Newspapers featured front-page headlines for weeks, a Knesset committee dedicated a session to the affair, and Tnuva's sales dropped sharply. As argued above, the fact that the contaminated product was milk played a major role in the resonance of the affair and in the legal recognition of disgust as part of tort law. Of no less importance, however, is the unique stature of Tnuva as not only the largest dairy producer, but also as a motherly company whose destiny is tied to the idea of a Zionist future.

Milk production had special importance for Zionist leaders, industrialists, and agricultural entrepreneurs (Rosen and Rosenthal 1994: 35, 39). Building a thriving, stable, and productive system of milk manufacturing and distribution was important as a way of feeding the nation's children and workers, and of realizing the dream of a sovereign, strong, healthy, and productive Jewish life in the old/new homeland. Producing milk via modern technologies, keeping the process hygienic and efficient, was also a way of distinguishing Jewish production and consumption practices from local "Palestinian ways" (Novick 2014: 37). Tnuva started as a cooperative of farmers in *Kibbutzim* and *Moshavim* (different kinds of agricultural cooperatives) in the 1920s, before the establishment of Israel (Verlinsky 1973: 11–13). As such, it symbolized the core values of Zionism and of nation building of the time: agriculture, productivity, cooperation, Hebrew/Jewish labor and making the most out of the land (Elazari 1930). Tnuva's members saw it as an organization guided by the needs of the young nation in the Land of Israel, supplying products to remote areas and aiding the Jewish *yishuv* in times of



33838.indb 108 06/06/2017 14:21

crisis and armed conflict (Verlinsky 1973: 15; Moskuna 2014: 16–19). Tnuva's online museum reinforces a narrative that interlaces the company's fate with that of the nation. Tnuva's timeline is organized not according to changes in production sites and technologies, markets, new products, or changes in the structure of the corporation, but based on major national events, such as *pogroms*, wars, military campaigns, or intifadas. The subliminal message is clear: Tnuva was there during every crisis or historical landmark (Tnuva's On-Line Museum). "Since its inception," the museum proclaims, Tnuva fulfilled roles of national nature, in organizing proper supply of essential food to the country's population. This was the case in the 1936–1939 Arab Revolt . . . and this was the case during the Second World War, when merchant ships were unable to reach the harbors of the Land of Israel. During the War of Independence, the text reports, Tnuva accepted Prime Minister Ben-Gurion's request to put its employees at risk so as to deliver dairy products to the sieged Jerusalem (Verlinsky 1973: 83–9; Davar 1947: 4). During happier times, Tnuva fed children in Israel's periphery, "adopted" (sponsored) elite military units, and funded the reunification of an iconic Israeli band, *Kaveret*, for Israel's fiftieth anniversary celebration. In times of war and in times of peace, Tnuva was there.

The images of Israelis and Israeliness conveyed in Tnuva's ads resonate with the national ethos. Children and adults in these ads are secular and light skinned, echoing the cultural and material dominance of *Ashkenazi* identity in Israeli society, and failing to depict *Mizrahi* or Arab bodies, who are all part of Tnuva's clientele.[2] This imagery positions Tnuva as reaffirming hegemonic Israeli identity, thereby tying its brand to this identity. There is a story of class to be told here as well. Tnuva's ads reflect the changes in the dominant perceptions in Israel about the ideal life. In the first three or four decades of the company's existence, Tnuva's products were presented in association with agricultural or industrious pioneering life, as products of pastoral farms but also products that nourish the farmer or laborer and his family, making them strong for their important work. With the decline of the Zionist ideology of cultivating the land and encouraging a new, healthy, and productive Jew away from the frail and studious life of the diaspora, the advertisements begin to depict more bourgeois lifestyle. In the 1990s, Tnuva's products became associated with the emerging middle-class ideal of suburban living epitomized in a house with a red roof and a lawn. Tnuva's cottage cheese, its flagship product discussed below, is now marketed with the slogan "The cheese that has a home," which refers to the suburban cottage house drawn on the packaging and to the cheese's distinct Israeliness.

In his autobiography, renowned Israeli author Amos Oz tries to imagine how the Land of Israel appeared to his mother when she arrived from Europe in the 1930s. Tnuva's products are part of the elementary experience of Jewish living in Palestine. Tnuva foods are enumerated alongside mosque towers, dry and hot wind, or tanned bus drivers in short pants (Oz 2007: 221). Tnuva's "green, big car" is the subject of a classical children's song written in the 1940s, which is still sang by most Hebrew-speaking toddlers. The song features the daily truck that transports the milk from farms to Tnuva's factory (Bergstein 1945). When the Supreme Court reviewed the sale of Tnuva to foreign private investment fund in 2010, Justice Amit opened his opinion by quoting this song



33838.indb 109 06/06/2017 14:21

(Yonatan Kimhi v. The Cooperative Societies Registrar 2010). Tnuva is, then, a core component of the Israeli imagination and of what it is to be Israeli.

Two additional events are worth mentioning, although they happened long after the silicon case was decided in 2003, because they illuminate Tnuva's importance in Israeli cultural and economic life.

In 2008, Tnuva was sold to the British investment fund Apax (Moskuna 2014: 20–8). The sale was perceived in Israeli public discourse as symbolizing the bankruptcy of the national ethos and the victory of the cynical, individualistic, free market ideology over values such as mutual help and corporatism (Turgeman 2006: 16), which Tnuva was held to represent (Moskuna 2014: 30–3; Svorai 2011: 29). Matters escalated when, in 2014, Apax sold the control of Tnuva to Bright Food, a Shanghai-based company that is fully owned by the Chinese government. This deal was not only seen as the privatization of a national asset, but also as selling a core Israeli asset to a foreign nation. A former head of the Mossad was quoted stating that the deal infringed upon Israel's security (Hasson and Lavi 2014; Hayut 2015: 22), and the grandson of one of Tnuva's founders reacted by saying: "Money blinds the righteous, and when it comes to money we completely lost ourselves. . . . There is no sense in transferring such a big company, if we are talking in terms of food security, to the hands of a Chinese government" (Azulay 2014). At the time of the sale, an image circulated in the media and social networks, which altered the house figuring on Tnuva's signature cottage cheese. In the place of the ubiquitous Israeli style suburban house stood a pagoda (Crystal 2014; Levi 2014; Zommer 2014: 8). Such public reactions illustrate how Tnuva's image is intertwined with national defense and even with Israel's very survival.

In the summer of 2011, Israel went through several months of what has been dubbed "The Social Protest," an intense period of vigils, sit-ins, a tent "town" at the center of Tel Aviv and in other cities, large demonstrations, and more. Likely inspired by the Arab Spring and preceding the Occupy Wall Street movement by a few months, the protest focused on the high cost of living, privatization, social inequality, and the housing crisis. The match that lit the fire, however, became known as "The Cottage Protest." One man, Itzik Alrov, posted on Facebook a call for a consumer ban against Tnuva, because the price of the cottage cheese exceeded the five New Israeli Shekel line (about 1.5 US dollars). This all-time high price was deemed outrageous for a product like cottage cheese. The public response to his call was swift, and surprisingly massive, growing into a national political movement. But why cottage cheese? Social protests over food prices typically erupt around the price of basic products, such as bread or milk. For non-Israelis, the fact that cottage cheese, a seemingly mundane spread, has the symbolic power of taking people out to the streets, is surprising. For most Israelis, however, Israeli cottage cheese is unlike any other—it has no competition in texture and flavor, and one has to taste it in order to appreciate its magic (Shamir 2013: 147). When Israeli expats say they miss the food back home, cottage cheese is often one of the first items on their list. And when they say "cottage," they mean Tnuva's cottage cheese. Tnuva successfully branded this cheese as a basic staple and a paradigmatic Israeli product, which is elemental not only for the Israeli diet but also for Israeli identity (Yeffet 2006). Unlike falafel and



33838.indb 110 06/06/2017 14:21

hummus, the other contenders to national food status, cottage cheese is not shared with neighboring Arab cuisines. As part of Tnuva's branding of cottage cheese as "The cheese that has a home," commercials have featured images of childhood memories of one's family sitting around the kitchen table, and a voiceover commenting "Tnuva: To grow up in an Israeli home" (Toussia-Cohen 2012). For the organizers of "the cottage protest," cottage cheese was a litmus test for the cost of living in Israel. If a middle-class family cannot afford cottage cheese, then things have gone deeply astray (Dovrat-Mazritz et al. 2011; Sadeh 2011).

The public's identification with Tnuva as a company that enjoys a quasi-governmental and maternal status and that is closely linked with Israeliness and the security of the nation, informed and fueled the rage against Tnuva in the affairs just described. The anger and disappointment in Tnuva were as deep as the public trust in it.

As an affair that preceded the Social Protest and the selling of Tnuva, the silicon scandal was even more shocking. It was the first time that Tnuva, with its image as a benevolent benefactor (Fischer 1995a: 12), was exposed as acting cynically, motivated by profit considerations in contradiction with consumers' interests (Rabi v. Tnuva 2008: para. 11, 129). Not only did Tnuva deceive its consumers before its actions became known, but it continued lying in the media and in the Knesset in its attempts to manage the crisis (Fischer 1995b: 19; Jacob 2012: 51–4).

In finding that disgust is a compensable harm, the *Rabi* majority recognized that Tnuva's actions invoked more complex forms of disgust, including a sense of betrayal, moral rage, shock, and helplessness. What was violated was not only milk's purity in its chemical-organic sense, but also the purity of the trust consumers had in milk, as a food carrying unthreatening and nourishing symbolic meaning, as well as the purity of the trust toward Tnuva as the supposedly benevolent maker of this milk. Without legal recognition of disgust, there was no place in the law to conceptualize these types of harms incurred by consumers.

## IV. Disgust in law

Disgust has had an ambivalent and unstable status in the law. The heated scholarly debates about the appropriate legal treatment of disgust claims suggest the difficulty of either dismissing disgust or simply incorporating it into the law's conceptual repertoire. Disgust arguments may be raised not only in tort cases like in *Rabi*, but also in tort cases concerning disgust caused by people, e.g., by the body odor of a homeless person, or by the sight of a breastfeeding woman. More dramatically, disgust can be invoked in criminal cases. Defendants may claim that they acted violently because they were disgusted by their victims, for instance, same-sex couples, and should therefore benefit from acquittal or at least from lighter punishment (Commonwealth v. Carr, 1990; Belkin 1988; Kahan 1998: 1621). This ambivalence, we propose, can be grounded in two reasons: law's difficulty in working with a subjective, ambiguous, and complex emotion and the fact that disgust undermines distinctions and categorizations that are fundamental to legal thinking.



33838.indb 111 06/06/2017 14:21

### *Law's challenge in dealing with an ambiguous, subjective, and multi-layered emotion*

As a powerful sensation that physically marks moral boundaries, disgust creates a hierarchy of values which is a threat to the law, whose hierarchy of values is not grounded in the visceral, fluid, and the subjective, but (at least ideally) in the objective, stable, and reasoned. Disgust can serve to identify the immoral due to the decisive physical response it prompts. In one case, for example, a murderer's request to receive the evidence that served to convict him—which included photos of the women that he murdered in intimate and undignified positions—was denied on the sole ground that it was a disgusting request (Beldotti v. Commonwealth 1996; Kahan 1998: 1644–5). The ability of disgust to teach us about what is moral and immoral has lead scholars to argue that it is essential for criminal law to recognize disgust arguments, since this emotion plays an important role in signifying the values of liberal societies and can partake in criminal law's educating role (Kahan 1998: 1655; Devlin 1965: 15).

Other scholars, in contrast, have expressed deep concerns over recognizing disgust arguments as legally admissible, arguing that it would entrench social hierarchies and inequalities by giving legal validation to acts based on disgust (Miller 1997: 202; Nussbaum 2004: 14, 221). This fear is understandable. In the United States, some judges recognized the disgust claim of defendants who acted upon their disgust and attacked gays, reducing their sentence (Belkin 1988; Kahan 1998: 1636). Due to the way disgust and morality are intertwined, acts considered immoral in a given society may prompt authentic feelings of disgust, accompanied by undeniable physical dimensions. For instance, sex outside of marriage can draw disgust-related hate crimes. Philosopher Martha Nussbaum, whose positions is that the law should not be only rational and utilitarian but make room for emotions, argues that the law should not recognize disgust because it is exclusionary and based on primordial fears (Nussbaum 2004: 72–5; Nussbaum 1999). She did argue, however, that we should differentiate between universal-essentialist-physical disgust and disgust that emanates from moral grounds. While the latter should be rejected by legal discourse, the former should not. For example, nuisance claims about objects that are "universally disgusting," such as feces, carcasses, or corpses, should receive legal recognition and a plaintiff who was disgusted by a corpse on her lawn is entitled to compensation.

The attempt to distinguish between universal-essentialist disgust and moral-cultural disgust is understandable, because it removes the possibility that disgust will serve to justify and to ground discrimination, hatred, and racism. But such distinction is far from easy (Abrams and Keren 2010: 1197). As we have seen, disgust is to be differentiated from indignation and from contempt, because it possesses both physical and emotional dimensions. Hanna Freund-Chertok makes this point through a beautiful example. Darwin reported his disgust when his food had been touched by a "naked savage" (Darwin [1872] 1965: 256–7). The savage's hands were not dirty, but he was considered as dirty by Darwin, due to the latter's cultural assumptions about naked savages (Freund-Chertok 2011: 119). This anecdote illustrates how difficult it would be to distinguish between "universal-essentialist" and "moral-cultural" disgust.



33838.indb 112 06/06/2017 14:21

The difficulty in clearly differentiating between the various elements of disgust should not lead to the conclusion that disgust should be kept out of the law. On the contrary: developing a jurisprudence of disgust can provide the law with the opportunity to critically examine the values that underlie it. Things that cause disgust take us, as Freund-Chertok puts it, to the fascinating border zones of society and culture, allowing us to re-examine the values and presuppositions that make something disgusting (Freund-Chertok 2011: 124–5). Considering a disgust argument would require lawyers, judges, jurists, and society as a whole to deliberate on the values that trigger that disgust and determine if they are defensible. In other words, disgust's unique quality as challenging society's moral boundaries renders it worthy of legal attention and of critical reflection. Such reflection would ask whether the type of disgust in question corresponds with or contradicts the legal system's fundamental values, and sharpen the legal system's moral borders. For example, a plaintiff who argues that he is disgusted by the skin color of certain people would certainly not receive legal recourse in democratic legal systems, but the very consideration of the argument, as well as the articulation of the reasons for rejecting it, can crystalize and reaffirm the legal system's core values and commitments (Fiss 1984: 1073; Luban 1999: 127; Kahan 1999: 69–73).

### *Disgust, nature, and the sources of law's authority*

Jurists may be reluctant to engage with disgust because it threatens the very conceptual categories which are the building blocks of legal analysis. Disgust challenges legal thinking in that it deconstructs constitutive distinctions between nature and culture, particular and universal, subjective and objective, and natural law and human law. Disgust amalgamates these categories, jeopardizing the theoretical and actual differentiation between them.

Disgust claims require judges to explore the semiotics of this emotion and to recognize that aversion for certain people or practices reflects social hierarchies. Accepting that disgust occurred, as a matter of fact, while rejecting it as legitimating violence or allowing for compensation, would enable a society to deliberate on its central values, its moral boundaries, and the elements that shape its identity (Kass 1997: 17). Let us return to the examples of judicial action such as the granting of an injunction or compensation for someone who was disgusted by the bodily odor of a homeless person, or a woman breastfeeding in public (Broida 2010: 217). Due to the physical nature of the emotion, judges may worry that even contemplating such claim in court could legitimize it. Here, the power of recognizing that disgust is never devoid of cultural and moral dimensions can help courts. The feeling of repulsion in response to a homeless person emanates not strictly from the narrow dimension of the body's physical reaction towards bad smell. It is grounded in the homeless person's social and cultural marginality and in the threat to social order that he or she represents (Blutner and Rothchild 2013). Similarly, the disgust experienced by the plaintiff whose gaze caught the breastfeeding mother originates to a great extent from social conventions against female nudity in public—nudity that is only legitimate when it is sexualized (Broida 2010: 219). Excluding disgust from the law would maintain law's boundaries as an institution that privileges (white, able bodied,



33838.indb 113 06/06/2017 14:21

masculine, and middle class) reason, shying away from the fluid and opaque nature of the bodily (Tirosh 2012: 295–301).

The argument that disgust is too open-ended, subjective, and morally regressive for the law is unconvincing. Social values are often debated and articulated during legal procedures. Judges routinely pour content into general and open-ended principles and moral values. Common law's provocation doctrine, for example, raises heated debates about the meaning courts give to reasonable reaction. Although such meanings are sometimes problematic in their sexism or racism, the juridical debates do not revolve over whether reasonableness or provocation should be altogether removed from legal doctrine, but around the correct meaning of reasonableness (Shachar 1989: 78; Kamir 1997: 136). Similarly, the law should recognize and incorporate disgust as a core human emotion without which the law's understanding of human meanings and motivations would be deficient. Instead of excluding disgust, courts should deliberate its correct meaning in their legal systems. Legitimizing disgust in tort law would therefore help fulfill one of the most important roles of the law, namely articulating the foundational values on which it stands.

## V. Conclusion

Milk that contained silicon was produced, marketed, and consumed. The actors in this case—the public, the plaintiffs, and the judges—imagine milk as the food that goes far beyond its nutritional values, as the epitome of nature and purity. The dairy that produced this milk was supposed to infuse it with particular trust, benevolence, and collective unity. Moreover, milk served here as a vehicle for restating collective commitments: social, cultural, national, ethical, and commercial. The absence of any bodily harm did not appease consumers, who looked for a language to express their dismay. Courts sided with consumers' sense that something was profoundly out of place. Something happened; a deep violation of the confidence entrusted in milk and in its supposedly benevolent producer. Plaintiffs conceptualized their harm through disgust, a feeling which is difficult to capture and to quantify, involving primordial instincts, habits of experiencing the world, and multiple cultural layers. It is therefore unsurprising that the complex multidimensionality of disgust challenged the Court in *Rabi*, and challenges legal theory in general. Disgust's resistance to distinctions such as nature versus culture, body versus mind, inside versus outside, and law versus morality, threatens to debase law's foundations. Disgust requires law's acceptance of the second order idea that the law can (and should) tolerate such ambiguities and blurring of categories. But Tnuva did something disgusting. The silicon-infused dink was disgusting not only because it contained a foreign substance, but also because the drink that was deceitfully tainted was milk, and the company that made it and sold it was so trusted that consumers were caught completely off guard when its actions and motivations were revealed.

When we started thinking about the *Rabi* affair, our initial intuition was that Tnuva customers deserved to be compensated for their disgust, but also that critics suspicious



33838.indb 114 06/06/2017 14:21

of disgust's place in law had a valid point. In seeking for a way to validate the *Rabi* Court's recognition of disgust while avoiding the pitfalls entailed in validating disgust as an actionable harm, we thought that we would try to develop a framework to articulate a distinction between core disgust arguments, referring to its visceral and universal dimensions and less value laden, and disgust that is infused with culture and ethics. There was no reason, we thought, for the law not to recognize essentialist disgust that is almost devoid of values and is mostly physical. But in the process of thinking through this case, we realized that Rabi's disgust was not purely visceral, but had to do with the meaning of milk in general, and of Tnuva's milk in particular. We realized that in fact, it is hard to imagine a case in which disgust will be devoid of ethical and cultural dimensions. We think that this is a good thing: discussions about what disgusts us are discussions about who we are as a society. In provoking such examinations, law fulfills one of its most profound roles.



33838.indb 115 06/06/2017 14:21