



## The Value of Being Disturbed

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1.

On October 9th of this past year, I listened to a debate staged on the Jim Lehrer Show between the lawyers for the Brooklyn Museum of Art and those representing Mayor Rudolph Giuliani of New York on the recent controversy over the provocative artwork currently on exhibit at the museum. As you no doubt know, an artist named Chris Ofili made a work of art portraying the Virgin Mary or, at least, called the Virgin Mary, which is spattered with elephant dung and small vaginal icons. The controversy became most heated when New York Mayor Giuliani decided to withhold the seven million dollars that the city regularly provides the Brooklyn Museum to cover its basic overhead on the grounds that the museum had violated the terms of the lease it had made with the city.<sup>[1]</sup> The lease stipulates that the Museum will set up exhibitions that will be appropriate for school children or, at least, it stipulates that that is one of the services, although not the exclusive one, that the museum shall provide. This more narrow argument about the lease stipulation, however, was preceded by a broader call of outrage by the Mayor. He claimed first that the exhibition was offensive and that, in particular, it offended people with certain religious beliefs. The Mayor argued that the sensibilities of religious Christians, mainly Catholics it seems, are offended by this artwork, that such Christians are taxpayers, and that they should not be paying taxes to support art that fundamentally offends or, indeed, violates their religious beliefs. His exact words on October 3rd were these:

The issue before us is whether hard-earned taxpayer dollars should go toward actively supporting an exhibit that is patently offensive to many of the taxpayers themselves. That many taxpayers feel is really just a display of hatred toward a particular religious group or extremely offensive in the way in which it deals with sexuality and other areas.<sup>[2]</sup>

2.

Later in the same public address, the Mayor asked, "...should City government be obligated to condone, finance, and support the printing and distribution of hate literature, any more than hate exhibits or similar kinds of exhibits?" He answered "no" and then went on to claim that taxpayer money should not be used for the "desecration of national or religious symbols, or spent on hate literature or hate speech."

3.

The structure of this last argument is particularly interesting, since it suggests that the art exhibit operates on the model of hate speech. Hate speech is generally considered to be a form of speech that acts in a discriminatory way, and it discriminates against a group that is understood to deserve special protection under the law. In other words, the assumption behind the doctrine of hate speech, as articulated by Mari Matsuda, Richard Delgado, Catharine MacKinnon, and others, is that it is speech that is used by a person or group who occupies a dominant position in society against those who occupy subordinate positions, and that the speech act itself is a further act of subordination. For the art exhibit to function as hate speech, as Giuliani suggests, is for us to understand that practicing Catholics for whom the 'Virgin Mary' is a sacred icon are being considered a minority, and that the work of art, and those who exhibit it, are practicing a form of discrimination. Indeed, the rhetoric of the Mayor's first argument relies fundamentally on the notion that taxpayers ought not to be supporting anything which constitutes persecution or discrimination of individuals on the basis of their religious beliefs. This is a basic precept of anti-discrimination law, arguably the oldest precept in its jurisprudence. So it is not a rhetorically weak strategy to claim that a work of art, and those who present it, actively discriminate against individuals on the basis of their religious beliefs.

4.

Now, the Mayor did **not** make the claim that practicing Christians or, indeed, Catholics, those who hold the icon of the Virgin Mary to be sacred, are religious minorities. But it does seem that the rhetorical force of his argument, based on the legal and moral unacceptability of discrimination on the basis of religious belief, makes that implication. And it is not my point to dispute the reality of anti-Catholic prejudice. It surely exists. And the link between religious freedom and anti-discrimination law

is an historically strong one. After all, that doctrine of anti-discrimination law was based on the notion that religious minorities had to be free to practice their religion without discriminatory hindrance of any kind. It was devised as a doctrine to protect religious minorities (who were not protected in England) from abusive religious majorities.

5.

So it seems that the first way in which Giuliani's rhetoric of anti-discrimination is surprising is that it effectively holds that the religious beliefs of Christianity, which remains the dominant religion in the U.S., are to be protected under the same laws that were designed to protect religious minorities. And that Catholics in New York are vulnerable to hate speech, and that they therefore constitute an especially vulnerable minority community. In the recent writings of Camille Paglia on the Internet journal, [Salon](#),<sup>[3]</sup> the suggestion is made that all the people who run the Brooklyn Museum of Art are Jews, and that the exhibition is somehow an expression of Jewish anti-Catholicism. This argument, however, overlooks the fact, as Katha Pollitt has rightly pointed out,<sup>[4]</sup> that Chris Ofili is an Anglo-African Catholic with no apparent Jewish heritage, and that the picture has hung in the Royal Academy of Art in London, hardly a Jewish enclave, prior to its appearance in Brooklyn.

6.

A certain very problematic confusion has emerged within the political rhetoric of this event. The Mayor seeks to show that certain provocative forms of artistic expression are tantamount to hate speech, and that they either threaten to violate the constitutional rights of an alleged minority or do, in fact, violate those rights. What has happened such that the forms of artistic expression regularly regarded as **protected** speech under the First Amendment are now considered to be forms of discriminatory **conduct**? And though Mayor Giuliani did not include this argument as part of any legal proceeding he has instituted, it nevertheless operates as a powerful feature of his political rhetoric, a hovering lawsuit, as it were, that does not get realized, but nevertheless - rhetorically - wields its force.

7.

A spokesperson for the [Weekly Standard](#), appearing on the Jim Lehrer Show in support of Giuliani, maintained that this controversy has nothing to do with the First Amendment, and that it will not do to say that this picture is 'controversial' or 'provocative', as I have just done. He spoke both of those words with apparent disdain and derision. This is not a question, he claimed, of what is permissibly provocative, but of what is flatly unacceptable. And the lawyer for Giuliani made the further point, with a strange grin on his face, that the Mayor's office was not saying that the picture should not be exhibited in a private gallery, only that the taxpayers should not be supporting this exhibition in a publicly funded art institution. Whereas the gentleman from the [Weekly Standard](#) maintained that publicly funded art institutions should be promoting values that will reverse the corrosion of values that has taken place as the aftereffect of the sixties, the Giuliani lawyer seemed to have no prescription for the Brooklyn Museum concerning what it ought to show, but he did think that publicly financed institutions ought **not** to be offending those who, in part, pay for the exhibition itself.

8.

Now, this last claim is an interesting one, for it suggests that the public ought not to pay for any form of art that profoundly offends the public. The basis for this claim is not that art ought only to please, or to confirm traditional values, including religious values. The claim seems to rest on the presumption that taxpayers are art consumers, and that they ought not to pay for a consumer good that turns out to be damaged or damaging in some way. Consumers have the right to expect satisfaction, and to have a good sense of what the consumer good is before they pay for it. In the case of the Brooklyn Museum, the taxpayer is represented as a consumer who did not know what it was that he was getting, and who is not satisfied by the product that arrived. The Museum is guilty, in a strange way, of consumer fraud, and the Mayor's office represents itself as a consumer rights advocate, one who is delegated with the authority to adjudicate the quality of cultural goods.

9.

In the lawsuit itself, it seems that the Brooklyn Museum is accused only of violating the terms of its lease, so it is a matter of contract. Moreover, it violates a contract that stipulates, in part, that the Brooklyn Museum show artwork that will be of educational value for the children of New York. That the Museum curators closed off part of the museum to children in order to present this show is taken to be evidence by the Mayor's office that the Museum knowingly exhibited art that "would be horrible for children to see."<sup>[5]</sup> And since the lease stipulates that exhibitions in the Museum should be available to schoolchildren, the Mayor's office holds that the Museum is technically in violation of its lease. So, this

is the only strictly legal dimension of the Mayor's claim, but you will have noted that the law emerges in another way here, as part of a political rhetoric in which a certain travesty against constitutionally protected freedoms (religious practice) and against constitutionally mandated notions of equality (minority status) are invoked as part of a popular appeal. Here the law itself becomes part of the force of a political argument, even though the legal argument that the Mayor's office actually makes is in no way parallel to the rhetoric by which it is announced, supported, and popularized. Indeed, it seems to me that the city, in the person of Giuliani, is exercising parental discretion, complaining that an 'X'-rated film is being shown in a venue that advertised a 'G'-rated film, and so extends the Mayor's new zoning laws to include museums along with porn shops as off-limits to general public access. The Mayor accuses the Museum of exposing children to danger or of failing to make its resources available to children in a proper way.

10.

The more consequential argument, however, is that the picture and the Museum both discriminate against those who hold to certain religious views. This argument has not taken the form of a lawsuit, but enters into the rhetoric of the Mayor's public appeal as a general legal principle that conditions his objections, but which he is evidently not willing to try out in court. It is, of course, interesting to see that the Mayor's office decided **not** to sue on this basis, even though this was the initial ground of the Mayor's proclamations of outrage. In this second argument, the government is figured as stopping discrimination and, indeed, upholding the First Amendment, since it is the First Amendment, after all, which secures the rights of individuals to practice their religions without discrimination or censorship. By making reference to the diversity of populations that are represented in New York, the Mayor thus makes his argument on the basis of anti-discrimination and multiculturalism. He will be the Mayor who represents all the people, including those who hold to certain religious beliefs. When he claimed on television that he will be the Mayor of "all" the people of New York in explaining why he opposes the exhibition, he makes clear that it is part of his pluralist mandate to limit public funding for art that offends key constituents.

11.

Defenders of the exhibit have pointed out that the elephant dung on the picture is itself a holy substance in certain African religious practices, and that the artist is, in fact, bringing clashing notions of the sacred together by superimposing them on his canvas. Indeed, the picture might be said to show how a sacred icon in one tradition signifies as defilement in another, that the elephant dung, holy in one context, becomes sacrilegious in another, and that Mary, sacred in one context, becomes defiled in another. The picture might be said to be playing on the possibility of these inverted meanings, and constituting something of a multicultural challenge to those who see it. To see it, and to understand it, means to be able to shift cultural frames in an instant. And this shifting might be said to be part of the very act of translation that is necessary for cross-cultural understanding to take place. In this sense, the picture might be said to produce a spectator capable of cross-cultural understanding, of shifting frames, of understanding the inversion of meanings that can take place when cultural frames are exchanged in this way. One still might want to know what the numerous vaginas are doing there. Katha Pollitt remarks that "the porn cutouts - mostly too small to distinguish - swarm around [the Virgin Mary] like flies or butterflies...."[\[6\]](#) and Roberta Smith in the New York Times writes that, "Chris Ofili did not invent pornography; it is all around us. He simply uses it in a way that is beautiful and double-edged. Why shouldn't a contemporary Madonna, even a loopy, exotic one, be surrounded by starkly contemporary images of sin?"[\[7\]](#)

12.

At best, this is a figure which is at once sacred and profane. Mary's virginity is part of what makes her sacred, and so it seems that the eternal impenetrability of that vagina is precisely the preoccupation of those who endow her with sacredness. Interestingly, as a surface feature of canvas, that eternal impregnability is preserved rather than violated, but I gather this aspect of the painting was not of interest to the Mayor's office or those who claim that the painting engages in hate speech or defamation. That the vagina is duplicated and brought forward onto the surface suggests that it is without shame, open to visual penetration, implicating the viewer of the picture as one to whom this presupposition of the sacred has been, quite literally, exposed. That the vagina is multiplied and disembodied suggests something of its status as a fetish, a set of substitutions that both represent and conceal what cannot be acknowledged about her. That Mary does not look like Mary, but is large and brown, suggests as well a certain racial crossing of the figure, one that no doubt offends those whose idealization of Mary consists

not only in the purity of her virginity, but the purity of her whiteness as well. To what extent has Mary been 'Africanized' here?

13.

So is this picture there just to shock, or does it only become shocking to the extent that certain cultural presumptions are in place, presumptions that are threatened with displacement by the picture itself? Why would a large and brown Mary be so frightening, so offensive, if it were not for the fact that Mary is presumptively white, and functions not only as an icon of sexual purity, but of racial purity as well? Or because we only know how to understand her sexual purity through the iconicity of racial purity? Consider that the picture might be read as the result of a Christian missionary culture in Africa, one which brings Christian iconography and religious practice there in order to convert and save the pagans. The Christian missionaries seek to have that iconography taken up. But look what happens when it is taken up, appropriated by and through a local culture, and comes into both a clashing and synthetic relation to other religious traditions. In some ways, this is the logical result of the civilizing mission as it expropriates Christianity to Africa. But this result was, of course, not intended. It is, for those who object to it, the monstrous result of Christianity's efforts to impose itself upon the local cultures of Africa, especially Nigeria.

14.

Now, this reading of the picture that I have offered becomes most peculiar when we recognize that the critical and censorious response to it is also waged in the name of multiculturalism. The Mayor seeks to protect the religious sensibilities of his constituency, and understands that a failure to protect them against this offense will result in the exclusion of those religious communities from the greater polity represented by the city government. In the name of protecting diversity, then, the Mayor attacks the picture. But the picture seems to be enacting a certain notion of multiculturalism as well. Are these different notions? And how are we to understand the discourse of multiculturalism such that it can permit, as it were, of this kind of clash within its own terms? Is this a single discourse deployed differently by each of the parties in this encounter, or is it a diffuse discourse that cannot be reduced to a predictable meaning?

15.

The above set of arguments are confounded by Chris Ofili's own written comments on the place of cow and elephant dung in his work. Although he has in some contexts referred to the religious meaning the dung has, it is also clear that he is a modernist of sorts who appreciates the texture of the substance, even its beauty. In this sense, if he produces a sacrilege, it is by insisting that the surface and texture of the substance can be separated from any and all possible significations, both religious and anti-religious. He writes, for instance, that he first began to use elephant dung in his paintings during a six weeks' scholarship in Zimbabwe. And, we are told in a recent review of his work, that

On his return to England he continued to use it and obtained supplies from obliging animals in a circus in Berlin and in London and Whipsnade zoos. The dots in his paintings also derive from this visit to Africa, where he saw a wall in a cave "completely covered in very small dots made with a sharpened twig. The concentration of that wall of dots just kind of blew me away; it was quite a memorable thing...," he claims. "I'm interested in ideas of beauty. Elephant dung in itself is quite a beautiful object, a different sort of beauty. I want to bring the beauty and decorativeness of the paintings together with the apparent concept of ugliness with shit and try to make them exist in that twilight zone ... you know that they're there, but you can't really ever feel totally comfortable with it."[\[8\]](#)

16.

So, Ofili wants us never to feel totally comfortable with what he has done, but he expects us to live with that discomfort. And though I don't think his art is particularly good, he does offer an important aesthetic insight to consider when he refers to what is only the "apparent concept of ugliness" that is brought together with "shit," and which produces a certain "twilight zone" when juxtaposed with conventional beauty. Those conventions are exposed in their contingency, and as relationally defined, and thus their taken for grantedness is brought into question. We are never totally comfortable with the juxtaposition not only because we cannot put beauty and ugliness together, but because what we thought was beautiful can also be conceived here as ugly, and what we thought was ugly can be brought forward into something beautiful.

17.

It's important to see here that something about the way modernist painting works is not quite

captured by the legal discourse that attends the art as controversy. What is disturbing about the painting for Ofili is not that the Virgin Mary is rendered in an allegedly sacrilegious way, but that the substance, intermittently spotting the canvas, becomes a surface color and texture, and its beauty consists not in the communication of an idea or in signifying one meaning over another, but in appearing *as* color and texture, as color and texture that emerge from, and over against, any signifying idea. In other words, Ofili thinks that the texture here is "cool," and wants that texture on his canvas in order to produce a certain visual and tactile effect there. It's not that he does not know that a certain iconoclasm is performed by the act, but the iconoclasm is two-fold: it's not just that he renders the icon of Mary sacrilegious, but he asserts the formal requirements of visual art above any and all ideological concerns, and he does this with hubris, and pleasure, in a way that Nietzsche might have called "beyond good and evil." The debates about the painting assume that the painting is either communicating an idea or waging an ideological war, but its iconoclasm may also consist in the fact that it is trying to assert something about painting that is beyond ideation and ideology. And this is, of course, its own ideology, the ideology of art as an autonomous domain whose freedom of expression is worthy of protection. This is a difficult assertion to make within any culture, but it is one that is potentially, and significantly, critical: if the medium is at some distance from any and all ideology, then the thought of that distance must come into play when we try to figure out what art 'means.' The distance works to call into question the settled ways in which we organize our work perceptually and ideologically.

18.

Now, one way I would locate the critical moment in culture is by the works that cultures produce that call into question some of the fundamental concepts that undergird the notion of culture itself. These are disturbing and disorienting moments, precisely because we lose our moorings at these moments, do not always know how to locate ourselves, do not know what it is we have thought we have always known. But are these moments of disturbance the same as undergoing an assault? Are we assaulted by the artwork or, more modestly, injured by it, when it effects an epistemological dislocation of this kind?

19.

It may be that the religious communities that the Mayor's office seeks to defend do not want to know, or do not want to see, that the iconic symbol which has sacred value for them does not sustain that sacred value universally. And it may also be that the Mayor understands it as his right and entitlement and duty to make sure that this community does not have to face or to know the limits of that icon's universalizability. He may think that the Catholic community he represents can continue to act in the world as if that icon is universally considered as hallowed, and that any cultural challenge to that ought to be kept from their view. If this is the case, then what the Mayor seems to be doing is maintaining the entitlement of the religious community to know and sustain its own dominance, its presumption of universalizability, and even its 'mission' of universalizing its truth around the globe.

20.

For if the picture is showing what happens when the icons of Christianity are taken up by religious cultures that have their own indigenous traditions, then not only is the picture exposing the limits of Christianity's global mission, but it is doing something even more disturbing. The picture is showing what happens when Christianity's global mission **succeeds**, when its icons are implanted on 'foreign' soil, appropriated by local cultures, and offered up as a mirror of the colonizing aims of Christianity itself. In a sense, the picture is the success of the very effort of Christianity to universalize its presence and truth, except that the result that presumptive Christianity receives in return is not precisely the one it had expected. Thus, if Giuliani seeks to protect the Christian community against discrimination, and if what constitutes discrimination here is the recognition that its icons are **not** universally considered sacred, he is not protecting a minority community, but rather a dominant one against the realization of its own faltering dominance, or against the realization of what its strategies of dominance have unwittingly produced. Thus, in the name of multicultural diversity, the Mayor protects the rights of the Christian community to continue to presume its own status as a universal religion whose icons are universally sacralized. And the painting might be said to rejoin to the Mayor and say: yes, yes, and this is what the effect of universalizing your icons has achieved, concretely, as it comes into a synthetic and dissonant encounter with African religious traditions.

21.

So it is not that the picture acts, but that it disrupts a frame of reference in which the sacredness of Mary as symbol is presumed. And in shoring up the rights of those religious people not to have that frame of reference disrupted, the Mayor underscores the necessity of that frame of reference, conflating

the frame of reference that exists for that religious community for the frame of reference that ought to exist for all of us. In other words, the Mayor actively continues the globalizing mission of Christianity itself. The challenge that the picture delivers to the public to think multiculturalism as competing and converging frames of reference for understanding religious meaning is refused by Giuliani, and refused **in the name of multiculturalism**. For him, the multiculturalism at issue is one that maintains that every religious group is guaranteed the right to practice freely, and apparently, the picture and the exhibition work, in his view, to threaten that particular freedom, and the constitutional framework that offers it protection. At least this is the argument he has made rhetorically, even if it has not emerged in the legal complaint against the Museum that his office has lodged.

22.

Clearly, we can see that multiculturalism is a complicated set of discourses, and that certain versions of multiculturalism can and are mobilized against other versions of multiculturalism. But my point is not to try to adjudicate among these terms, or to decide which one is right, although I do want to argue that a cynical use of multiculturalism has been linked here with the rights of religious communities in such a way that implies that the religious community in question (Christianity) is a religious minority in need of protection. Although by protection, Giuliani clearly means 'legal protection', he is also suggesting that the sensibilities of this religious community ought not to be offended, and sliding, it seems, between offense (some of which is a First Amendment necessity) and injury (which, in the context of his argument, seems to be considered tantamount to discriminatory conduct). It is this problem of being offended to which I would like to turn at this point. For one of the presumptions of the attack on the Museum is that it ought not to be in the business of offending the sensibilities of those who finance the Museum itself.

23.

It seems that the once accepted notion that art ought to disturb or provoke or unsettle us has become increasingly questionable of late. And an increasing number of politicians, especially those who now openly oppose funding for the NEA, believe that there is a line of acceptability that ought to demarcate what is and is not disturbing. In fact, the value of being disturbed is no longer a value in itself, and it is openly mocked by conservative pundits. Sometimes 'being disturbed' is considered the same as 'being shocked for the sake of shock-value', but sometimes it is seen as an active ideological assault, the end of fair-play, the rights of one ideological force to wage war with the aid of public money against another. This last remark contains a kernel of truth, but perhaps the battle lines are drawn a bit differently than I've just suggested.

24.

Now one way of defending the public financing of art which offends, as this art surely does, is to say that art is precisely the site where such battles **ought to** take place. It is the venue in which battles, say, over multiculturalism and religious iconography ought to be staged, articulated, publicly aired. And we might even go further and say that artworks are under a certain obligation to stage such battles for us, so that we might have the occasion to produce discourse and opinion on the matter and 'have it out', as it were, in the sphere of public debate. To close the institution and foreclose the exhibition is thus to deprive us precisely of the occasion for the controversy itself, and to displace the terms of the debate altogether. The debate is no longer about the limits and meanings of multiculturalism or the difficulties of resignifying religious icons, as it might have been, but of whether museums that exhibit artwork which disturbs our taken for granted beliefs that strongly ought to be funded by the public, and whether the Mayor's office, in this case, is in a singular position to decide the issue. De-funding is a way to drain the debate of its institutional basis, and to defy the precept that the institution's cultural work consists precisely in articulating such moments of social disarticulation, when we recognize the public itself as fractured or syncretically melded in ways that are disturbing and not always predictable, and then staging the debate that emerges from that non-unified condition we are in.

25.

I don't see anything wrong with debating whether or not museums ought to be publicly financed (it would probably do us all good to think again about why precisely that is a public good worth paying for), and if they are financed, what their obligations to the public might be (here it would be important to consider whether regularly offending the public is part of the public good, and how we might make such an argument, and whether it is possible to distinguish between acceptable and unacceptable forms of offense). But if the very occasions for this debate are drained dry or forced to close, then it seems we are no longer having a debate at all, but one side has preemptively executed its case, and sought to foreclose

debate on the art, and open lawsuits that seem, in that case, not to articulate the driving political passions surrounding the event. For this to work as a debate, it seems there must be a commitment precisely to publicly financed museums that deliver this challenge to us, which does not mean that it has to be resolved in any particular way, but only that we agree to be challenged, and to pay institutions regularly to deliver those challenges to us.

26.

It is not the case that publicly financed institutions must produce and circulate all sorts of speech, and the fact that they don't does not exactly constitute a First Amendment violation. Thus, Giuliani's lawyers appear on television again and again to say that this art would be better off shown in a private collection. Although there is no strict obligation under the law for the Museum to show one kind of art rather than another, is there an overriding constitutional good that is achieved by virtue of the Museum exhibiting this kind of work?

27.

The Yale legal scholar Owen Fiss makes a perhaps even stronger argument along these lines in his book, *The Irony of Free Speech*.<sup>[9]</sup> Discussing there the criteria that the NEA must use in making allocations to artists, he argues that "Every NEA allocation will have an effect on public debate, so what is needed to judge such allocations is some standard to distinguish pernicious effects from harmless ones" (41). Fiss consults the First Amendment to find an appropriate norm, and it turns out to be that of collective self-determination. The Constitution seeks to ensure conditions of full and rich public debate, and freedom of expression is a necessity to the extent that it helps to ensure those very conditions. Without the fullness and richness of public debate, the ability of the public to canvass opinions and make its own decision on its own desired course in the future is seriously hampered. Thus, Fiss argues that a standard of unacceptable expression becomes cause for concern when it "keeps opinions from the public to which they should be exposed in order to govern themselves or to choose the kinds of lives they wish to live"(41-42).

28.

The NEA is, of course, not the same as a publicly financed museum, but both of them are under a certain mandate to serve the public, and not just private patrons. To this extent, Fiss argues that the NEA should not be passing judgment on the merits of the ideas advanced by the artworks that they fund, but should only consider whether the admission of such 'ideas', if indeed, they can be isolated as 'ideas', should be included among those that the public ought to have access to if it is to decide its own course in a knowledgeable way. Fiss makes an exception for hate speech. But legal liberalism runs into problems, I think, precisely at the moment where it claims to be able to know with certainty the distinction between free expression and hate speech. After all, one of the ways that the Giuliani tactic was able to derail so many of us from making First Amendment arguments in defense of this exhibition was that the exhibition was said to be performing this very silencing function, silencing an ostensible religious minority. At the point where it becomes impossible to distinguish between minority expression especially in need of constitutional protection and hate speech that violates the freedom of expression of religious minorities, we run into a distinctively contemporary legal and rhetorical problem. Indeed, I believe that the reason we have not seen a public outcry in the name of the First Amendment on this issue is precisely because of a conceptual confusion that paralyzes progressive thinkers at this juncture.

29.

Of course, this is where the Giuliani tactic has become especially shrewd, since one of his claims has been that this art work does function like hate speech. In a sense, no religious group is protected from criticism or parody under the First Amendment, but it would be important to know whether any religious group constitutes a minority viewpoint, and whether their views have been systematically excluded from a full exercise of the First Amendment. Fiss argues that the state must take an active and **activist** role in making sure that minority views are heard, and that the public debate on values is informed by a full range of opinions, not just the already dominant ones.

30.

But can the state really do this job? As the constitutional legal theorist, Robert Post, points out, Fiss's proposal involves the state in making decisions about who should have access to the marketplace of ideas, and who should not, and this enhances the state's power in ways that we may live to regret. If the state were a high-minded parliamentarian, as Fiss seems to assume, it might make such decisions in a reasonable way; but Fiss's view requires that the state make substantial judgments about what is a majority view, what is a minority view, and whether equal time has been apportioned to minority views.

At best, this would fortify the state as a regulatory form of power, defining and administering to points of view that it deems recognizable. At worst, we might see the most pernicious forms of ideological warfare conducted under the aegis of high-minded parliamentarianism, whereby the kind of minority expression that constitutes the Virgin Mary picture is construed as the hate speech of the dominant against a religious minority. Is there anything in Fiss's view that precludes the kind of judgment that Giuliani has made from becoming the rule of law?<sup>[10]</sup>

31.

As long as we have lost track of the value of being disturbed, the democratic value of being offended, we will be unable to direct our government to make decisions that do not lead to our easy satisfaction. It is not the norm these days that students ask to have their taken for granted beliefs disturbed, that people are willing to read writing that does not immediately satisfy, returning them to what they already know. The value of critical theory which consisted in calling the status quo into question is rarely, if ever, heralded as a productive moment of culture during these times. Who says: yes, take my icon, and make me rethink its value in the context of a multiculturalism that is no longer reducible to ready-made pluralism!?! Give me an image that is neither purely Christian, purely African, purely modernist, and make me live in the clash of perspectives presented there. Few, if any, ask for such disruptions, savor their consequences, want to live in the unknowingness they produce. More often than not, we ask of art and language to give us back a world that we already know, reconfirm our place, our position, our perspective. And this is precisely to sacrifice the critical perspective that gives us the world anew.

32.

Although this example may not be particularly good art, it does stand for a particularly good principle, which is that art should take our breath away, make us wonder which world we live in and why, and make us suffer what Wallace Stevens called "the exhilarations of change." This does not always happen through sensationalist means, and it can happen by a simple alteration of the way a frame works, or in the blending or texturing of color in ways that seem unprecedented, or it may be that what we are used to seeing in non-public domains suddenly becomes public, and then we are aware of being collectively exposed to and by an image that tells us immediately something about how the public sphere to which we belong is constituted. If certain pictures **cannot** be shown in public, or cause problems when they **do**, it is usually because what is meant by the public is predicated upon the exclusion of certain forms and kinds of representation. Thus, when we are told that the public ought not to pay for such a picture, that the public ought not to be offended by such a picture, the denunciation articulates for us an ideal about the public that is sustained precisely through a certain exclusionary activity. We cannot remain ourselves if we see what is presented here for us to see: who we are is predicated upon the un-seeability of this image, its unrepresentability in public, and for it to become a public representation, a publicly financed representation, one that we pay for and receive in return for our payment, is to become a collectivity that is willingly undone by what it sees. This is the sign, I would suggest, of a healthy collectivity, one that does not need to remain itself, one that is willing to risk becoming other than what it already is, one that is even willing, against the odds, to pay for that very risk.

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### letter to the editors

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## Notes

<sup>[1]</sup> On November 1, 1999, this lawsuit was overturned in Federal Court in Brooklyn by Judge Nina Gershon on First Amendment grounds. She argued at one point that "There is no federal constitutional

issue more grave than the effort by government officials to censor works of expression and to threaten the vitality of a major cultural institution, as punishment for failing to abide by governmental demands for orthodoxy."

[2] Rudolph W. Giuliani, "The First Amendment Does Not Require Public Subsidy," Mayor's Message, 3 Oct. 1999 <<http://www.ci.nyc.ny.us/html/om/html/99b/me66100.html>>

[3] Camille Paglia, "'Sensation' and Lack of Sensation." 6 Oct. 1999 <<http://www.salon.com/people/col/pagl/1999/10/06/sensate/index.html>>: "That a Jewish collector and a Jewish museum director had no compunction about selecting a parodic image of the Madonna from the whole of Chris Ofili's dung-bedecked oeuvre shows either stupidity or malice."

[4] Katha Pollitt, "Catholic Bashing?" *The Nation*. 1 Nov. 1999 <<http://www.TheNation.com/issue/991101/1101pollitt.shtml>>

[5] Rudolph W. Giuliani, "Freedom of Expression Does Not Require Government Subsidization," Mayor's Message, 26 Sept. 1999 <<http://www.ci.nyc.ny.us/html/om/html/99b/me990926.html>>

[6] Katha Pollitt 2.

[7] Roberta Smith, "Bringing America Up to Speed," *The New York Times* 24 Oct. 1999, sec. 2: 40.

[8] From "Chris Ofili", Global Artnews, <<http://www.artnewpaper.com>>

[9] Owen Fiss, *The Irony of Free Speech* (Cambridge: Harvard UP, 1996).

[10] Post, "Equality and Autonomy in the First Amendment", forthcoming, op. cit.

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