THE 21ST-CENTURY CITY AND ITS VALUES: URBANISM, TOLERATION, AND EQUALITY

October 1, 2004

SESSION 2: TOLERATION

Ira Katznelson: I think we should begin the discussion period by asking Professor Nussbaum for any reactions she has to Professor Sullivan's remarks.

Martha Nussbaum: These are wonderfully provocative comments. So let me just take a couple of minutes to give some reactions.

I guess first of all to describe the general idea that I favor. It's very similar in structure to John Rawls's idea of political liberalism—that is, that the political conception of a society is not morally empty, but it is partial, it's a partial moral conception that we can agree on as a basis for political society, living together. And as Rawls says, it's a module that you then attach to a whole lot of other things you believe, and there may be conflict in that attaching, but that's up to you to sort that out. But the idea that Rawls and I share is that no form of liberalism that's totally empty of moral content could ever be stable, and the key to that moral content has to be an idea of equal respect.

Now about negative liberty. I mean, I think Rawls already said this beautifully in A Theory of Justice. I actually think that that idea is incoherent. I mean if you think about a person who's left alone by the state, that person is not a free person. As Adam Smith already observed in Wealth of Nations, kids in England who didn't have compulsory education provided by the state were not free: they were working in factories because their parents sent them there and they worked the whole day and they didn't have the opportunity to develop their human potential in the way that the children in Scotland, who were coerced by the state, they were able to be free. So I think the issue of how you produce a free person is very complicated, but clearly, it involves strong state action in areas of education and economic empowerment, I would say, as well as the zealous protection of some other liberties. And freedom of association is very dear to me, as it is to Professor Sullivan. About the public-private distinction, I also have problems with that one because I do believe that that distinction—I mean, she's of course quite right to say that Locke and Kant drew on that distinction to solve some of their problems, but, as Mill well
knew, what that did was to shield violence against women and lots of other bad stuff that went on inside the family, and it gave it the cover-up of permissiveness. And so any liberalism that's really going to protect human freedom has got to consider that the family is part of the political structure of society, and then we have to think carefully how to balance respect for freedom of association against the promotion of safety, security, opportunity, development, for females and other vulnerable people in that structure. So those are my general views.

I guess I think that, in particular with some of the issues that our society is having most difficulty with today, a policy of "Oh, let's try to pretend that we're keeping our hands off," on the part of the state is just not adequate. If you think of the issue of how to include or tolerate people with disabilities, which is something that I've been thinking about a lot lately, well, first of all, the posture of state inaction is just a charade, because the state has got to design public space one way or another way. They've got to have wheelchair ramps or not wheelchair ramps. So they are always in the business of making choices. And if they say, "Oh state inaction, that just means we're going to leave the buildings the way they were without access for people with disabilities," it doesn't mean that they're really doing nothing.

In the case of sexuality, I think the tremendous amount of violence and stigmatization against same sex couples and gay and lesbian people suggests that . . . my colleague Richard Epstein, a famous radical libertarian, wrote a very fine editorial in the *Wall Street Journal* against the gay marriage amendment, and I guess I was really moved by his growth and insight on that issue. But what he said is this shows the wisdom of "Let's just get the state out of it," and let's "Live and let live." Now I think that's actually a rather contradictory position in the current situation. If the state really gets out of it, then people don't "live and let live." And whenever they're inclined to not "live and let live," we really need the state more rather than less. What I'm concerned with is the way that we introduce people to these things in childhood: How do teachers present disability in a classroom; how do they present issues of sexuality in the classroom? And I think you can't just keep away from all human topics, you've got to do it one way or the other.

Now about the two cases. I guess I want to say that I don't think my view solves any legal problems because I think both of those cases are hard cases where the freedom of association of individuals comes into tension with other values that the society is promoting. And I think the old adage that hard cases make bad law . . . but I think they certainly make bad philosophy, in the sense that you can say quite abstractly what the general structure is, and then when you come to a tough issue like abortion rights or something, it's not a sign that the principles are inadequate, [but] that the principles don't take you all the way to a clear one-sided solution to those cases. So I actually think that the cases are hard. And I guess about the education—I guess it's just to me the question ought to be, "What would public education contain, and what would public education involve?" Now as to state support for private education, that's a very complicated, mixed situation, and I really don't have clear intuitions about what should be permitted there. I guess—I think in Finland, where the church-run groups get money from the state all the time, but the understanding is that they're really promoting the same values as everyone else, so there's no tension, that's one thing. But in the U.S. we know that that's not the case and it's a much harder case.
Ira Katznelson: Let me just pose two questions. First is a question about Locke. The letter concerning toleration is probably my favorite text in the long lineage of Western political thought, and the reason it appeals to me so much is because of what might be called its sociological realism. He's commenting on a Europe torn apart by religious conflict, soaked in blood, and his line of solution did not lead through a reshaping of the human person first, it led first through a change in institutional rules, i.e., separation of church and state, limiting the role of the magistrate and the like. My question from that Lockean perspective, too simply put albeit, is, If we had to choose between, as it were, the pathway of education, reconstitution of the human person, addressing the baneful possibilities of emotions, like shame, or the character or narcissism, as opposed to thinking as hard as we can about reshaping our institutional milieus, why would we opt for the former as opposed to where Locke came out?

And the second question, perhaps not unrelated though loosely tethered to it, is the question about the scope of—you've written on this subject—the scope of humankind inside this common new civil, non-repressive civil religion. Because the wider the scope, the more we will bump up, not just in Boston or New York but globally, bump against groups whose very institutional rationale is that of building boundaries, setting conditions that distinguish them from others and who will resist that culture as a repressive imposition. So the question then is still Locke's question: How do groups like the Catholic Church, or the Reformation churches which surely had such crisp views, thick views about what was proper, how should they and could they be integrated into an institutional milieu without remaking themselves as groups or remaking their individuals as persons?

Martha Nussbaum: Okay. Those are great questions. About the first, I mean, look, I said—and I probably didn't stress it enough because I had to cut out a lot of things—that institutions are one very important part of how I think these values should be introduced into a society. Values of equal respect are expressed by a tax system, by a welfare system, by the presence or absence of health care and so on. So of course that's very, very important. And indeed I think there are certain problems that one cannot solve without a central role for institutions because there are collective-action problems. If you try to solve the problem of economic redistribution through private philanthropy, well, we know that it leads to tremendous collective-action problems, plus being quite unfair to the people who are good, that is, the ones who give away a lot of their money to the poor under that voluntary system are competitively disadvantaged vis-à-vis the ones who are selfish. And so for all those reasons coercive taxation seems to be the best way to solve the problem of redistribution. And I think a lot of problems of global justice—right now we're trying to solve them by a kind of system of private philanthropy, but much more coordination and institutional organization would be needed.

But you know, at the same time, you can't do it only by institutions because if people don't have the will to sustain them, they will change them. I mean I grew up, as you did too, in a time when there was a lot of parent consensus about the importance of social welfare, and even Richard Nixon supported universal health care for all Americans. Now why did that change? It changed because through the Reagan era, people lost the will to support that, and there was a new culture of competitive
narcissism, I would say, that increasingly took over through the family and the schools and there wasn't enough done about that.

I mean again, to turn to India, which—I think it's sometimes more useful to talk about a nation that one isn't a citizen of, observing—what was it that Nehru did wrong? I think he built all the institutions right, but what he didn't do while the Hindu Right was busily organizing at the grassroots level, and having all these groups for boys that organized them into little bands, and had attractive games, and stories, and songs, and so on, all surrounding a vision of India as [a] Hindu-first place, the other side, so to speak, was doing nothing to mine the Hindu tradition for images of pluralism and toleration. Tagore was the only one who was doing it, but he was doing it in the Bengali language which was spoken mainly in Bengal, and it just didn't take over. And everyone now will say that, they say, "We have failed to build at the grassroots level a culture of pluralism and respect." But it could've been done if Nehru had had more respect for the arts and humanities. He thought technological education was the thing, and even though he read every book in the world and every poem in the world, he just didn't think it was an important part of creating a public culture. So that's the first thing.

Remind me of the second question.

Ira Katznelson: The scope question, and when you bump against . . .

Martha Nussbaum: Well, you know, I think that in every case you're going to have, I mean, since . . . all right, let me talk about my view rather than Rawls's view. My view says that what the common core of the political conception should be is a set of opportunities, or as I call them "capabilities," that people will all have. Now that already leaves spheres of freedom for these groups you're talking about, because for example the Amish can happily support the right to vote, even though they believe it's wrong to vote. If the conception is that every citizen has to vote, then they have a problem with that. Again, people who think that religion is bunk, they can support freedom of religion as a very important part of the political conception, because they're aware that their fellow citizens will use that. So in general people can support lots of things at the level of capability or opportunity that they wouldn't support if the functioning were made basic.

Now then, I think then one isn't required to show that every group is going to feel no tension around these ideas. Some, if they have racism or hatred in their very structure, then those groups will be at odds with the political conception, and then what will happen is not that they will be suppressed if they do no harm to others, but that they're going to be—their position in the political order will be different from others in the sense that if they can't, as a piece of legislation, introduce their ideas because they go against the constitution. So if the Hindu Right introduces just a plain piece of legislation saying that Muslims will have only half the vote of Hindus, that just can't happen because it's against the values enshrined in the constitution. So they would have to change the constitution which is a more arduous matter and less likely to happen. But their speech won't be suppressed as long as they're [not] doing, or imminently threatening, harm to others. And so I think many hate groups exist in any society, and it's just a question of how far you go in protecting others from them, and I think the test should be something about the imminent likelihood of violence.
Ira Katzenelson: We're up against a reasonable, hard time constraint of airplane schedules, but we have a few more minutes and I think what we'll do is take a small number of brief questions from the floor, and then give the two principals a chance to respond. I'm going to stand there because I can't see in this light.

Man: I was quite interested in Miss Sullivan's concept of timesharing. And I'm just wondering how that fits into New York City being a host, let's say, for the Republican National Convention, and maybe you timesharers don't allow any protests.

Kathleen Sullivan: Are you going to collect questions first?

Ira Katzenelson: Let's collect two or three, and then . . .

Man: I was struck by a non-marking in the city which is no of the concept of toleration in the values of the market, thinking of this as being the city where the Dutch let the Jews in, where commerce and trade from in the seventeenth century even religious intolerance.

Man: I was . . . Professor Nussbaum saying Kant's work on religion. The book in which he . . . women are inferior to men, and whites are superior to blacks, and sexually . . . even when the gays . . . husband and wife . . . of propagation is assault on women's rights, and I agree with Professor Sullivan who mentioned the categorical imperative . . . That's the point where Kant shows his toleration, not the source which you cited.

And one other point. The unique thing about John Rawls was incoherence.

Man: A practical question: Since 9/11 has intolerance increased or decreased in the U.S., and what are the factors driving that?

Kathleen Sullivan: The last question is quite profound. Let me start with that. Has intolerance in the United States increased or decreased since 9/11? And I think—I don't mean this as a lawyer's trick—I think the answer is both. Increased in the sense that suspicion of the other has been heightened in a way that doesn't happen when there's not a threat to security, when everybody's just going about their business and having a dot-com boom or something like that. And yet tolerance, I mean, I think the most striking thing, for all the criticism one might otherwise level at the administration's response in some respects to 9/11, and not just the administration, the Congress's response and the USA PATRIOT Act, for all the criticism one might otherwise level at some of the impositions on liberty in the wake of 9/11, one thing really didn't happen, and that is there is no return to notions of quarantine, internment, massive roundup. There are things to worry about in the immigration and deportation system, there are issues to worry about, about secret surveillance, but there's been a learning process from the internment of the Japanese and Japanese Americans in the wake of Pearl Harbor, and I think our learning from that experience of the incorrect application of intolerance to a very over-inclusive set of people, there may be some learning about intolerance. Now fear breeds intolerance, and this is something that Professor Nussbaum touched on, and fear may breed yet a kind of resurgence of intolerance that we haven't seen in the first bounce, and if there were another grave incident one can't predict. But I think it's interesting to
note that some expressions of intolerance that we have used as a society in the past
did not come out this time.
One respect to timesharing, I don't mean to suggest that it can only be one idea at a
time in the streets. A parade is a unique form of public expression in which you
probably can't have two parades marching at odds in the street at the same time.
But there's nothing wrong with having events inside events in which there can be
simultaneous critique and demonstration, and it would be a travesty of freedom of
speech to say that one must wait one's turn to speak until there's no longer an
occasion to be listened to.

**Martha Nussbaum:** Toleration and the market. It is often said, and I think it does
happen sometimes, that when people really want to make money they waive these
other animosities. I had an incident where my daughter and I went into a very
conservative Muslim bookstore up on Devon Avenue in Chicago, and she was dressed
in short shorts, and clearly they did want to ask her to leave. I mean they were
looking very angrily at us, but when I came up, you know, we had this big pile of
books that we were buying, then they waived all that, you know. So I think it does
happen. But I'll tell you, if you study the history of the BJP, the party that was just
defeated in the last election in India, it kind of puts the lie to that, because here are
people who have both a very strong ambition to be the party of globalization and
good business, and they've managed to get the support of most of the business
community, and at the same time they are preaching hate in a very open way. And
the younger ones more than the older ones. That's what's even more scary. I mean
the more business-oriented and younger they are, they more they do that. So I don't
know. I think we can't rely on that.

Kant on women. Well, it was actually in the *Lectures on Ethics* which is an earlier
work. But you know, he did say that people use each other reciprocally in the sex
act—he was quite neutral about that—and he said sex involved the instrumental use
of others for pleasure. And some radical feminists have actually invoked that as
something that's quite connected to worries about objectification that feminists have,
although he might have been wrong about the solution, which was marriage.
But about the big question about 9/11, I agree with Professor Sullivan that I think
"both" is the answer. In the wake of the first alarm, there was tremendous
inclusiveness, and there was respect for that gay rugby player who helped bring
down the fourth plane, there was sympathy for people of all different national and
ethnic origins who died, people in other parts of the country who didn't like New York
were sympathizing with New York. But you know, I think that kind of died away and
the more long-term suspiciousness of Muslims is what I'm particularly worried about,because I think it's very ignorant. You know, a lot of people that I talk to about these
things think that all Muslims are Arabs, they think there's never been a democratic
Muslim nation, and I say, "Well, what about—forget about the early democracies in
the Middle East that were overridden by the British—but what about Bangladesh,
what about the Muslim 15 percent in India?" And they don't know these things at all,
and when I say that I'm writing a book about religious violence in India often people
say, "Oh, what's the matter? Are the Muslims creating trouble there?" So you know,
that's one reason I wrote the book because I kept getting that. And so I feel that
there is this demonization of the Muslim Other, which I am very worried about. And I
think education is very important, just to dispel some of the false factual information
that people have. That's probably not enough, but at least it would be something.
Ira Katznelson: One parting observation. This is a session on toleration and cities in the twenty-first century. And one lesson of this very rich discussion is that the transformation of urbanism is such that all of humankind is now part of an urban fabric. And as we are all part of an urban fabric the questions of both tolerance and toleration, not identical words, presses forward at the top of not just any parochial but a broadly human agenda.

Thank you both very, very much.