Lessons from the Brooklyn Museum Controversy

Peter Levine

How many art exhibitions are accompanied by a “Health Warning”? Visitors to the Brooklyn Museum’s recent “Sensation” show were told: “The contents of this exhibition may cause shock, vomiting, confusion, panic, euphoria, and anxiety. If you suffer from high blood pressure, a nervous disorder, or palpitations, you should consult your doctor before viewing this exhibition.”

Those brave (and hip) enough to enter were exposed to paintings, sculptures, videos, and installations by a group called The Young British Artists. The works that had the best chance of causing shock and vomiting included Marcus Harvey’s portrait of the child-killer Myra Hindley, painted with real children’s handprints; Damien Hirst’s “A Thousand Years,” composed of a decaying cow’s head with live flies and maggots; and Chris Ofili’s “Holy Virgin Mary,” which incorporates elephant dung and photographs of genitalia.

As the predictable uproar about the exhibition erupted, New York Mayor Rudolph Giuliani tried to slash the Museum’s funding. He claimed that the decision not to admit unaccompanied children to “Sensation” put the Museum in violation of its city lease and subjected it to eviction. He also argued that the government may not finance blasphemous art, because to do so breaches the separation of church and state.

These arguments were rejected in federal court; the city was compelled to refund the money it had withheld. The Mayor did score points, however, by alleging (with some plausibility) that “Sensation” was a “scam”: a conspiracy involving Christie’s auction house, the Brooklyn Museum, and the owner of the art, Charles Saatchi, to raise the market value of his collection. Meanwhile, the Mayor’s opponents accused him of using a cultural controversy to score points with conservative voters as he prepared to compete with Hillary Clinton for New York’s open Senate seat.

Behind all the ritualistic name-calling and litigation was a serious issue: the relationship between art and democracy. This relationship has been troubled and unproductive for several decades. I think that politicians and artists must share the blame.

Imagine that we were debating welfare reform or zoning instead of elephant dung on “The Holy Virgin Mary.” In these more ordinary cases, we would want elected officials to supervise decisions that involved public money, but we would expect them to act only after reasonable public deliberation. We would ask everyone involved to heed multiple perspectives, respect facts, achieve as much common ground as possible, and examine arguments rather than assault their opponents’ characters.
This is the deliberative approach to democratic politics. I will argue that artists and politicians ought to behave more deliberatively than they have in their recent skirmishes. But deliberation is only relevant if arts policy belongs within the normal give-and-take of politics. Both sides in the Brooklyn Museum controversy claimed—in contrast—that a high constitutional principle settled the question of arts funding. If they were right, then neither the public nor elected officials had any business deliberating about particular works of art or about arts policy in general.

Charges of “Censorship”

One group, civil libertarians, detected unconstitutional censorship in New York City’s treatment of the Brooklyn Museum. According to the American Civil Liberties Union, the Museum was an institution “devoted to discourse and expression.” Once the government had decided to fund such an institution, it could not use its money to influence decisions about what images were exhibited. According to the ACLU:

Just as academic judgments are left to the academics, curatorial judgments must be left to the curators. Just as a state cannot use its funding authority to micro-manage the content of a professor’s lectures, the First Amendment also bars Mayor Giuliani from using City funding to dictate the content of a curated art exhibition.

In its brief, the ACLU explicitly charged the Mayor with censorship. Some people have gone further and seen a reduction in the overall level of government support for the arts as “a de facto form of censorship.”

U.S. District Judge Nina Gershon resolved the case in the Museum’s favor but on narrower grounds, concluding that:

The issue is not whether the City could have been required to provide funding for the Sensations exhibit, but whether the Museum, having been allocated a general operating subsidy, can now be penalized with the loss of that subsidy, and ejectment from a City-owned building, because of the perceived viewpoint of the works in that exhibit. The answer to that question is no.

With this ruling, civil libertarians won a battle in the war over arts policy. But the Constitution cannot compel governments to subsidize art in the first place. When the Supreme Court ruled in 1998 that individual artists may not be denied federal grants because of the content of their work, Congress simply canceled all support for individual artists. If democratic leaders are given the choice either to fund everything that curators call “art,” or to support no exhibitions at all, many will choose the latter option. In New York City, museums are powerful and will probably continue to receive tax money no matter what the Mayor thinks. (However, some observers fear that he will punish the particular institutions that sued him.) In other communities where the arts have far less political clout, complete denial of funding is a likely response to adverse court rulings.

I am not arguing that courts should never strike down state arts policies that violate the First Amendment. For example, the City of New York probably acted unconstitutionally when it made an unrestricted grant to a museum and then withdrew the money ex post facto because of the content of the exhibited art. How much flexibility the government enjoys under the First Amendment is a matter of ongoing legal controversy. But regardless of the proper answer to this question, broader issues remain that will never be settled in court, because only the public has the right to decide them. Do the arts need and deserve public subsidies? If so, what are the best priorities for our arts budget? For instance, should more money go to museums, schools, or artists? Should the public fund amateurs, students, or professionals? Should we subsidize big-city artists, or regional institutions? Should we exhibit contemporary works, or Old Masters? Should our arts budget promote video installations, or novels, or public monuments?

These matters should not and will not be settled by judges. Before the larger jury of public opinion, the avant-garde may have a difficult case to make, but it cannot hide behind charges of “censorship.” Arts programs and subsidies are never entirely different from appropriations for schools or homeless shelters; inevitably, they are matters to be settled by some combination of majority rule, horse-trading, delegation to professional experts, and (if we’re lucky) constructive public deliberation.

Sinful and Tyrannical Subsidies?

In court, Mayor Giuliani argued just the reverse of the civil libertarian position. Whereas the Museum’s lawyers wanted to prevent elected officials from refusing to fund controversial art under almost any circumstances, the Mayor claimed that the state may never support such expression. It is always wrong, he said, to use public money to finance “vicious attacks on religion.”

But if the state must be neutral about matters of faith, then it cannot discriminate against irreligious expression. (This has been the Supreme Court’s view since a 1952 case, Joseph Burstyn, Inc. v. Wilson.) Perhaps the Mayor’s real position was that public
funds should never support anything that causes very deep offense to some. "If you are a government subsidized enterprise," he said, "then you can't do things that desecrate the most deeply held and personal views of the people in society." In the preamble to the Virginia Bill for Establishing Religious Freedom, Thomas Jefferson wrote, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical."

Although this "Jeffersonian Principle" is not explicit in the U.S. Constitution, it is often invoked in First Amendment cases. For example, some people argue that it precludes unions from lobbying the government with their members' dues, student governments from using mandatory activity fees for controversial purposes, and Congress from funding political campaigns with tax money.

The Jeffersonian Principle has something going for it. The fact that some citizens "abhor" the Confederate flag seems a sufficient reason not to fly it over a statehouse, because doing so expresses official disrespect for their views. However, if we apply the Jeffersonian Principle literally and comprehensively, there can be no democracy. As the Supreme Court noted in 1984, "virtually every congressional appropriation will to some extent involve a use of public money ... to which some taxpayers may object." This applies to state acts of expression as well as to other governmental activities.

For instance, the Secretary of State's latest pronouncements on Africa may enrage me, yet I have helped to pay her salary. Every day, public school teachers propound before tender ears ideas that would make some of us cringe. For that matter, think of the portraits in City Hall's Blue Room, where the Mayor meets the press. They show an array of dead white males, including Jefferson (who owned slaves) and Edward Livingston (who served as an antebellum Louisiana senator after leaving New York in a hurry). I happen to think that Jefferson's portrait is a worthy symbol, but not everyone would agree. As Hugh Field, a freshman at Pratt Institute, told The New York Times, "I find the Mayor offensive, but that doesn't mean I'm going to stop paying my taxes."

It seems to me that citizens and elected officials ought to pay some attention to the Jeffersonian Principle and try to avoid decisions that will offend

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Sometimes offense should be given—either because those who take umbrage are morally wrong, or because discord is the price we must pay for equitable public debate.

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Truth v. Justice: The Morality of Truth Commissions

Robert I. Rotberg and Dennis Thompson, Editors

The truth commission is an increasingly common fixture of newly democratic states with repressive or strife-ridden pasts. From South Africa to Haiti, truth commissions are at work with varying degrees of support and success. To many, they are the best—or only—way to achieve a full accounting of crimes committed against fellow citizens and to prevent future conflict. Others question whether a restorative justice that sets the guilty free, that cleanses society by words alone, can deter future abuses and allow victims and their families to heal. Here, leading philosophers, lawyers, social scientists, and activists representing several perspectives look at the process of truth commissioning in general and in post-apartheid South Africa. They ask whether the truth commission, as a method of seeking justice after conflict, is fair, moral, and effective in bringing about reconciliation.

"This book discusses the vast and complex range of choices in between blanket amnesty and total accountability through criminal justice, and does so with engaged and critical sympathy."

—Albie Sachs, Justice of the Constitutional Court of South Africa

"The case for truth commissions is strongly and persuasively presented in these essays, which bring together a remarkable group of lawyers, political theorists, and historians, all of them intelligently engaged with each other's concerns."

—Michael Walzer

In addition to the editors, the contributors are Amy Gutmann, Rajeev Bhargava, Elizabeth Kiss, David A. Crocker, André du Toit, Alex Boraine, Dumisa Ntsebeza, Lisa Kois, Ronald C. Slye, Kent Greenawalt, Sanford Levinson, Martha Minow, Charles S. Maier, Charles Villa-Vicencio, and Wilhelm Verwoerd.

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people's deepest convictions. But sometimes offense should be given—either because those who take umbrage are morally wrong, or because discord is the price we must pay for having a robust, diverse, and equitable public debate. Mayor Giuliani claimed that the offense taken by some Catholics automatically made "Sensation" an inappropriate use of tax money. He thereby sought to end (or circumvent) the public debate about the particular works exhibited at the Brooklyn Museum—just as civil libertarians hoped to evade the debate by charging "censorship" in federal court.

A More Constructive Approach

Let's assume, instead, that democratic institutions may and will decide whether to fund art. It would be useful for the public and elected leaders to deliberate, rather than leave the results to brute majority rule or logrolling. In deliberation, a wide range of relevant considerations can be aired, stereotypes and hasty judgments can be debunked, and satisfactory compromises can be devised. In debates about arts policy, deliberation has a further advantage. Whether the state chooses to fund controversial art or to shun it, some are offended by what the government seems to be expressing on their behalf and with their money. It is a consolation to be able to articulate the contrary view during a public debate.

In Democracy and Disagreement, political philosophers Amy Gutmann and Dennis Thompson set high (and perhaps unrealistic) standards for "deliberation." Every argument must appeal to reasons or principles that could be accepted by other people who are also deliberating. Every empirical claim must be testable by reliable, non-private methods. All reasons and arguments must be offered in public. All participants (including ordinary citizens) owe explanations to everyone else whom their decisions may affect. As they deliberate, they are supposed to be open-minded, to acknowledge that their opponents' positions are also motivated by moral beliefs, and to explain their views in terms that minimize their disapproval of others.

By the Gutmann-and-Thompson standard, the public debate about "Sensation" was not deliberative. Many in the Art World (a loose network of established artists, agents, curators, critics, and patrons) attacked Mayor Giuliani's allegedly selfish motivations. But even if his only goal was to gain votes, his position could still be correct, his judgment sound. The lowest personal insult was delivered by Glenn Scott Wright, Chris Ofili's London agent. Wright told The Washington Post that Mayor Giuliani's behavior is "both totalitarian and fascist, a reprise of the Nazi regime's censorship." This kind of remark makes a decaying cow's head look like a subtle and perceptive statement.

A half dozen editorials implied that it was a mistake for the public to deliberate about whether to support contemporary art. Even the most offensive works might later turn out to be great—weren't Shakespeare and Joyce controversial in their times?

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But imagining doing it requires a degree of artistic intuition of a very rare order, since one would have to anticipate what it would look like and what effect it would have on the viewer. The work in fact has the power, sobriety and majesty of a cathedral, some of which, of course, must be credited to the shark itself.
Chris Ofili's "The Holy Virgin Mary," a controversial painting of the Virgin Mary embellished with a clump of elephant dung and two dozen cutouts of buttocks from pornographic magazines, shown at the Brooklyn Museum of Art as part of the "Sensation: Young British Artists From the Saatchi Collection" exhibit. (AP Wide World Photo/Diane Bondareff)
Deliberation and the Avant-Garde

Danto’s review exemplifies deliberation; but how deliberative must critics, artists, curators, patrons, and agents be? All of Gutmann and Thompson’s examples involve matters that public officials debate: laws, appropriations, court rulings, and administrative decisions. It seems philistine and misguided to ask artists and their interpreters to become policy analysts. Nevertheless, I believe that avant-garde artists can and should pay more attention to deliberative values than they do.

Consider an example of politically motivated or *engagé* art that fails as rhetoric because the artist does not know how to persuade average Americans who disagree with him. On the wall of the Whitney Museum, Hans Haacke has printed Mayor Giuliani’s remarks about the “Sensation” show in *Fraktur*, Hitler’s preferred script. The sound of marching boots emerges from nearby trash cans, while newspaper clippings and the text of the First Amendment lie on the floor, apparently ready to be trampled.

This installation, entitled “Sanitation,” criticizes a public policy (the revocation of the Brooklyn Museum’s funding). It offers reasons for its conclusion and may promote serious thinking—although perhaps not exactly the thoughts that Haacke had intended. On these grounds, “Sanitation” qualifies as an exercise in deliberation, but it is an extremely clumsy example. It invites the response that its artist has trivialized the Holocaust and misunderstood the present political situation. Rudy Giuliani is no Adolf Hitler; besides, the Mayor’s office lacks dictatorial powers. Perhaps Haacke feels that he dwells among the complacent subjects of a police state, so that he must issue shocking statements in order to provoke dialogue and resistance. However, this view is false. The fact that “Sanitation” poses as “art” is no excuse for its bad arguments and *ad hominem* attacks.
Unlike Haacke’s “Sanitation,” the works in “Sensation” do not directly engage policy questions. Often they challenge the traditional limits of art by combining a cool, museum-style presentation with appalling materials, such as human blood. But even these works can be germane to policy decisions. The public (and public officials) must consider the definitions, purposes, and limits of “art” whenever the question of cultural subsidies arises. If post-modern artists successfully undermine the distinction between art and despised objects such as cows’ heads, then the case for arts subsidies will weaken. More generally, shocking the bourgeoisie is no way to persuade them to pay for art. Representative Brian Bilbray is a moderate California Republican who votes to fund the National Endowment for the Arts. “You can’t expect public funds to be used on the cutting edge,” he told the San Diego Union-Tribune, “because artists have to be responsible to the people who pay the bills, just like Michelangelo had to answer to the pope.”

Another class of works in “Sensation” invites us to change our ways of observing other people, perhaps for moral reasons. For instance, Danto argues that Jenny Saville’s cropped painting of a naked woman with contour lines like those in a topographical map (“Trace”) challenges our tendency to objectify the female body. Saville is heir to a long tradition of artists who seek to shock us out of our visual habits and assumptions. Consider a famously controversial American work, Andres Serrano’s photograph of an old woman with withered breasts about to perform oral sex on a young man (“The Kiss,” 1996). The purpose of this image is surely to make men question their desire for images of nude female bodies.

In principle, such works could change social norms for the better, with implications for public policy. But it is unlikely that many men who happily employ the “male gaze” when they look at real women are going to view images by Saville and Serrano. Except when there is a controversy about public money, the Art World mostly talks to itself. Avant-garde artists could once command a large audience merely by crossing boundaries of taste and propriety, but now the public is not so easily shocked, and only pop culture frequently achieves succès de scandale. The Daily News’ Michael Daly wrote: “As viewed in the catalogue, ‘Sensation’ is now about as sensational as Beanie Babies.” Ofili’s “Holy Virgin Mary” still managed to attract headlines by appalling the Catholic Church, but the only people who seemed to notice Jenny Saville’s paintings were respectful art critics who already opposed sexism and the male gaze.

Therefore, instead of trying to astound the bourgeoisie, engage artists might employ more deliberative techniques. It need not be burdensome to have to persuade average citizens by using reasons that they can share and by listening carefully to their responses. These are democratic skills that can inspire the fine arts, as the long tradition of American public art testifies. One high point was the New Deal, when artists employed by the Works Progress Administration’s Federal Art Project (WPA/FAP) generated hundreds of thousands of murals, posters, and statues in consultation with “co-operating sponsors”—usually local governments. Even today, Christo saves all the correspondence, plans, environmental-impact statements, and petitions that he needs before he gets permission to “wrap” a building. These objects (which are often beautiful) become part of the art; they celebrate his respectful engagement with democratic communities.

To engage the public in dialogue does not require behaving in the civil, courteous, and reasonable fashion that we would prefer in the U.S. Senate or the Supreme Court. When the circumstances demand it, the artist and philosopher Adrian Piper distributes small cards with the following text: “Dear Friend. I am black. I am sure you did not realize this when you made/laughed at/agreed with that racist remark.” This is effective political performance art. It challenges not only the recipient but also Piper’s whole audience to examine their consciences in ways that could change social norms and ultimately affect public policy decisions. Perhaps Piper’s cards do not exemplify deliberation, as Gutmann and Thompson define it. For example, when she appears to acknowledge the good faith of others (“Dear Friend, I’m sure you did not realize . . .”), she may be bitingly sarcastic rather than sincere. But an artist can contribute to an important democratic conversation even if her rhetoric is not itself civil.

The Politics of Art

More so than artists, elected officials and political commentators have a duty both to deliberate and to

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foster reasonable public discussion. To be sure, politicians sometimes face a dilemma. If they behave civilly and thoughtfully, they may lose elections to opponents who hold what they consider pernicious views and methods. The competitive nature of politics excuses some lapses from the Gutmann-and-Thompson norms. But that does not mean that everything that powerful politicians say is acceptable from the public’s point of view. Similarly, newspapers must sell copies in a competitive marketplace. But they do not have to discard civility and reasonableness in order to capture market share.

One of the worst effects of the “wars” over arts funding is that we have not been able to deliberate about such issues as a public or in Congress.

During the “Sensation” debate, New York City looked for technical excuses to penalize the Museum, rather than advance a cogent critique of the art. (I leave aside the conflict-of-interest allegation, which raised important but complex questions about museum practices generally.) The Mayor never addressed the arguments that Danto and others made in defense of the Young British Artists; indeed, he never attended the show.

Meanwhile, in the New York Post, columnist Rod Dreher called the exhibition’s organizers “Prospect Park Poo Peddlers” and accused them of “intellectual mountebankery and self-righteous leftie mewling.” This was extreme, but more respectable voices repeatedly accused Ofili of being an anti-Catholic bigot, even though the artist denied the charge and explained that his use of elephant dung symbolized “regeneration.” Mike Barnicle of the New York Daily News presented a particularly caustic analogy:

Ofili, himself a Catholic, is black as night. Imagine for a moment if a guy named Kelly sat down at an easel, produced a painting of a black man being dragged behind a pickup truck driven by a laughing rabbi with a smiling Billy Graham standing on the bumper, urinating on the victim’s battered corpse and decided to call it art.

Liberal museum goers, Barnicle concluded, would be the first to demand that “Kelly’s” work be banned. But it’s hard to see how the wicked and cartoonish painting in Barnicle’s story could resemble “The Blessed Virgin Mary.”

The Mayor denounced any and all art that (as a factual matter) offends some citizens. Instead, he could have explained why the particular works in dispute were not worth exhibiting and then listened to any serious replies. At the same time, he could have consid-

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Announcement—
The Report to have a new name!

Beginning with the first issue of 2001 (Volume 21, Number 1), the quarterly publication, Report from the Institute for Philosophy and Public Policy, will have a new name:

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