***April 16, 2015***

1. Last time, saw that *Notre Dame v. Sebelius* helped us think about what a “reasonable accommodation” and a “substantial burden on free exercise” are. This time, we’ll recall an exchange in our discussion from last time to deepen our understanding of another theme of Nussbaum’s book.
2. Big theme of Nussbaum’s chapter on burqa, and indeed of her book, is inconsistency, its role in human moral failure and how it can be overcome. We want to understand that.
   1. Start with the inconsistency of which Notre Dame was accused – it is inconsistent to provide coverage of Viagra to everyone while denying contraceptive coverage to women. This was the point pushed by Rachel and Natasha.
      1. In what exactly does the inconsistency consist?
         1. The men can use Viagra only to facilitate sexual activity
         2. So if a man receives doctor-prescribed Viagra, then he uses it to facilitate sexual activity.
         3. If an unmarried man receives doctor-prescribed Viagra, then he uses it to facilitate sexual activity
         4. Sexual activity by unmarried men is sinful activity.
         5. So an unmarried man who receives doctor-prescribed Viagra uses it to facilitate sinful activity
         6. Notre Dame covers the costs of Viagra prescribed for unmarried male students and faculty.
         7. So Notre Dame covers the costs of something some of its unmarried male students and faculty use to facilitate sinful activity.
         8. The use of artificial contraception by women is sinful.
         9. Notre Dame refuses to cover the costs of artificial contraception to its female employees and students.
         10. So Notre Dame refuses to cover the costs of something some of its female employees and students use to facilitate sinful activity.
         11. Notre Dame treats men and women inconsistently.
      2. Argument goes on from here in an interesting way. But first note that we can get to C only if the word ‘sinful’ means the same thing in (4) and (8). One might deny – as Danny did -- that they do mean the same thing. Do they?
   2. Responses:
      1. Where does the argument go from here?
         1. Choice of whether or not to engage in sinful activity should be left equally to all employees.
         2. That choice is left to male employees and students but not to female employees and students.
         3. So Notre Dame burdens what should be the free choices of female employees and students but not male employees and students.
         4. The imposition of differential burdens by gender on what should be free choices reflects gender bias.
         5. So the Notre Dame policies regarding Viagra and artificial contraception reflect gender bias.
         6. Policies which reflect gender bias should be changed so that they no longer reflect it.
         7. So Notre Dame should change its policies regarding Viagra and artificial contraception so that neither choice is burdened.
      2. Should we deny step (1), the claim that the choice should be left equally to employees?

* + - * 1. If so, will we then want – not just to deny C – but to argue on the contrary that Notre Dame should burden the choices of *both* male and female employees and students?
        2. Would it be fair for Notre Dame to impose that burden? Or would that amount to treating faculty/students and staff inconsistently, since staff have few employment options whose conditions are not set by Notre Dame?
    1. Should we accept (4)? To decide whether to accept (4) and its implications, do we need the kind of sympathetic imagination and wide-ranging discussion Nussbaum advocates?
  1. Now to Nussbaum’s claims about inconsistency:
     1. Inconsistency shows a failure to treat *everyone* as equals.
     2. Inconsistency revealed in the arguments does not show a failure to treat *others* – those other than oneself – as equals. It therefore seems to be of a different form than Nussbaum identifies at the beginning of chapter 3. Does this call into question the link she tries to forge between inequality and selfishness? *See discussion questions on pp.98-138.*