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Community and Identity in a Postmodern World

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Review Essay
Community and Identity
in a Postmodern World

MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION
AND AMERICAN LAW By Martha Minow. Ithaca: Cornell Univer-
sity Press, 1990. Pp ix, 403. $29.95 cloth; $13.95 paper.

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I. INTRODUCTION

My childhood, as was many of ours, was heavily influenced by the
characters, skits, and songs of the television show "Sesame Street."
Through this show, I learned my ABC's, the identification and spelling
of common everyday objects, and, according to Minow in her book *Mak-
ing All the Difference: Inclusion, Exclusion and American Law*,[1] how to
categorize and differentiate those objects. Through the song "Which one
of these things is not like the others," many young children are requested
to pick out the items that do not belong with the rest of the group of
items depicted (p 1). As lawyers, we continue this tradition of simplify-
ing often complex factual situations into neat, pre-existing legal catego-
ries under the guise of "legal analysis" (p 2). While, at first glance, the
process of categorizing may appear harmless, Minow warns us otherwise:

> When we identify one thing as like the others, we are not merely classify-
> ing the world; we are inventing particular classifications with consequences
> and positioning ourselves in relation to those meanings. When we identify
> one thing as unlike the others, we are dividing the world; we use our lan-
> guage to exclude, to distinguish—to discriminate (p 3).

Hence, Minow begins her roughly 400-page journey into a thorough
exploration of what she terms the "dilemma of difference," and its causes
and resolution. The dilemma is that we may recreate the "stigma of dif-

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[1] Martha Minow, *Making All the Difference: Inclusion, Exclusion and American Law* (Cornell
Press, 1990) (*"Difference"*).

ference by either ignoring or noticing it" (p 20). In Minow's mind, this dilemma seems to result from society's process of assigning individuals to categories and then, once categorized, determining which categories to include and exclude from political, social and economic barriers (p 21). Using real examples from litigation involving conflicts such as maternity leave, bilingual education, Native American land claims and affirmative action, Minow goes about the task of deconstructing the very notion of difference—categorized and labeled as such by those in power—to arrive at a "way out" of the dilemma. By exposing the relational nature of labeling "difference" and the people behind the labeling, Minow finds a way out of the dilemma by instructing those in power to "take the perspective of another" in order to understand how difference is a function of comparisons between people. Finally, she suggests that the disempowered assert the "language of rights" to gain attention for neglected perspectives (pp 379-83).

Minow's approach is a brilliant and thought-provoking analysis that will undoubtedly leave the majority of readers forever changed in the way that they go about the daily process of organizing things, people, and events. This accomplishment is monumental in and of itself. However, while she deconstructs difference, reconstructs "rights language" and urges those in power to shift to the standpoint of the historically marginalized (p 376), there is very little in her approach that is transformative for those marginalized by the assignment of difference and its attendant meanings. Nor does Minow consider alternatives to the difference dilemma outside of the existing structures of power and its institutions. This review essay explores ways in which difference can both be deconstructed and simultaneously reclaimed by those marginalized by the social construction of difference.

II. THE PROBLEM WITH DIFFERENCE: DILEMMAS, SOURCES, RESOLUTIONS

Minow tackles an arduous challenge: How do we "respect and acknowledge differences without preserving the historical negative consequences" of some differences (p 39).[2] On the one hand, recognizing differences may reinforce negative meanings associated with them, thereby recreating difference in a society committed to sameness (p 20). On the other hand, refusing to acknowledge differences may make them "continue to matter in a world constructed with some groups, but not others, in mind" (p 20). In the legal world, this dilemma can translate into debates about special versus equal treatment, integration versus separa-

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[2] Minow focuses on those categories often deemed the most salient in society; that is, race, gender, ethnicity, religion, class, and disability. These categories are salient because "the dominant institutional arrangements were designed without [them] in mind." Minow, *Difference* at 70.

tion, and neutrality versus accommodation (p 20). Current legal responses to these debates tend to recreate, rather than resolve, the dilemma: "The right to be treated as an individual ignores the burdens of group membership; the right to object to the burdens of group membership reinvokes the trait that carries the negative meaning" (p 48).

Despite the serious shortcomings of the current legal system, Minow is not yet willing to junk the entire system. Instead, she carefully examines the unstated assumptions behind sources of difference, seeks to dispel them and moves on to demonstrate how the legal system can be transformed to "reveal truths obscured by the dominant view" (p 376). Reversing the unstated assumptions that make the difference dilemma seem unresolvable, her starting points for transformation of this dilemma are the following: 1) difference is relational, not intrinsic; 2) "who" or "what" should be taken as the point of reference in naming difference (that is, the norm) is debatable; 3) there is no single perspective for judging questions of difference—every perspective is a perspective, no matter how widely held; 4) assertions of difference as "truth" obscure the power of the person attributing a difference and exclude competing perspectives; and 5) existing social and economic arrangements are not neutral and cannot be justified by the claim that everyone has chosen his or her position in the status quo (pp 52-53).

Jettisoning off of these premises, and through an intricate analysis of various reform movements and theories (pp 146-224), Minow deconstructs difference. In her view, difference is located in relationships. Since "people live and talk in relationships and never exist outside of them," it follows that difference is a statement of relationships between people and social practices (p 111). Difference is "difference" because it is named in comparison to an unstated norm constructed by those in power (p 111). By paying attention to, and exposing, *who* names the difference "notions of difference will no longer be the end but rather the beginning of an inquiry about how all people, with all their differences, should live" (p 213).

The essence of the transformation of the "dilemma of difference" is that once those in power admit to the partiality of their perspective, then they can finally see the perspective of the marginalized and the marginalized can use the "language of rights" to demand attention for their perspectives that have been neglected by those in power (pp 373-90). In the "language of rights," Minow finds a communicative framework through which one challenges unstated norms, exclusion and exclusive perspectives (p 297). "Rights language" can also be a way to describe and remake patterns of relationships (p 383). Thus, to strengthen her social relations approach, she "rescues" and "reconstructs" the "language of rights" to enable it to spark "rich contests over whose version of reality should prevail, for now" (p 383).

While undoubtedly transformative, Minow's resolution of the dilemma of difference leaves control of the transformative process too much in the hands of those already in power. Minow urges those in power to take seriously the perspective of those who have not been the norm, or to shift to the standpoint of an historically marginalized person. In return, those marginalized by assigned meanings of difference are urged to demand attention for their perspectives through the "language of rights." To Minow's credit, she boldly shifts some of the burden of transformation on those doing the labeling. However, the weakness of Minow's approach is that she does not pay enough attention to how equal discourse can be achieved in a communal dialogue given current realities of hierarchical relations between groups in this society. If one does not alter society's structural inequities that are built upon dominant patterns of participation and discourse, the question is whether individuals who are continually burdened by the assigned meaning of difference can empower themselves to assign new meanings of difference that transcend the old labels. Is the assertion of "rights language," alone, sufficient to rescue the historically marginalized? In the next two sections, I will explore Minow's theory more closely and offer alternative ways in which the meaning of difference can be reclaimed within the communities of individuals marginalized by the dilemma of difference.

III. THE "LANGUAGE OF RIGHTS" AND EMPOWERMENT THROUGH COMMUNITY

I believe that one of the most sound ideas in dramatic writing is that in order to create the universal, you must pay very great attention to the specific. Universality . . . emerges from the truthful identity of what is.[3]

A. The Communitarian Movement

A recent movement among legal scholars who embrace a theory of communitarianism has become increasingly popular and prominent.[4] This theory rejects liberalism's focus on the individual and believes in the process of collective, deliberative dialogue amongst the community of all

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[3] Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* at 74, 234 (Routledge, 1990) ("*Black Feminist Thought*") (citing Lorraine Hansberry, *To Be Young, Gifted and Black* (Signet, 1969)).

[4] See Frank Michelman, *Law's Republic*, 97 Yale L J 1493 (1988); Cass Sunstein, *Beyond the Republican Revival*, 97 Yale L J 1539 (1988); Note, *A Communitarian Defense Of Group Libel Laws*, 101 Harv L Rev 682 (1988); Cynthia Ward, *The Limits of "Liberal Republicanism": Why Group-Based Remedies and Republican Citizenship Don't Mix*, 91 Colum L Rev 581 (1991); and Alex Johnson, *The New Voice of Color*, 100 Yale L J 2007 (1991) (describing the communitarian theory and situating some of the "new voices of color" within the author's revised theory of communitarianism). Note that the terms "communitarianism," "republicanism" and "civic republicanism" have often been used interchangeably. Note, 101 Harv L Rev at 682 n1.

citizens towards a conception of the common good.[5] In this collective, the individual is viewed not atomistically as the sum of parts, but rather as part of the community "simultaneously shaping the community to which he belongs and being shaped by it."[6] Some of the basic attributes of this theory are 1) the notion of community as the assimilation, as opposed to the encouragement, of difference;[7] 2) the ability of the community's citizens to take the position of another; 3) the openness of every citizen in the community to change and/or revise their most fundamental commitments; 4) nonconfrontation; and 5) a state reactive to citizen determinations of the public good.[8]

Pluralism, its political adversary, reflects a process whereby interest groups struggle and compete for scarce social resources and political victories.[9] A key feature of pluralism is political representation whereby government officials "respond to constituent desires and exercise little or no independent judgment."[10] Communitarianism rejects pluralism's "preoccupation with the individual and the individual's participation within particular interest groups that fosters a focus on self and allows differences—such as race, ethnicity, and gender—to divide our society."[11] Pluralism's atomization of interests is said to be destructive to "public citizenship" and "community" because it alienates the citizen from her government.[12] Instead, achieving "universalism," the mediation of different approaches and conceptions of the common good through discussion and dialogue, is said to be more politically viable and less divisive.

B. Minow's Community: Rights and Relationships

Whether intended or not, Minow's reconstruction of "rights language" through the recognition of their "inevitable relational dimensions" (p 283) leads her down a familiar path of embracing "communitarianism." She rejects traditional rights theory's obsession with autonomous individualism. Although it often provides a remedy to the individual, rights analysis often leaves existing institutions that themselves define and burden difference in place: "[I]n short, it preserves

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[5] See Ward, 91 Colum L Rev at 585 (cited in note 4); Johnson, 100 Yale L J at 2053 (cited in note 4).

[6] Johnson, 100 Yale L J at 2056 (cited in note 4).

[7] For example, as one commentator has noted:
   To overcome the separatist pull of diversity and disagreement, a strong momentum toward political connectedness, manifested in a common belief in the possibilities of empathic dialogue, is essential if a republican community is to survive.
   Ward, 91 Colum L Rev at 585 (cited in note 4).

[8] Id at 584-89 (summarizing the literature in this area).

[9] Sunstein, 97 Yale L J at 1542 (cited in note 4); Ward, 91 Colum L Rev at 593 (cited in note 4).

[10] Sunstein, 97 Yale L J at 1543, 1547 (cited in note 4).

[11] Johnson, 100 Yale L J at 2053 (cited in note 4).

[12] Ward, 91 Colum L Rev at 596-97 (cited in note 4).

rather than alters the dilemma of difference" (p 147). Indeed, current rights conceptions merely carve out spheres of authorized individual action and articulate relationships between the individual and the state by dictating "when the state will affirm an individual's liberty to act or fail to act, and when the state will listen to a person's objections about another's conduct" (p 279).

On the other hand, a traditional social relations approach fails to check power when people unknowingly misuse their power by claiming to act in the best interests of others (pp 241-66). Minow illustrates the weaknesses of traditional social relations theory through current feminist theory's essentialism and early nineteenth century's progressivism. For example, feminists' claim to speak from the standpoint of all women, suppressing the multiplicity of women's differences, represents the easy slip into "simplifying constructions [that] reflect political, economic, and social structures that are usually taken for granted" (pp 229-39).[13] Likewise, progressive reformers' avoidance of participatory processes, that would include those individuals they sought to help while imposing their interests on those very same people, merely resulted in the perpetuation of a world of "us" versus "them" and an expansion of bureaucratic power (pp 239-66). Minow sees both movements as another version of the dilemma of difference: "collective neglect of individual need denies relationships and oppresses individuals, but so [do] many efforts to acknowledge need and responsibility towards others" (p 266).

The danger with a pure social relations approach or a strict rights-based approach manifests itself through "either a system of hierarchical status relations or a system of autonomous individualism that leaves each person 'free' to protect himself or herself in an indifferent or hostile world" (p 268). Given this reality, the last one third of her book is devoted to constructing "Rights in Relationship." She attempts to rescue both the social relations approach and the rights approach in order to capture what "seemed valuable in a world of mutual obligation while still pursuing the protection of rights against coercive power" (p 268). To do so, she locates rights *within* actual relationships instead of as a *definition* of the relationship (p 269). Minow argues that legal rights should be seen as the "language of a continuing process rather than as fixed rules" (p 295). In fact, the assertion of "rights language" can affirm "community" and foster communal dialogue:

> By invoking rights, an individual or group claims the attention of the larger community and its authorities. At the same time, this claim acknowledges the claimant's membership in the larger group, participation

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[13] This point has been developed fully by other scholars. See Elizabeth Spelman, *Inessential Woman: Problems of Exclusion in Feminist Thought* (Beacon Press, 1988); Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan L Rev 581, 585 (1990) (describing gender essentialism as the notion that there is a monolithic "women's experience" apart from other facets of experience like race, class, and sexual orientation).

in its traditions, and observations of its forms. . . . Those who claim rights implicitly agree to abide by the community's response and to accord similar regard to the claims of others. In a deeper sense, those claiming rights implicitly invest themselves in a larger community, even in the act of seeking to change it (pp 293-94).

Minow defines community as "not total agreement but, instead, commitment to share a 'communicative framework' " (p 294). Thus, like advocates of the communitarian movement, Minow envisions a community, universal in nature, where the "language of rights" draws each claimant into the community and "grants each a basic opportunity to participate in the process of communal debate" (p 296). Equality in this "rights discourse" community would mean that every person has "equality of *attention*" (p 297). Rights, because of their powerful effect in the law, call upon those in power to "at least listen" and "structure attention . . . even for individuals and groups treated throughout the community as less than equal" (p 297).

C. Advantages of the Universal Community

Because the notion of "community" presupposes similarity on some level amongst those constituting the community,[14] the theory of communitarianism has been criticized on a number of grounds. For example, it has been criticized for advocating heterogeneity despite the "incommensurability of values among groups."[15] The notion that a heterogenous society can reach a general perspective on any substantive issue is doubtful. Moreover, without some criteria or substantive principles for deciding which perspectives should be taken into account and when, communitarianism lacks a mediating principle.[16] Communitarianism has also been criticized as unrealistic given the fact of pluralism: that is, that every individual belongs to a host of groups and coalitions, many of which have stronger claims on individuals than a vague concept of "the community."[17] Additionally, it seems to require too much of a leap of faith for the nation's disadvantaged to believe that such a theory can improve their legal status in light of this nation's history of oppression.[18]

However, there is something undoubtedly appealing about the notion of addressing issues of difference through a universal community. Something about the very process of communal dialogue seems inherently transforming. The notions of talking and listening to each other,

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[14] See Minow, *Difference* at 386 (cited in note 1) (asserting that individualism is a delusion because "language is shared and our categories communally invented").

[15] Kathleen Sullivan, *Rainbow Republicanism*, 97 Yale L J 1713, 1722 (1988).

[16] Id at 1722-23; Kathryn Abrams, *Law's Republicanism*, 97 Yale L J 1591, 1600 (1988).

[17] Jonathan Macey, *The Missing Element in the Republican Revival*, 97 Yale L J 1673, 1679 (1988).

[18] Derrick Bell and Preeta Bansal, *The Republican Revival and Racial Politics*, 97 Yale L J 1609, 1612-13 (1988).

finding the commonality and acknowledging the differences between members of the community, and treating "dilemmas of difference" as community problems rather than problems rooted in distinct individuals, are all extremely attractive elements of communitarianism.[19] In community, for example, problems of pregnancy and childcare have the potential to become a community concern and not just "a woman's problem" that requires solutions involving everyone in the community (p 89). Racial discrimination would involve more than just a major breach of constitutional rights requiring an individualized remedy but, rather, a responsibility for the entire community to address and remedy.

In the case of children with special educational needs, Minow aptly demonstrates that such community responses are possible. Instead of addressing the issue of teaching a hearing-impaired child in a speaking school by either isolating the child into a classroom with other hearing-impaired children and a sign language teacher or by bringing a sign language teacher into the English speaking classroom to interpret for the hearing-impaired child, Minow proposes:

> . . . [W]hat if the teacher instructed all the students in sign language and ran the class in both spoken and sign language simultaneously? This approach conceives of the problem as a problem for all students. After all, if [the hearing-impaired student] cannot communicate with her classmates, they cannot communicate with her, and all lose the benefit of exchange. Moreover, conducting the class in sign language would engage all the students in the difficult and instructive experience of communicating across traditional lines of difference. . . . It would be educational for all of them to discover that all languages are arrangements of signs and to use group action to improve the situation of an individual. Involving classmates in the solution affords a different stance toward the dilemma of difference: it no longer makes the trait of hearing impairment signify stigma or isolation but responds to that trait as an issue for the entire community (p 84).

Thus, a communitarian approach seems particularly well-suited to problems of social equality and difference because it offers more than just the possibility of "equal rights." It goes further by offering a community which seeks to promote equal dialogue between individuals who share some of the same goals but who also bring diverse backgrounds and experiences to political debate.[20] Such dialogue can expose possible unconscious biases by requiring each person to express her interests and views to the public and allows those biases to be openly challenged.[21] Additionally, resolving issues of difference and equality through community dialogue strengthens the moral force behind a resolution to end, say,

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[19] Ward, 91 Colum L Rev at 601-03 (cited in note 4); Minow, *Difference* at 80-90 (cited in note 1).

[20] Michelman, *Conceptions of Democracy in American Constitutional Argument: Voting Rights*, 41 Fla L Rev 443, 450 (1989) (describing "dialogic politics").

[21] Ward, 91 Colum L Rev at 602 (cited in note 4) (pluralist liberal state leaves the psychological motivations of private citizens untouched).

discrimination based on certain differences. As in the case of the hearing-impaired student, community dialogue "would challenge the perspective of any observer who assumed the existing classroom instructional mode to be natural and necessary" and "alternatives to the status quo . . . would need consideration" (p 84).

D. Problems With the Universal Community

One critical element missing from communitarianism theory is how the universal community ought to be shaped. How do we achieve a community where the marginalized person who attempts to assert "rights language" (or other forms of language) in a national dialogue will be equally acknowledged and listened to? As Minow and others have noted, communal dialogue is founded on the notions of shared goals, an equal right to present one's views, "equal attention," and empathic discussion. This concept of a universal dialogic community assumes too much. It assumes shared goals by members of the community. It assumes that individuals are positioned similarly to each other and that current power imbalances will easily disappear. It assumes that those in power will relinquish that power with just a little enlightenment. It assumes equal participation by all members of the community. Yet, for many individuals, participation on multiple levels of this society is far from equal. Moreover, it is doubtful that the mere assertion of "rights language," as the past few decades have instructed us, will be enough to alter institutional arrangements and foster equal recognition, participation, and attention.

In the ideal universal community, power dynamics would be fluid, everyone would have a voice (even if that voice were represented by a group), everyone would listen and respond to other voices in order to remain in the community, and everyone would share a common cause which would foster communal dialogue and encourage individuals to transcend their differences.[22] However, neither Minow nor other proponents of communitarianism tackle the problem of constructing this universal community. While Minow recognizes that "power may be at its peak . . . when it shapes preferences, arranges agendas, and excludes serious challenges from either discussion or imagination" (pp 237-38), she gives insufficient attention to ways in which power dynamics could be altered to allow for equal attention and consideration in communal debate. Aside from professing belief that the "language of rights" can "battle dominant arrangements" (p 382) by sustaining the call that "makes those in power at least listen" (p 297), Minow does not attend to the complexities of power arrangements that continue to disenfranchise certain groups in this society. Without thoroughly addressing current

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22 See Collins, *Black Feminist Thought* at 233-34 (cited in note 3).

patterns of participation, power dynamics, and inequities among groups of citizens, the universal community will merely reflect the status quo and thus be thwarted from fostering the type of dialogic process that ideally characterized it.

For those who have been marginalized by the power dynamics and lack of inclusive participatory patterns in this society, it is important to first achieve self-definition within those smaller communities where they share common languages, heritages, and goals. In order to attain a universal community struggling for its common causes, we must first examine the specific context in which knowledge claims are made and the power inequities among groups that produce what Donna Haraway calls "subjugated knowledge" from those groups.[23]

> A Black women's standpoint and those of other oppressed groups is not only embedded in a context but exists in a situation characterized by domination. Because Black women's ideas have been suppressed, this suppression has stimulated African-American women to create knowledge that empowers people to resist domination. Thus Afrocentric feminist thought represents a subjugated knowledge.[24]

The mere presence of subjugated knowledges among groups in a society indicates that groups are not equal in making their standpoints known to themselves and others.[25] In order to bring these groups with subjugated knowledge into a larger community, they must first develop a sense of knowledge, identity, and empowerment in their own communities.

In order to achieve the universal community, empowerment of the historically marginalized must occur within their own communities. Individual self-definition can occur within communities where language, heritage, and certain goals are widely shared. This approach is communitarian in nature because it situates self in the context of respective communities rather than in an individual context.[26] It allows for equal dialogue, albeit in multiple dialects, within communities where all voices are heard and where voice emanates from the community in which it is shaped.[27] It also paves the way for a more universal equality among groups whereby those in power will recognize and take seriously self-definition by marginalized groups. A universal community will only be achieved through an ongoing search for identity among the marginalized, a recognition of their power to define themselves, and a respect for those identities.

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23 Id at 235-37 (citing Donna Haraway, *Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective*, 14 Feminist Studies 575, 575-99 (1988)).

24 Id at 234 (citing Michel Foucault in Colin Gordon, ed, *Power/Knowledge: Selected Interviews and Other Writings 1972-1977* (Pantheon, 1980)).

25 Id at 235-36.

26 Johnson, 100 Yale L J at 2059 (cited in note 4).

27 Id at 2059-61.

IV. RESCUING CATEGORIES AND IDENTITIES

A surprisingly less predominant theme in Minow's book is the extent to which difference, as constructed, shapes the identities of those burdened with the meaning of difference. Minow touches upon this theme by acknowledging, in a few places in her book, that differences may be important to identity but that negative meanings associated with difference eventually outweigh any positive aspect of that difference. Much of the injury, as Minow points out, results from "pigeonholing people in sharply distinguished categories based on selected facts and features" (p 53). Categorization is easy because people fall back on stereotypes and imagery created around the construction of differences that allow us to simplify the world we perceive (p 234). However, the danger of categorization is that it assumes an essence of individuals based on one trait, rather than trying to see the various traits of that individual (pp 233-34). Another danger of simplifying categorizations is that they "reflect political, economic, and social structures that are usually taken for granted" (p 237).

Perhaps because of the power possessed by those constructing essentialist categories, the shaping of identities of those burdened through the categorization process does not appear to be a viable approach in altering negative meanings of difference. In Minow's mind, any effort of the marginalized to reshape their identity, despite the assigned meaning of difference, is futile. The meanings of difference cannot be altered by those burdened by them because "the meanings of these traits are beyond the control of any individual, although groups of people may organize to challenge negative meanings assigned to a trait they share" (p 47). This presents another dilemma for marginalized groups: "[h]ow do you protest a socially imposed categorization, except by organizing around that category?" (p 55) Minow, however, does not have much faith in group action designed to alter the meaning of difference because, in resisting the demeaning consequences of those labels, groups will ultimately "encounter complex layers of meanings that they cannot control" (p 235).

Again, Minow leaves the power of transformation, this time with respect to creating identities, in the hands of those already in power. By "shifting to the standpoint of a historically marginalized person" and "opening up to another point of view," those in power must at least entertain the possibility that "prior categories and assumptions need revision" (p 376). The end result of this transformation may mean the death of labeling and categorization by those in power and the realization of how "we are *all* different from one another and also how we are all the same" (p 376). Minow does not sufficiently address the use of categorization by those burdened by the assigned meaning of difference other than to say that "a different analysis" is warranted for "self-assigned difference, names and identities chosen by the group itself" (p 119). However,

the main point of her book seems to be that focusing on categories of difference, for whatever purpose, recreates the stigma of difference and, hence, leaves intact the "dilemma of difference."

Categorization, though, has been and continues to be a means by which those marginalized groups can empower themselves by redefining the assigned meaning of difference. Categories, like rights, need to be rescued to allow those marginalized by essentialist categorization to empower themselves by altering, for themselves, the meaning of categories of difference imposed upon them by those in power. Minow's rationale for rescuing rights is equally powerful with regard to categories:

> There is something too valuable in the aspiration of rights, and something too neglectful of the power embedded in assertions of another's need, to abandon the rhetoric of rights. That is why I join in the effort to reclaim and reinvent rights. Whether and how to use words to constrain power are questions that should be answered by those with less of it. For this task, rights rhetoric is remarkably well suited. It enables a devastating, if rhetorical, exposure of and challenge to hierarchies of power. . . . As a bridge between the world-that-is and alternative worlds-that-might-be, rights claims cannot belong exclusively to any state or set of officials. Those without official roles are equally important to the task of bridging present and future (p 307).

Marginalized groups can rescue categories by claiming those categories and by transforming negative meanings associated with them into positive ones that they create. The empowerment in this process of transformation comes not only in protesting the assigned meanings of a categorical difference, but also in the recognition of the power to define that difference for the community of individuals embracing the difference. When marginalized groups define themselves, they "clearly reject the assumption that those in positions granting them the authority to interpret our reality are entitled to do so."[28]

Minow's apparent lack of faith in this process of empowerment, her seeming willingness to get rid of categories altogether, and her placement of the power of transformation in the hands of the powerful, are antithetical to a theory of empowerment that reclaims assigned meanings of difference. Instead, as Minow herself at times intimates, distinction should be made between those who "deploy" or "activate" and those who "lapse into" essentialist categorization.[29] Looking at the subject-position from which one categorizes and where the effects of the categorization are concentrated is critical in deciding whether categorization is being deployed as a powerful tool of domination by a hegemonic force or whether it is being deployed as a political tool of self-definition by a politically

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[28] Collins, *Black Feminist Thought* at 106-07 (cited in note 3).

[29] Diana Fuss, *Essentially Speaking: Feminism, Nature and Difference* at 20 (Routledge, 1989) (arguing that the essentialist/constructionist binarism of current postmodern, and, in particular, feminist, theory can be paralyzing).

marginalized group.[30] Of course, there is always the danger that a group deploying a strategy of essentialist categorization will create a mutually exclusive nature of their identity and thus frustrate any later attempt to create community or coalitions sharing common goals.[31] However, as Diana Fuss argues, one answer to this is that "we need both to theorize essential spaces from which to speak and, simultaneously, to deconstruct these spaces to keep them from solidifying."[32]

V. CONCLUSION

"A new generation of activists is here" announced the winter 1991 issue of *Out/look*, the national lesbian and gay quarterly:

> They are trying to combine contradictory impulses: to bring together people who have been made to feel perverse, queer, odd, outcast, different and deviant, and to affirm sameness by defining a common identity on the fringes. . . . These contradictions are locked in the name Queer Nation:

> QUEER = DIFFERENCE
> NATION = SAMENESS[33]

> . . . The operant dream is of a community united in diversity, queerly ourselves.[34]

Is it possible for a society to deconstruct difference *and* allow marginalized groups to empower themselves through sameness without foreclosing all possibilities of a universal community committed to equal dialogue in the future? Minow attends to the first half of the question, but never thoroughly assesses the second half. The dilemma of difference is concededly a powerful dilemma. Its resolution has relational aspects, as Minow demonstrates in *Making All the Difference*. Making the point that "difference is not discovered but humanly invented" (p 55) by those in power, Minow has contributed immensely to our understanding of how we marginalize those labeled as "different." However, by taking the risk of acknowledging and respecting the power of the marginalized to reclaim and transform the meaning of assigned categorization, there is more potential for creating a universal community that makes "all the difference."

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[30] Id at 29-37.

[31] Id at 96.

[32] Id at 118. This point has been made by anti-essentialists also. For instance, Angela Harris notes:

> Even a jurisprudence based on multiple consciousness must categorize; without categorization each individual is . . . isolated . . . and there can be no moral responsibility or social change. My suggestion is only that we make our categories explicitly tentative, relational, and unstable, and that to do so is all the more important in a discipline like law, where abstraction and "frozen" categories are the norm.

Harris, 42 Stan L Rev at 586 (cited in note 13).

[33] Allen Bérubé and Jeffrey Escoffier, *Queer/Nation*, Out/look 12, 14 (Winter 1991).

[34] Alexander Chec, *A Queer Nationalism*, Out/look 15, 17 (Winter 1991).