

**Not Always in Knots**

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Martha Minow, *Not Only for Myself: Identity, Politics and the Law*.  
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**I**n *Not Only for Myself: Identity Politics and the Law*, Martha Minow explores the problems with relying on identity politics to resolve the paradoxes and conflicts of social problems, especially those that resist neat solutions. In framing her thoughts, Minow, a law professor at Harvard, often returns to first-century Rabbi Hillel's paradoxical questions:

If I am not for myself, who will be for me?  
If I am not for others, what am I?  
And if not now, when?

Although identity politics take one big step toward others and thus partially meets the Rabbi's command, they are limited to embracing others who are similar to oneself. Thus, Minow searches for a more all-encompassing method of being "for others."

Minow employs examples from law and politics and from the arts, literature, and humanities that span both law and morality. She does not shy from explaining the complicated legal issues that arise with her examples, but she then illuminates the limits of law in addressing them. To her credit, Minow does not touch either extreme of the debate—the gutter of talk-radio or the excesses of postmodernist theorizing—but instead provides a concise, readable text which searches for approaches to problems that often defy simple solutions.

Minow identifies two entwined strands of mistakes regarding identity politics: ignorance, and the routine categorization of in-

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dividuals. Ignorance is the lack of knowledge regarding past and present atrocities committed upon persons based on their identity. Minow provides myriad examples of such ignorance: her law students, for instance, know nothing of the U.S. government's internment camps for Japanese American citizens during World War II and are truly shocked when they encounter sexual harassment or racism. "Routine categorization" involves the assumption that group membership serves as a proxy for shared experiences especially as victims of societal prejudice. Such categorization offends both those who are committed to individualism and those who are committed to a deliberative community of like individuals who are not necessarily victims or continually victimized.

But the weight of group identities is undeniable, Minow acknowledges. Social institutions work to make them real; so do long histories of enslavement, subordination, or other sustained maltreatment. It does little good to tell people to halt preoccupation with group identity and past pain and to defer to the common good. Identity politics help some people feel connected and empowered: for example, organizing against shared oppression builds a sense of belonging among members of social movements, and "coming out" aids young gay men and lesbians to find acceptance in a new community. Criticisms of identity politics come both from those who place the individual at the center of political and moral discussion and worry that any emphasis on groups is a threat to national cohesion, and from those who warn that group focus distracts attention from economic disparities and splinters coalitions that could otherwise work for greater economic justice. Minow goes further to suggest that identity politics ignores the "intersectionality" of the multiple groups of which an individual can be a member. Not only can one individual self-identify into a variety of categories, but all group memberships are not necessarily complementary. She uses a story of an HIV-positive gay man attending a musical with his grandmother, a widow devoted to family and art, to show how multiple and divergent identities can enhance relationships and bring people together. We do not need to be the same to be together.

Law, Minow finds, bolsters solidity of group identities while ignoring or masking the complexities of real lives. American legal treatments of race, family status, and American Indian tribal identity provide illustrations. A variety of legal rulings (for example, those relating to citizenship) have defined and redefined the category of "white" and its associated privileges. Such legal formality makes it easy to forget how fluid and contestable identities can be and, also perhaps paradoxically, how often identities are not changeable at the will or whim of an individual. Minow reiterates Janet Halley's warning against relying upon limited studies that show same-sex sexual preference to be biologi-

cally based (thus meeting one of the three necessary prongs for a strict scrutiny analysis for equal protection). What happens, Minow asks, when judges who believe homosexuality is immutable restrict the rights of gays?

Some legal contests over identity seem amenable to scientific or empirical answers. Here Minow is cautious. Paternity and other genetic issues can be proven. By establishing such family relations as simple scientific questions, however, the law often closes off discussion that could aid fuller understanding of the complexities of intimate relationships. Courts, for example, look for one psychological parent in a custody case, when a child may be attached to more than one adult. Courts also abide by irrefutable presumptions, such as that a girl younger than age 18 is incapable of giving meaningful consent to sexual intercourse. In these jurisdictions, statutory rape charges require only evidence of the girl's age to preclude consent as a defense. Surely, some girls can consent to sex. These legislators and courts, however, have defined individuals in the category "girl" as unable to exercise choice over intimate relations.

Issues of race, family status, and tribal membership converge in custody determinations involving children with American Indian heritage. Minow uses two examples: a court case involving the placement of Indian children in a white home after both parents relinquished custody and sought white adoptive parents, and a Barbara Kingsolver novel addressing the same theme. In both, the tribe of the children's mother challenged the adoption and won the ability to make its own placement decision. The tribal court ultimately decided to leave the children with their adoptive parents. Minow asks: What are the lessons to parents, children, social service agencies, and tribes? Who, legally, can frame the questions and why?

As these examples illustrate, legal assessments of identity run two basic risks: they may trap people in categories that deprive them of latitude for choice and self-invention, and they may fail to recognize affiliations that are meaningful in their lives.

What needs to be remedied? An identity politics that seals people in their dependence on victim status as a source of meaning? Or widespread ignorance of the mistreatment of people because of their difference? Minow argues that both must be confronted. We must acknowledge and respond to past and continuing burdens that accompany group membership while simultaneously promoting opportunities for individuals to emphasize or deemphasize particular aspects of themselves.

Remembering and remedying group-based harms can be accomplished by enforcing antidiscrimination laws, facilitating public reparations (for example, in Rosewood, Florida), and devising strategies for eliciting the facts that may be hidden about

the harms of current and past injustice (for example, the South African tribunals gathering information about apartheid).

Expanding possibilities for individual self-definition can be accomplished by encouraging individuals to temporarily affiliate with groups for specific purposes (for example, Lani Guinier's suggestions regarding voting districts), by limiting the ability of government to use group-based categories unless rectifying group-based wrongs (for example, forbidding the use of peremptory challenges during voir dire), and by publicly supporting art and artistic work that addresses the topics of past and present identities and affiliations.

Children and schooling are a significant focus for Minow. For parents, maintaining a culture, a religion, a language, or a nation depends on the cultivation of attachment and knowledge within the next generation. Given the larger society's attitudes toward some identities, however, some parents may try to resist the assignment of particular group identities to their children, especially when those labels spell stigma or disadvantage. How much should children's upbringing be an extension of their parents' freedom and how much instead an opportunity for collective national policy? Minow supports parents' right to self-definition, including control over their children's identities. Simultaneously she supports using public policy to empower children to invent themselves and to overcome being forced to choose among multiple identities segregated through past generations' choices. In broaching the difficulties of "facing and forging the future," she suggests that groups form and find strength through identity politics, but address social concerns through working with other groups that share common interests. She urges that we immerse ourselves in the use of group categories, and then resist them.

Minow's vision of common cause among differing identities is appealing but clearly difficult to achieve. She contends that the principal obstacles are those privileged few who benefit from the divisions: "They huddle in suburbs and private residential developments, with private security, garbage collection, and after school entertainment for children" (p. 152). Crisscrossing connections cannot occur when people do not encounter one another. Unfortunately, the law has enforced rather than broken down the walls between communities. The courts have actively limited school desegregation and legally validated new patterns of self-segregation, largely sought by economically advantaged whites who have also redefined affirmative action as an "essentially contested topic." Thus, concludes Minow, we are obligated to make the necessary moves ourselves, as individuals with multiple identities.

Minow concludes that identity politics have tied us in knots. In their stead she suggests that we promote daily contact across lines of differences at schools, jobs, and communities. Such con-

tacts strengthen the kind of ties that permit a solidarity sufficient for sustaining debates over the future.

What happens, though, when identity does matter? It is here that Minow's critique and suggestions for change falter. When groups are targeted and harmed, identity must matter. We need to understand the incidents, their broader impact, and what can be done.

During the summer of 1997 Abner Louima was brutalized by Brooklyn police. He was taken to a precinct house, stripped, and sodomized with a bathroom plunger causing serious damage to his bladder and colon. The plunger was then shoved into his mouth breaking his teeth. Hemorrhaging, Mr. Louima was left in a cell to suffer. In reflecting upon this incident, Barbara Smith, a black-feminist essayist and activist, wrote of her subsequent sleepless nights and her thoughts about Abner Louima's family, the impact of the incident on blacks, and the disregard of whites to the daily realities of racism:

I have always been struck by how oblivious most white people are to the actual substance of Black people's lives, how consistently they ignore our humanity as well as deny the waking nightmare of racial oppression. Even those who care about racial justice do not always recognize that the kind of brutality experienced by Abner Louima at the hands of the police . . . directly impacts the lives of other Black people, including the ones they know, in deeply demoralizing ways. Less conscious whites view racist violence as atypical, isolated incidents. (Smith 1998:192)

One way to address the horrific beating of Abner Louima is through identity politics—a method that acknowledges both the atrocity committed upon one individual as well as the impact the event has on a whole community. Identity politics is not merely the “routine categorization of individuals,” nor embracing victim status as Minow suggests, but is instead a way of conceptualizing shared reality.

Similarly, in the gay community in Wyoming in the fall of 1998 a young man, Matthew Shepard, was savagely beaten, tied to a buck fence, and left to die. Testimony at the preliminary hearing by the police officer who detached him from the fence indicated that blood caked his face except for indentations where tears had carved their path. Shepard died a week later in a Colorado hospital at the same time a local college homecoming parade featured a scarecrow attached to a fence with a sign stating, “I'm Gay,” decorated with antigay epithets. Several days later, to the horror of his home community, Matthew Shepard's funeral was invaded by hate-mongers who picketed the church with celebratory signs including one boasting that another fag was in hell.

Wyoming has no antihate crimes legislation. Past efforts to introduce bills broadly addressing racism, sexism, and other forms of bigotry were stymied because their sponsors wished to criminalize homophobia as well. Some legislators actually claimed that if they voted to protect gays and lesbians, future legislation would promote the rights of shepherds to have sex with their sheep. Even those appalled by the analogy between bestiality and nonheterosexual sex were uncomfortable with providing explicit equal rights protection to sexually identified individuals. After all, they argued, Wyoming is the "Equality State," where it is already a crime to target any group for violence. Besides, they contend, gays and lesbians are rarely the targets of such prejudicial acts.

Many of us in Wyoming's heretofore quiet and unobtrusive gay and lesbian community responded vehemently to the torture and murder of Matthew Shepard and the accompanying notion that it was an aberrant occurrence. We publicly acknowledged deep-seated fears as well as direct personal experiences with homophobia. Friends, neighbors, and colleagues were shocked and uncomfortable at the revelations of sexual identity and perhaps at the implied privilege of their heterosexuality. Such personal disclosure is not easy but is part of the method of identity politics. To acknowledge our sexuality and its meaning in our lives does not necessarily pigeonhole us as Minow suggests. We, too, have many identities, including our race, sex, and age. But acknowledging our reactions to the Shepard murder as gays and lesbians is important and relevant. Fighting for antihate crimes legislation as gays and lesbians will be necessary. This we know from embracing identity politics.

Identity politics do not necessarily "tie us in knots." Instead we are tied down by accepting legal categories and idealized cultural notions that promote "universals" with long and shameful racist and sexist histories. On the contrary, identity politics challenge these assumptions. For example, Ruthann Robson (1992) advocates the development of a lesbian legal theory that rejects both assimilationism and separatism as absolute principles. The project puts lesbian identity first and foremost and results in a reconceptualization of the law and legal situations so that lesbian experience and realities are centered.

Gary Peller (1995), in his support of affirmative action, advocates a radical race consciousness. He rejects the "integrationist," liberal, color-blind, meritocracy advocated by the proponents of the civil rights movement. He argues that the mistake of the integrationists was the expected and necessary trade dictated by the acceptance of reason and neutrality over prejudice and discrimination: race needs be equally irrelevant for blacks as for whites; in other words, blacks could not embrace their racial identity if white racial identity is defined as white supremacy. The current

acceptance of this ideology masks the way that U.S. institutions reflect dominant racial and ethnic characteristics. Thus race reform has proceeded on the basis of integration into “white” cultural practices—practices that many whites mistake as racially neutral (p. 69).

Deborah Waire Post (1995) shows how her identity as a black woman impacts her teaching in law school—how she is diminished in the eyes of students who perceive her as deficient, how colleagues dismiss her when she is “emotional,” and how she survives:

It is not perversity which informs my choice as a black woman to continue using a style which leaves me open to attack by those who claim to be the arbiters of quality and intellectual rigor. It is a commitment to the principle of diversity and to the idea that all of us, including white males, will be impoverished by rejection of ideas, interests, styles, and beliefs merely because they are different. The abandonment of cultural differences does not increase understanding; it diminishes in a very real way the possibility of understanding. (P. 425)

The real problem is that the law and other social institutions are ill-equipped to address identity. Centuries of practices that have privileged the elite have not been eradicated by a few decades of identity politics. In some instances the most blatant inequities have been abolished, but so much more must be done that abandonment of identity politics would probably hurt much more than help. Embracing identity in all its complicated reality is not the problem; crossing cultural bounds, as Minow suggests, is only part of the solution. More, not less, understanding of identity is needed for the transformation of society to one that truly celebrates diversity. Works by critical race theorists, disability activists, feminists, and others are not necessarily moving us apart as Minow suggests. Instead they often give the rich details of difference that are absolutely necessary for moving us forward. Minow’s suggestions for change are forthright and compelling; they offer us a vision. But they are limited by their own insistence that identity need be simultaneously embraced and resisted. Sometimes one must choose between embracing and resisting. The choice of how and when is often the lesson of identity politics.

## References

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