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DIFFERENCE AND SOCIAL POLICY: REFLECTIONS IN THE CONTEXT OF SOCIAL MOVEMENTS

Iris Marion Young

Legal theory, policy discussion, and political philosophy have recently been much occupied with the issue of equal treatment versus special treat-

ment for oppressed and disadvantaged groups. The debate is abstract, but I suggest that it loses some of this abstractness if we focus on the wider context of movements of oppressed groups that question the liberal humanist ideal of liberation as transcending group difference. Since the 1960s women, Blacks, American Indians, gay men and lesbians, old people, the disabled, and other oppressed groups have asserted a politics that reclaims a positivity and specificity to group difference. By asserting this politics these groups redefine the meaning of difference so that it no

longer means exclusive opposition and deviation from a norm, and reveal that the liberal humanist ideal of universal standards according to which everyone should be measured tends to perpetuate disadvantage and silence the specific culture and experience of some groups. This politics of difference seeks to sever the association of equality with sameness, and focuses on equality as participation and inclusion. Where group differences continue to exist and some groups have greater power and privilege, promoting the participation and inclusion of currently disadvantaged groups often requires recognizing the specificity of their situation and culture, rather than being blind to difference.

Debate about sameness versus difference has raged particularly strongly in recent years among feminist theorists. Focusing on difference by feminist theorists seems particularly risky because "natural" differences have been used in so many ways to justify excluding women from meaningful participation in society; but by recognizing that feminism is simply one of the several movements of the oppressed and disadvantaged that challenge the assumption that social equality entails that everyone conform to common standards and is treated in the same way, this risk is reduced. Treatment of pregnant and birthing women in relation to the workplace is neither the only nor the primary context in which the issue of same treatment versus different treatment arises. Thus, situated in this larger context feminists are better able to defend different treatment without restricting this defense to gender contexts or only on biological grounds.

I. LIMITS OF THE LIBERAL HUMANIST IDEAL

There was once a time of caste and class, when tradition decreed that each group had its place, and that some are born to rule while others to serve. Law and social norms defined rights, privileges, and obligations differently for different groups, distinguished by characteristics of sex, race, religion, class or occupation. Social in-

equality was justified by church and state on the grounds that people have different natures, and some natures are better than others.

Then one day Enlightenment dawned, heralding a revolutionary conception of humanity and society. All people are equal, these upstart men declared, inasmuch as all have a capacity for reason and moral sense. Law and politics should therefore grant to everyone equality of political and civil rights. With these bold ideas the battle lines of modern political struggle were drawn.

For over 200 years since first rang out those voices of Reason, the forces of light have struggled for liberty and political equality against the dark forces of irrational prejudice, arbitrary metaphysics, and the crumbling towers of patriarchal church, state and family. In the New World we had a head start in this fight, since, the American war of Independence was fought on these enlightenment principles, and our Constitution stood for liberty and equality. So we did not have to throw off the yokes of class and religious privilege, as did our Old World comrades. Yet the United States had its own aristocratic horrors in the form of slavery and the exclusion of women from public life. In protracted and bitter struggles these bastions of privilege based on group difference began to give way finally to topple in the 1960's.

Today a few vestiges of prejudice and discrimination remain, but we are working on them, and have just about realized the dream those Enlightenment fathers dared to have. The state and law should express rights only in universal terms that apply to all in the same way, and differences among persons and groups should be a purely accidental and private matter. Today we are seeking a society where differences in race, sex, religion, and ethnicity make no more difference in people's rights and opportunities than do difference of hair color. We believe that people should be treated as individuals, not as members of groups; their life options and rewards should be based solely on their individual achievement. We tell each other this story and make our children perform it for

our sacred holidays—Thanksgiving Day, Fourth of July, Lincoln's Birthday. We have constructed Martin Luther King Day to fit the narrative so well that we have already forgotten that it took a fight to get it included in the canon year.

There is much truth to this story. The liberal humanist ideal of liberation as transcending group differences did and does inspire movements against oppression and domination, and the successes of these movements have created social values and institutions we would not want to lose. The liberal humanist ideal has been crucial in denying essential differences among groups that previously were invoked to justify privileges for some and exclusion for others. The struggles inspired by this ideal resulted in legal recognition that all United States citizens are entitled to equal protection under the law and cannot be excluded from public institutions or employment solely on grounds of group membership. A people could do worse than to tell this story after big meals and occasionally call upon one another to live up to it.

Still, the story has its limits. Though legal equality has been largely achieved for all groups, with the shameful exception of gay men and lesbians, by any measure of equality some groups continue to be disadvantaged and oppressed, while others continue to have power and privilege. Because legally sanctioned impediments to the inclusion of women, Blacks and other racialized groups, and disabled people have been removed, some individuals from these groups have been able to attain positions they otherwise could not have achieved, and a few have even gained positions of high prestige and power. As groups, however, segregation, disadvantage and exclusion continues, and there is little sign of a breakdown of these inequalities.

Though in many respects the law is now blind to group differences, not all members of society are, and therefore some groups continue to be marked as deviant or the "Other." In daily interactions assumptions continue to be

made about certain groups that justify exclusion, avoidance, paternalism, and authoritarian treatment. Continued racist, sexist, homophobic, ageist, and ableist behavior and institutions create particular circumstances for the members of these groups, usually by disadvantaging them in their opportunity to develop their capacities and by giving them particular experiences. In part because these groups have been segregated and excluded from one another and in part because they have particular histories and traditions, there are cultural differences among them, differences including language, style of living, body comportment and gesture, values, and perspectives on society. Thus, the differences that continue to exist among groups are partly imposed by the effects of discrimination and partly chosen voluntarily by the members of the group.

The liberal humanist ideal presumes that there are norms and attributes of humanity in general to which everyone can aspire and which can be used to judge the merit and capacities of people as individuals, rather than as members of groups. Once the impediments of discrimination and stereotyping are removed, then inequalities will reflect tastes, capacities, and efforts, rather than any group attributes.

Measuring all according to the same standards and treating everyone in the same way often contributes to perpetuating disadvantage and oppression where the commitment to the equal moral worth of all persons has been achieved, but where group differences and group inequalities remain. The ideal of a common humanity in which all can participate without regard for race, gender, religion or sexuality poses as neutral and universal—speaking correctly, being rational, professional, decent, intelligent, and so on. These supposedly neutral attributes of assessing merit, however, require substantive behaviors to be judged, and insofar as the ideals are substantive they must be particular. Oppressed groups find that rationality, intelligence, correct speech, proper body

comportment, and the like, reflect the experience and way of life of the dominant white middle class men. Because women or Blacks, for example, often have not been socialized in the same way as those white middle class men, they are less able to conform to these allegedly neutral standards of competence. They then are at a disadvantage in a merit competition under rules of equal treatment.

Even though these standards claim to be neutral, they tend to be biased in favor of the privileged groups, thus disadvantaging some persons, and forcing them to deny aspects of their identity or culture if they are to properly measure up to the standards. To the degree that members of oppressed groups conform to dominant standards and achieve by those mainstream criteria, they find that they must invalidate aspects of their experience and identity. When we use an ideal of general human standards, then we make Puerto Ricans, or Chinese Americans ashamed of their accents or their parents, Black children despise the female dominated kin networks of their neighborhoods, and women root out their tendency to cry. Therefore, even when formerly excluded groups succeed in conforming to the standards they do not experience as neutral, they often do so at the expense of splitting or denying their identities as feminine, Black, Indian, and so on.

II. THE POLITICS OF DIFFERENCE

As a result of such experiences, some social movements of the oppressed have challenged the ideal of liberation as transcending group difference and have asserted instead the positivity of group-based experience. In the late 1960s, for example, Black Power and Black Nationalism advocates criticized the assimilationist goal that characterized the civil rights movement, and asserted instead a positivity and specificity to Afro-American culture, and the need for separate political organization.¹ Many Black liberation theorists continue to argue that the Afro-American experience gives to black people distinctive cultural forms and ways

of understanding society that make assimilation to white-dominated culture both difficult and undesirable.²

Recent movements for American Indian rights provide an even more telling example of the assertion of positive group difference. Indians have sought to recover and preserve their languages, rituals and crafts, and this renewal of pride in traditional culture also fostered a separatist political movement. The desire to pursue land rights claims and to fight for control over resources on reservations arises from what has become a fierce commitment to tribal self-determination, that is, the desire to develop and maintain political and economic bases in, but not of, white society. Indians demand that rights to jobs, health care, and social services be recognized at the same time as their right to group-based political and cultural self-determination.³

These are but two examples of a widespread tendency in the politics of the 1970s and 80s for oppressed, disadvantaged or specially-marked groups to organize autonomously and positively assert their cultural and experiential specificity. In the last twenty years movements of Spanish-speaking Americans, Jewish Americans, gay men and lesbians, and old people, have all asserted a positive group difference against the universalist and assimilationist principles of liberal humanism. Paradoxical as it sounds, such

¹ See, e.g., S. Carmichael & C. Hamilton, *Black Power* (1967); see also J. Bayes, *Minority Politics and Ideologies in the United States*, ch. 3 (1982); L. Lader, *Power on the Left*, ch. 5 (1979).

² See, e.g., Sheila Collins' discussion of the "melting pot" myth. S. Collins in *The Rainbow Challenge: The Jackson Campaign and the Future of U.S. Politics* (1986); see also H. Cruse, *Plural but Equal: Black and Minorities in America's Plural Society* (1987). Many black theorists couch this discussion specifically in terms of a confrontation with typical Marxian assumptions of a unified proletariat. See Harris, *Historical Subjects and Interests: Race, Class and Conflict*, in *The Year Left: An American Socialist Yearbook* (J. Brenner, et al. eds. 1987); Outlaw, *On Race and Class*, or, *On the Prospects of "Rainbow" Socialism*, in *The Year Left*, supra, at 106.

³ See V. Deloria & C. Lytle, *The Nations Within*, chs. 15–17 (1984); R. Ortiz, *Indians of the Americas*, pt. III (1984).

challenges to the ideal have become possible only once that ideal has received wide recognition in the society. Only when the principle that persons should not be inhibited from institutional participation because of group membership has been widely affirmed, can oppressed groups discover the mechanisms that perpetuate exclusion and disadvantage even when there is formal equality.

The women's movement has also generated its own versions of a politics of difference. Humanist feminism, which predominated in nineteenth century feminism and in the contemporary women's movement until the late 1970s, finds in any assertion of difference between women and men only a legacy of female oppression and an ideology to legitimate continued exclusion of women from socially valued human activity. Thus it is analogous to an ideal of assimilation in identifying sexual equality with gender blindness, measuring women and men according to the same standards and treating them in the same way. Indeed, for many feminists, androgyny named the ideal of sexual liberation—a society in which gender difference itself would be eliminated. Given the strength and plausibility of this vision of sexual equality, how confusing it was when feminists also began taking the turn to difference, asserting the positivity and specificity of female experience and values.⁴

In practice, female assimilation has meant that women should aspire to enter male dominated realms of business and politics and compete in those realms on a par with men. Women who seek equality must be strong, rational, competitive and independent, and leave behind the traditionally feminine sphere in which they learned

⁴ I have developed an account of this contrast between humanist feminism and a feminism that affirms rather than denies female difference at greater length elsewhere. Young, *Humanism, Gynocentrism and Feminist Politics*, 8 *Women's Stud. Int'l Q* 173 (1985) (special issue entitled "Hypatia: A Journal of Feminist Philosophy"); see also Miles, *Feminist Radicalism in the 1980's*, in *Feminism Now: Theory and Practice* (M. Kroker, A. Kroker, P. McCollum, & M. Verthuy eds. 1985).

to be emotionally caring, nurturing, and cooperative. Some feminists who assert the positivity of female difference, on the other hand, seek to revalue activities and relations traditionally labeled as feminine.⁵ Others look to the sexual division of labor and find in women's laboring activities the bases of specific positive values and approaches to the world.⁶ Under these versions of feminism women should not seek to be like men, but rather, should press for a social restructuring that will recognize and promote the values and forms of human relationship typical of "private" institutions of mothering, sistering, and domestic caretaking.

While the women's movement has tended to discuss and theorize women's specific experience and culture, at the same time there has been increasing discussion among feminists in recent years about the oppressive implication of any assumption that there is a single female experience. Feminist conferences and publications have generated particularly fruitful, though often emotionally-wrenching discussions of the oppression of racial and ethnic blindness and the importance of attending to group differences among women.⁷ From such discussions principled efforts have emerged to provide autonomously organized forums for Black women, Latinas, Jewish women, lesbians, differently-abled women, old women, and any other women who see reason for claiming they have, as a

⁵ The theory of gender psychology developed by Nancy Chodorow that women's identities are defined more in relation to other people's than men's, N. Chodorow, *The Reproduction of Mothering* (1978), has inspired some feminists to find gender-specific approaches to morality, science, and other human activities. See C. Gilligan, *In a Different Voice* (1982); see also *Women and Moral Theory* (E. Kittay ed. 1986); J. Grimshaw, *Philosophy and Feminist Thinking* (1986) (particularly chs. 7, 8); E. Keller, *Reflections on Gender and Science* (1985).

⁶ L. Leghorn & K. Parker, *Women's Worth* (1981); N. Hartsock, *Money, Sex and Power*, ch. 10 (1983); Ruddick, *Maternal Thinking, in Mothering: Essays in Feminist Theory*, 213 (J. Trebilcock ed. 1984).

⁷ See, e.g., E. Bulkin, M. Pratt, & B. Smith, *Yours in Struggle* (1984).

group, a distinctive voice that might be silenced in a general feminist discourse. These discussions of difference within the women's movement mirror the puzzles generated by assertions of difference in all oppressed social movements. The practices feminists have instituted to structure discussion and interaction among differently identifying groups of women offer beginning models for how to institute a politics that attends to difference.

The politics of difference asserted by all these diverse social movements is more liberating than liberal humanism in three ways. First, asserting the value and specificity of the culture and attributes of oppressed groups relativizes the dominant culture. That is, when feminists assert the validity of feminine sensitivity and the positive value of nurturing behavior, when gays describe the prejudice of heterosexuals as homophobic and their own sexuality as positive and self developing; and when blacks affirm a distinct Afro-American tradition, then the dominant culture is forced to discover itself for the first time as specific: as Anglo, European, Protestant, masculine, straight. If whites, men, professionals, and other dominant groups come to notice that their experiences and ways of understanding social relations are particular, they can perhaps become more aware of how their standards of authority, intelligence, reasonableness, creativity, and the like are colored by that experience. It then becomes increasingly difficult for dominant groups to maintain their norms as neutral and universal, and to construct the values and behavior of the oppressed as deviant, perverted, or inferior.

Second, the politics of difference promotes a notion of group solidarity against the individualism of liberal humanism. Liberal humanism values treating and evaluating each person as an individual, ignoring differences of race, sex, religion, and ethnicity. With the institutionalization of formal equality, some members of the formerly excluded groups have indeed succeeded by mainstream standards, but structural patterns of group privilege and oppression remain

nonetheless. The politics of difference stands for a group solidarity that measures liberation according to how far women, blacks, Latinos, and so on as groups have come toward equality with other groups.

Third, the assertion of positive group difference provides a standpoint from which to criticize prevailing institutions and norms. Black Americans find in their traditional communities, which refer to their members as "brother" and "sister," a sense of solidarity absent from the calculating individualism of white professional capitalist society. Feminists find in the traditional female values of nurturing a challenge to a militarist worldview, and lesbians find in their relationships a confrontation with the assumption of complementary gender roles in sexual relationships. From their experience of a culture tied to the land, Native Americans formulate a critique of the instrumental rationality of European culture that results in pollution and ecological destruction. The relativizing of the dominant culture, then, does more than reveal the specificity of the dominant norms that claim universality and neutrality. It also provides access to questioning which of those norms are indeed humanly valuable, and which reinforce the power and privilege of the groups whose experience they reflect.

III. RECLAIMING THE MEANING OF DIFFERENCE

Since proponents of asserting group specificity certainly wish to affirm the liberal humanist claim that all persons are of equal worth, they appear to be faced with a dilemma. How can a group both claim a right to inclusion in all human activities and at the same time assert and celebrate its specificity? Analyzing W. E. B. Dubois's arguments for cultural pluralism, Bernard Boxill poses the dilemma this way: "On the one hand, we must overcome segregation because it denies the idea of human brotherhood; on the other hand, to overcome segregation we must self-segregate and therefore also deny the idea of human

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brotherhood."⁸ Martha Minow poses a similar dilemma. "Are the stigma and unequal treatment encountered by minority groups better remedied by separation or by integration of such groups with others? Either remedy risks reinforcing the stigma associated with assigned difference by either ignoring it or focusing on it."⁹

Many people both inside and outside of the movements find the rejection of the liberal humanist ideal and the assertion of a positive group difference both confusing and controversial. They fear that any admission by oppressed groups that they are different from the dominant groups risks justifying anew the subordination, special marking, and exclusion of those groups along pre-modern lines. Since calls for a return of women to the kitchen, blacks to servant roles and separate schools, disabled people to nursing homes, are not absent from contemporary politics, the sort of dilemma that Boxill and Minow highlight takes on particular poignancy. It may be true that the liberal humanist ideal that treats everyone the same and applies the same standards to all perpetuates disadvantage because real group differences remain that make it unfair to compare the unequals. The assimilationist ideal of liberal humanism, however, is far preferable to a reestablishment of separate and unequal spheres for different groups justified because the groups are different.

This dilemma of difference appears, however, only if equality implies sameness and difference implies deviance, exclusion, and inequality. The social movements asserting positive group difference directly challenge these meanings of equality and difference themselves. They engage

the meaning of difference itself as a terrain of political struggle, rather than leaving it to be monopolized by those who seek to use difference to justify exclusion and subordination.

In the ideologies of racism, sexism, anti-Semitism and homophobia, some groups are marked with an essence. The ideology alleges that group members have specific dispositions that suit them for some activities and not others by virtue of characteristics the group is alleged to have by nature, and hence out of its control. "Difference" in these ideologies always means exclusionary opposition to a standard of true universal humanity. There are rational men, and there are women, there are civilized men, and there are wild and savage peoples. The marking of difference always carries a good/bad opposition, it is always devaluation, the naming of an inferiority in relation of a superior standard of humanity. "Difference" here always means absolute otherness; the group marked as different has no common nature with the normal or neutral ones.

This attempt to measure all against some universal standard generates dichotomies—masculine/feminine, civilized/savage, etc.¹⁰ The second term is defined negatively as the lack of the truly human qualities; at the same time it is defined as complement to the valued term, as what brings it to completion. By loving and affirming him, a woman serves as a mirror to a man, holding up

¹⁰ I believe that post-modernist critiques of the logic of Western metaphysics uncover much about how this process of attempting to bring particulars under a single category or standard generates exclusive dichotomies. While there are important differences between Theodore Adorno's critique of what he calls a logic of identity in Western thought, and Jacques Derrida's critique of a metaphysics of presence, they both describe this process of totalization that expels what does not fit the unity to a category completely outside. Both provide some indication of what a positive understanding of difference as particularity without exclusivity might mean. See T. Adorno, *Negative Dialectics* (1973); J. Derrida, *Of Grammatology* (1976). I have developed a more extended account of how their philosophies can apply to social theory elsewhere. Young, *The Ideal of Community and the Politics of Difference*, 12 *Soc. Theory & Prac.* 1 (1986); see also F. Dallmayr, *Twilight of Subjectivity: Contributions to a Post-Structuralist Theory of Politics* (1981).

his virtues for him to see.¹¹ By carrying the white man's burden, the civilized will realize universal humanity by taming and educating the savage peoples. In no case is the group defined as different recognized and affirmed in its own specificity from its own point of view. Thus, this assertion of difference as exclusive opposition actually denies difference because it universalizes the perspective of particular groups into a common measure of persons, and never affirms group identity in its incommensurable specificity.

By asserting a positive meaning for their own identity, oppressed groups seek to seize power over the defining difference itself and to eliminate the presumption of difference as deviance in relation to a norm. By puncturing the universalist claim to unity that expels some groups and turns them into the Other, the assertion of positive group specificity opens the possibility for understanding the relationship of one group to another merely as difference, instead of exclusion, opposition, or dominance. What can such a positive conception of group difference mean? Group identity should be understood in relational terms.¹² Social processes generate relational differentiations, situations of clustering and affective bonding in which persons feel affinity for particular other people. My "affinity group" in a given social situation are those people with whom I feel the most comfortable. Such affinity differentiates groups, but not according to a substantive identity: there is no common nature that members of the group have.¹³

The politics of difference promotes a conception in which groups do not stand in a relation of

inside and outside. That groups define themselves as different does not mean that they have nothing in common. Groups themselves, moreover, are not unities; every group has group differences cutting across it. Difference here does not mean opposition and exclusivity, but particularity, specificity, and the impossibility of reducing either social process or individual subjectivity to unity.

IV. DIFFERENCE AND SOCIAL POLICY

The issue of the right to pregnancy and maternity leave, and the right to special treatment for nursing mothers, is highly controversial among feminists today.¹⁴ I do not intend here to wind through the intricacies of what has become a conceptually challenging and interesting debate in legal theory. As Linda Krieger argues, the issue of rights for pregnant and birthing mothers in relation to the workplace has created a paradigm crisis for our understanding of sexual equality because the application of a principle of equal treatment on this issue has yielded results whose effects on women are at best ambiguous and at worst detrimental.¹⁵

In my view an equal treatment approach on this issue is inadequate because it either implies that women do not receive any right to leave and then return to a secure job when having babies, or

¹⁴ Throughout this section I will use the term "special rights" to designate the differential treatment I am arguing particular groups should receive. I use the term in much the same way that Elizabeth Wolgast develops it. E. Wolgast, *Equality and the Rights of Women* (1980). Like Wolgast, I would wish to distinguish a class of rights that all persons should have, general rights, and a class of rights that categories of persons have by virtue of particular circumstances. That is, the distinction should refer only to different levels of generality, where "special" means only "specific." Unfortunately, "special rights" tends to carry a connotation of *exceptional*, that is, specially marked and deviating from the norm. As I assert below, however, the goal is not to compensate for deficiencies in order to help people be "normal," but to denormalize, so that in certain contexts and at certain levels of abstraction everyone has "special" rights.

¹⁵ Krieger, "Through a Glass Darkly: Paradigms of Equality and the Search for a Women's Jurisprudence," 2 *Hypatia* 45 (1987). Deborah Rhode provides an excellent synopsis of the dilemmas involved in this crisis in "Justice and Gender" (unpublished manuscript) (chapter 9).

¹¹ L. Irigaray, *Speculum of the Other Woman* (G. Gill trans. 1985). Irigaray applies the critique of the metaphysics of presence to sex and gender, suggesting that gender opposition between the masculine and the feminine is founded on a denial and repression of sexual difference.

¹² See Minow, *supra* note 11, at 204–06.

¹³ I take the term "affinity" from Donna Haraway's use of it in *A Manifesto for Cyborgs: Science, Technology, and Socialist Feminism in the 1980's*, *Socialist Rev.*, Mar.–Apr. 1985, at 65. The term connotes for her the effort in contemporary anti-racist movements and the women's movement "to craft a poetic/political unity without relying on a logic of appropriation, incorporation, and taxonomic identification." *Id.*, at 74.



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it assimilates such guarantees under a supposedly gender neutral category of "disability." Such assimilation is unacceptable because pregnancy and childbirth are normal conditions of normal women, that are socially necessary work and that have unique and variable characteristics and needs.¹⁶

Assimilating pregnancy into disability gives a negative meaning to these processes as "unhealthy." It suggests, moreover, that the primary or only reason that a woman has a right to leave and return to a secure job is that she is physically unable to work at her job, or that doing so would be more difficult than when she is not pregnant and recovering from childbirth. While these are important reasons, depending on the individual woman, another reason is that she ought to have the time to establish breastfeeding and to develop a relationship and routine with her child, if she chooses.¹⁷

The pregnancy leave debate has been so heated and extensive because both feminists and non-feminists tend to think of biological sex difference as the most fundamental and eradicable difference. When difference means deviance, stigma and disadvantage, this impression can engender the fear that sexual equality is not attainable. I think it is important to emphasize that reproduction is by no means the only context in which issues of same versus different treatment arises. It is not even the only context where it

arises for issues involving bodily difference. The last twenty years have seen significant success in winning special rights for persons with physical and mental disabilities. These are clear cases where promoting equality in participation and inclusion requires attending to the particular needs of different groups.

Another bodily difference that has not been as widely discussed in law and policy literature, but should be, is age. With increasing numbers of willing and able old people marginalized in our society, the issue of mandatory retirement has been increasingly discussed. This discussion has not exploded because serious consideration of working rights for all people able and willing to work implies major restructuring of the allocation of labor in an economy with already socially volatile levels of unemployment. Forcing people out of their workplaces solely on account of their age is arbitrary and unjust. Yet I think it is also unjust to require old people to work on the same terms as younger people. Old people should have different working rights. When they reach a certain age they should be allowed to retire and receive income benefits. If they wish to continue working they should be allowed more flexible and part-time schedules than most workers currently have.

Each of these cases of special rights in the workplace—pregnancy and birthing, physical disability, and being old—has its own purposes and structures. They all challenge, however, the same paradigm of the "normal, healthy" worker. In each case the circumstance that calls for different treatment should not be understood as lodged in the differently treated workers, *per se*, but in their interaction with the structure and norms of the workplace.¹⁸ Even in cases such as these, difference does not have its source in natural, unalterable, biological attributes, but in

¹⁸ Littleton suggests that difference should be understood not as a characteristic of particular sorts of people, but of the interaction of particular sorts of people with specific workplace structures. Littleton, *supra* note 16, at 546.

the relationship of bodies to rules and practices. In each case the political claim for special rights emerges not from a need to compensate for an inferiority, as some would interpret it, but a positive assertion of specificity in different forms of life.

Issues of difference arise for law and policy, moreover, not only regarding bodily being, but just as importantly for cultural integrity and invisibility. By culture I mean group specific phenomena of behavior, temperament, or meaning. Cultural differences include phenomena of language, speaking style or dialect, body comportment, gesture, social practices, values, group specific socialization, and so on. The politics of difference suggests that the social groups in our society that suffer oppression and disadvantage have culturally specific forms of life produced both by the self-segregated affinity of the group members and by their history of exclusion and disadvantage. Since difference does not imply exclusive opposition, saying that social groups are culturally different does not imply that they do not also have elements of shared culture with other groups. To the degree that groups are culturally different, however, equal treatment in many issues of social policy is unjust because it denies these cultural differences at the same time that it makes them a liability. There are a vast number of issues where fairness involves attention to cultural differences and their effects, but I shall briefly discuss three: affirmative action, comparable worth, and bilingual/bicultural education and service.

Whether they involve quotas or not, affirmative action programs violate a principle of equal treatment because they are race or gender conscious in setting criteria for school admissions, jobs, or promotions. These policies are usually justified in one of two ways. Giving preference to race or gender is either understood as just compensation for groups that have suffered discrimination in the past, or it is understood as compensation for the present disadvantage these groups suffer because of that history of discrimination and

exclusion.¹⁹ I do not wish to quarrel with either of these justifications for the differential treatment based on race or gender implied by affirmative action policies, but only to suggest a third possible interpretation of these policies. Affirmative action policies can be understood as compensating for the cultural biases of standards and evaluators used by the schools or employers. If these standards and evaluators are assumed to reflect at least to some degree the specific life and cultural experience of dominant groups—whites, Anglos, or men—and that the development of truly neutral standards and evaluations is difficult or impossible because female, black, or Latino, cultural experience and the dominant cultures are in many respects not reducible to a common measure, then affirmative action policies compensate for the dominance of one set of cultural attributes. Such an interpretation of affirmative action has the advantage of locating the "problem" that affirmative action solves at least partly in the evaluators and their standards, rather than only in the disadvantaged group.

While not a matter of different treatment as such, comparable worth policies similarly claim to challenge cultural biases in traditional evaluation in the worth of female-dominated occupations, and in doing so require attending to differences. Schemes of equal pay for work of comparable worth require that predominantly-male and predominantly-female jobs have similar wage structures if they involve similar degrees of skill, difficulty, stress, and so on. The problem in implementing these policies, of course, lies in designing methods of comparing the jobs, which are often very different. Most schemes of comparison choose to minimize these differences by using supposedly gender neutral criteria, such as educational attainment, speed of work, manipulation of symbols, decision making, and so on. Some writers have suggested, however, that standard classifications of job traits may be systematically

¹⁹ For one among many discussions of such "backward looking" and "forward looking" arguments, see B. Boxill, *supra* note 10, ch. 7.

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biased to keep specific kinds of tasks involved in many female-dominated occupations hidden.²⁰ Many female-dominated occupations involve gender specific kinds of labor—such as nurturing, smoothing over social relations, or the exhibition of sexuality—that most task observation ignores.²¹ A fair assessment of the skills and complexity of many female-dominated jobs may therefore involve paying explicit attention to gender differences in kinds of jobs rather than applying gender blind categories of comparison.

Finally, linguistic and cultural minorities should have the right to maintain their languages and cultures and at the same time be entitled to all the benefits of citizenship, as well as valuable education and career opportunities. This right implies a positive obligation on the part of governments and other public bodies to print documents and to provide services in the native language of recognized linguistic minorities, and to provide bilingual instruction in schools. Cultural assimilation should not be a condition of full social participation, because it requires a person to transform his or her sense of identity, and when realized on a group level means altering or annihilating the group's identity. This principle does not apply to any persons who do not identify with majority language or culture within a society, but only to sizeable linguistic or cultural minorities living in distinct though not necessarily segregated communities. In the United States,

then, special rights for cultural minorities apply at least to Spanish-speaking Americans and Indians.

At stake in all these policy issues, as many writers have pointed out, is the meaning of social equality, and indeed, whether equality remains a useful concept for promoting social justice. The politics of difference denies that equality implies sameness, and instead interprets the goal of equality as the full participation and inclusion of currently oppressed and disadvantaged groups in all of society's institutions and social positions, and especially those most highly valued.²²

The universalist claims that there is a contradiction in asserting that formerly segregated groups have a right to inclusion, and at the same time that these groups have a right to different treatment. There is no contradiction here, however, if attending to difference is necessary in order to make participation and inclusion possible. Groups with different circumstances or forms of life should be able to participate together in public institutions without shedding their distinct identities or suffering disadvantage because of them. The goal is not to give special compensation to the deviant until they achieve normality, but rather to de-normalize the way institutions formulate their rules by revealing the plural circumstances and needs that exist, or ought to exist, within them.

²⁰ See Beatty & Beatty, "Some Problems with Contemporary Job Evaluation Systems," in *Comparable Worth and Wage Discrimination: Technical Possibilities and Political Realities* 59 (H. Remick ed. 1981); Steinberg, "A Want of Harmony: Perspectives on Wage Discrimination and Comparable Worth," in *Comparable Worth and Wage Discrimination*, *supra*, at 23; *Women, Work and Wages* 81 (D. Treiman & H. Hartmann eds. 1981).

²¹ D. Alexander, *Gendered Job Traits and Women's Occupations* (Ph.D. diss., Economics, Univ. of Massachusetts, 1987).

²² I do not take it that a conception of equality as participation and inclusion need be interpreted as an "equality of results," where that implies a strict proportional representation of formerly excluded groups in institutions and kinds of positions or occupations. Too many writers pose the alternatives in a dichotomous fashion that suggests that if equality does not mean being blind to difference, then it must mean equal results in this sense. See, e.g., Reynolds, "Stotts: Equal Opportunity, Not Equal Results, in The Moral Foundations of Civil Rights" 39 (R. Fullinwider & C. Mills eds. 1986).