HOME VISITING AND FAMILY VALUES: THE POWERS OF CONVERSATION, TOUCHING, AND SOAP

Commentary on Martha Minow's Learning from Experience: The Impact of Research About Family Support Programs on Public Policy.

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Any reader expecting me to quarrel with Professor Martha Minow will be disappointed. In a symposium about science, technology, and the law, how wise and brave of her to talk about the science of helping ordinary mothers and babies.¹ She chooses for her topic neither miracle babies produced in vitro nor monster mothers who must be diagnosed as psychopathic or sociopathic to grab public attention. Her chosen subject is the most low-tech law and science of all—well-baby care, visiting nurses, and human interaction on an intimate scale.

Her chosen context is a type of home-centered, preventive program close to my heart. My favorite example is the civilian “health worker” program in the Brazilian state of Ceara. This impoverished northern region of Brazil cut its infant mortality rate by one-third within four years after initiating a simple program of home visiting that recruited and trained women from the community with a gift for healing, issued them backpacks, bicycles, and baby scales and assigned each woman the task of visiting every home in her territory once each month.² “With the ‘economic miracle,’ middle-class infant mortality vanished, but it had not been eradicated from the shantytowns.”³ The home visitors in Ceara’s “Viva Crianza”⁴ program are paid the minimum wage, and they travel light. In Ceara, some seven thousand workers visit four million homes once every month, carrying with them basic instruction on sanitation and nutrition, plus a knapsack stocked with soap,

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¹ Martha Minow, Learning from Experience: The Impact of Research About Family Programs on Public Policy, 143 U. PA. L. REV. 221 (1994).
³ Id.
⁴ Roughly translated, viva crianza means “long live the child.” Id.

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scissors, ointments for common ailments, and rehydration formulas for children with intestinal illnesses. "Instead of sick citizens clogging hospitals," explains Ceara's Governor, "we opted for prevention and family visits." Brazil, like many countries, is discovering that centralization and progress are not necessarily synonymous.

Here in Philadelphia, we have our own slightly higher-tech version of the Brazilian "health worker" program. It is called the Maternity Care Coalition (MCC). The brainchild of University of Pennsylvania Law School graduate Harriet Dichter, the MCC operates on a shoestring and survives year to year on scarce grant dollars and inadequate government subsidies. Rather than bicycles, the MCC uses vans called "Mom Mobiles," which take basic maternal and infant health services into poor communities, many of them African-American, East Asian, and Latino. Staffed by nurses and community workers, the Mom Mobiles park on a neighborhood street, broadcasting hit songs and giving out free gifts to make contact with pregnant women who are young, alienated, poorly educated, drug dependent, or simply too confused by a "disjointed tangle of services" to know when and how to access them. The Mom Mobile provides basic health screening such as blood pressure testing, and the workers use their mobile phones to set up clinic appointments for continuing prenatal care. Each woman is offered a community-based mentor who helps her through her pregnancy and first year of parenting. Community groups like MCC have

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5 Id.
6 Harriet Dichter, class of 1984, was an instrumental early leader of the MCC, where she volunteered her pro bono services. See Murray Dubin, Reaching Out with Facts on Child Care, PHILA. INQUIRER, May 3, 1990, at B8. At this writing, Dichter is serving as Director of the City of Philadelphia's Office of Maternal and Child Health, and her place at the MCC has been taken by JoAnne Fischer. See Larry Copeland, Once Outsiders, They Now Fight from Within System: Three Longtime Health Advocates Are Now Key Players in the Philadelphia Health Department, PHILA. INQUIRER, Mar. 29, 1992, at M1.
7 The MCC sends a Latina Mom Mobile to Spanish-speaking neighborhoods. See Dubin, supra note 6, at B8.
9 In addition to delivering services to mothers and infants, MCC has played a role in increasing funding for home visits and other preventive measures under existing federal programs, such as the 1989 and 1990 amendments to Title XIX of the Social Security Act, which created a program of Early Periodic Screening and Diagnostic Testing (EPSDT) of medicaid-eligible children. In the recent settlement of Scott v. Snider, a case brought on behalf of underserved Pennsylvania children, MCC joined in advocating home visits for low birth weight babies and other children at risk. See
little time and money to spare for self-evaluation. They are too busy
dealing with immediate crises, like the epidemic of low birth weights
and rising rates of congenital syphilis and HIV infection among the
city's newborns. I doubt if the Mom Mobile has been as rigorously
evaluated as Professor Minow's social science protocols would
demand, with control groups, blind studies, and the like. I am
absolutely confident, however, that the program works.

It is said that Mother Theresa once commented that parts of
American inner cities rival the Third World for poverty and
suffering.\textsuperscript{10} I imagine she had in mind places I have seen on my
travels in North and West Philadelphia, where small children play
nearly naked in trash-strewn lots next to boarded-up and abandoned
houses. In spite of their geographical location, many of the mothers
and children in the streets of Kensington, Mantua, and Strawberry
Mansion live unbridgeable miles, even continents away from
Independence Hall. In truth, the infant mortality rate in certain
sections of Philadelphia\textsuperscript{11} compares to that of many Third World
countries.\textsuperscript{12}

Philadelphia is not unique. The National Commission on
Children reported that one in four children in the United States was
born to a woman who lacked early prenatal care, in spite of the fact
that "overwhelming evidence shows that prenatal care . . . reduces
the likelihood of low birth weight [and that] positive effects are
greatest for those . . . at the highest risk of poor birth outcomes:
black and some Hispanic women, poor women, very young women,

\begin{footnotes}
\footnote{Minutes from Maternity Care Coalition Policy and Advocacy Committee Meeting
(Oct. 12, 1994) (on file with author).}
\footnote{The story may be apocryphal, but it is true that Mother Theresa has opened
missions in places like Philadelphia. See Alfonso A. Narvaez, Mother Theresa Opens
Newark Mission, N.Y. TIMES, June 27, 1981, at 26.}
\footnote{See Walter F. Roche, Jr., Group Battles for Aid to Cut Infant Mortality, PHILA.
INQUIRER, May 15, 1991, at B5 (reporting that Philadelphia had the "fifth highest
infant mortality rate in the nation").}
\footnote{In 1990, the infant mortality rate for black babies in the United States was twice
as high as for white babies. See NATIONAL COMMISSION ON CHILDREN, supra note 8,
at 119. The overall infant mortality rate in the United States puts us behind twenty-
one other industrialized nations. See id.; see also Foreign Aid Comes Home, WASH.
POST, June 11, 1994, at A20 (stating that "[t]here are poor neighborhoods around the
country with infant mortality rates that rank up there with [the Third World]"");
Harlem's Infant Mortality up 40%: Health Officials Can't Explain Why, THE RECORD,
Oct. 6, 1994, at A19 (reporting that "Harlem's [infant mortality] rate was closer to
those of Third World countries, such as Mexico's 28 per 1,000 and Thailand's 27,
than it was to other impoverished city neighborhoods").}
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and poorly educated women."¹³ The report continues,

[a]s in other areas of human services, it is typically those women
who need prenatal care the most who are least likely to receive it.
Unfortunately, these are also the women who are most likely to
have frail, unhealthy babies, who, in turn, will bear the long-term
consequences of poor or inadequate care.¹⁴

Are the distances between our own domestic first and third worlds
unbridgeable? Minow's article asks this same question in another
form.

The question Professor Minow poses in her article is deceptively
simple—not unlike the bicycles and the Mom Mobiles I described
above. If we have reason to believe that home visiting programs
work, why don't we fund them? The explanations she offers are far
from simple. In fact, they are extraordinarily rich with insights
about American society and social history. As those who know my
work can guess, I agree wholeheartedly with many of Professor
Minow's concerns. I share her ambivalence about the values of
privacy.¹⁵ The veil of family privacy, as battered women and
abused children know, can exclude not only prying eyes but life-
saving interventions.¹⁶ I also share Professor Minow's interest in
history—especially in re-examining the insights of Progressives and
so-called "child savers."¹⁷ The important contributions of the
Progressives, especially their insistence on a public ethic of
responsibility for children and their caregivers, have been overshad-
owed by their well-documented class prejudice and blindness toward
other family values, such as respect for the family's religious and

¹³ NATIONAL COMMISSION ON CHILDREN, supra note 8, at 122-23.
¹⁴ Id. at 124.
¹⁵ See Barbara B. Woodhouse, Towards a Revitalization of Family Law, 69 TEX. L.
REV. 245, 255, 278 (1990) [hereinafter Revitalization] (arguing that American family
law reflects a strongly individualist concept of family rights that damages children);
Barbara B. Woodhouse, "Who Owns the Child?": Meyer and Pierce and the Child as
Property, 33 WM. & MARY L. REV. 995 (1992) (discussing how the property-based
notion of children and the model of the patriarchal family endanger children's rights
to safety, nurturing, and stability) [hereinafter Who Owns the Child?].
¹⁶ See Girl's Death a Case of Suspicions Ignored, CHI. TRIB., Nov. 9, 1987, at 8
(describing the death of a six-year-old child by parental child abuse and stating that
"[a] combination of fear, apathy and a big-city reluctance to breach another family's
privacy apparently prevented [neighbors] from alerting the authorities" of their suspi-
cions).
¹⁷ See Barbara B. Woodhouse, "Out of Children's Needs, Children's Rights": The
a revitalization of Progressive traditions in which parents' unregulated control of their
children must yield to child-centered rights).
cultural integrity, and for the importance of intimate attachments. Learning from history and experience may allow modern family advocates to avoid the cultural blunders and ethnocentrism of the “friendly visitors” who came before them, while recapturing their sense of relationship to their neighbors' children and their commitment to decentralized and personal interaction.

I also agree with Professor Minow about the complex politics of individualism and pluralism. Individualism can be an excuse for failing to offer positive support as well as a spur towards independence and achievement. Especially when dealing with families, often called the basic unit of society and the building blocks of community, there is much to be gained from universalizing and destigmatizing community support for families rather than treating it as an heroic or extraordinary measure. I agree with the Governor of Ceara—offering basic preventive measures to any family that wants them seems like a more efficient use of resources than waiting until parents and children are already in crisis.

As an historian of family law, I admire Professor Minow’s insistence on placing political and social science, and our contemporary judgments about the lessons they have to teach, in historical and cultural context. And I like the way she illuminates the

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19 See Barbara B. Woodhouse, Children’s Rights: The Destruction and Promise of Family, 99 B.Y.U. L. Rev. 497, 512-515 (1993) (discussing the difficulty of individualism and communitarianism in redefining the role of the family and addressing the needs of children and their caregivers); Barbara B. Woodhouse, Hatching the Egg: A Child-Centered Perspective on Parents’ Rights, 14 Cardozo L. Rev. 1746, 1814-18 (1993) (discussing parental authority, generational justice, and a child-centered perspective in redefining and challenging both the private and public law of the family) [hereinafter Hatching the Egg].


22 Among the readings I use in my seminar The Supreme Court and the Family are Martha Minow, “Forming Underneath Everything that Grows”: Towards a History of Family Law, 1985 Wis. L. Rev. 819 (critiquing the traditional family law history and
failures of communication when social scientists and policymakers try to converse. I am persuaded that she is right that the language of science, in its dedication to rigor and quantification, can sound like a vote of no confidence to policymakers and like a death knell to politicians. Minow's own example convinces me that policymaking demands the skills of scholars who are comfortable in many disciplines and who can make it their job to interpret the lingo and philosophy of one discipline to another.

Let me focus on several ways in which I would not only embrace but extend Professor Minow's reasoning. First is her point about the importance of treating family members as subjects, rather than objects. As Judge Bazelon predicted, social science plays an increasingly critical role in shaping policy—especially family policy. If experience is the life of the law,\textsuperscript{23} then I agree with Professor Minow and with Professor Susan Sturm that we need to bring a wider range of experience to formulating law. The science and history upon which we draw to formulate legal norms must take seriously the experiences of low-status people, like women and children, as well as those in positions of authority and power. It is easy to dismiss the viewpoints of dependent people, like all women used to be and poor women and children still are, as uninformed or incompetent. As a children's advocate, I have called for and am happy to see experts not only talking about child development, in which we study children objectively, but also experts studying what children themselves have to say about policies such as foster care and visitation.\textsuperscript{24} Recent studies have gone beyond rhetoric to outlining an alternative history of family law less grounded in progressive individualism) and Martha Minow, \textit{We the Family: Constitutional Rights and American Families, in The Constitution and American Life} 299, 299 (David Thelen ed., 1988) (challenging the Supreme Court's "story of consistent and enduring constitutional protection for the privacy and self-determination of families and their members... as mythical"). I count on these pieces to raise my students' consciousness about family law and its cultural embeddedness, contingency, historical relativity, and subtle metamorphosis over time. See also Woodhouse, \textit{Who Owns the Child?}, supra note 15, at 995 (reevaluating two seminal United States Supreme Court cases in their historical context and their continuing impact on family law).

\textsuperscript{23} See OLIVER W. HOLMES, THE COMMON LAW 1 (1881) ("The life of the law has not been logic: it has been experience.").

\textsuperscript{24} See Lita L. Schwartz, \textit{Enabling Children of Divorce to Win}, FAM. & CONCILIATION CTS. REV. 72, 74-75, 79-80 (1994) (showing how children's perspectives can inform decisions about visitation and custody); Woodhouse, \textit{Hatching the Egg}, supra note 19, at 1827-43 (discussing methods by which the law might be changed to reflect children's experiences, needs, and interests); see also ALDRIN FURNHAM & BARRIE STACEY, YOUNG PEOPLE'S UNDERSTANDING OF SOCIETY (1991) (discussing the process
examine how children actually rank the importance of the various rights we adults ascribe to them, from the right to a name to the right to protection from harm. Without consciously seeking, asking, and listening, professionals working with powerless people will not find out, since many of their subjects have difficulty making their voices heard or surmounting barriers of access to support. A surgeon in Brazil says, "I tell my agents they are my eyes and ears," and he is not talking about policing child abuse or parental neglect, as Americans might suspect, but about voluntary referrals to his clinic of people who did not know they needed care or did not know where to find it.

Another concern I share, one that Minow's article suggests indirectly, is a fear that the American romance with remote technology and our reluctance to deal with the messy, the intimate, and the ordinary may get in the way of lasting progress for children and their caregivers. We are capable of performing high-tech medical miracles such as separating conjoined twins through complex, lengthy operations. Meanwhile, I read in the newspaper of a new epidemic of childhood measles, a preventable disease that afflicted thousands of American children in recent years.
That epidemic prompted federal legislation to promote universal immunization, a project that remains stalled while various interests battle over the plans for free vaccine distribution.29

To illustrate the dangers of overvaluing technology, objectification, and abstraction, as well as the dangers of undervaluing house calls, conversation, and soap, I offer you a Philadelphia story—actually a University of Pennsylvania story.30 This is a story about context and history, sameness and difference,31 and lessons learned in what Minow’s home visitors call “the teachable moment.”32

Every summer, students and faculty from the schools of medicine, law, social work, nursing, and dentistry collaborate in a multidisciplinary undertaking called “The West Philadelphia Health Cooperative.” Their aim is to do research and field work in public health, and one of their recent projects was a health census of Mantua Hall, a public housing project not far from the University of Pennsylvania campus. Teams of students and researchers went from apartment to dilapidated apartment in a high-rise building where power was often out and not one elevator was operating reliably. They gathered data directly from families about their health and social service needs. They then set up a clinic in the building to offer basic services and referrals on site.33

A young nurse who had expressed some ambivalence about joining the team told this story to my class on family policy. She thought she already knew all there was to know about West Philadelphia mothers from her work in the University of Pennsylvania Hospital Maternity Units. She confessed to us that the Mantua Hall census had been an epiphany for her, a watershed in her training. Working inside the hospital, she had come to regard the

inadequate immunization funding for approximately 17,000 cases of measles).34


30 I am a great believer in the use of stories, whether you call them narratives, parables, or fables, as a means to illuminate the law with human experience. See Woodhouse, Hatching the Egg, supra note 19, at 1748-54 (using narratives drawn from children’s stories to discuss how the legal norms of family have failed children).


32 Minow, supra note 1, at 248.

33 See BRIDGING THE GAPS: PHILADELPHIA COMMUNITY HEALTH INTERNSHIP PROGRAM, 1993 HEALTH ACTION REPORT 4-9 (1993) (discussing the collaboration between academic health institutions and the communities to promote a cooperative use of existing resources to meet community needs) [hereinafter HEALTH ACTION REPORT].
mostly poor, young, and African-American mothers giving birth there as (she was embarrassed to admit) the “problem” and not the “solution” for their babies. They struck her as inattentive, incompetent and enmeshed in hopelessly chaotic lives. They seemed to have little time for their infants and often no interest in learning how to care for them. She grew angrier and angrier at having to send these helpless infants home with such feckless, unattached caregivers.

The women she met in Mantua Hall were the same young mothers and weary grandmothers she had seen in the Maternity Unit, only they seemed entirely transformed. They were eager to get health care for themselves and their children; they listened carefully, never missed an appointment, questioned her relentlessly, and worked to mobilize their neighbors. It became painfully clear to the young nursing student how much they loved their babies and how hard they were struggling to overcome grossly substandard living conditions and tremendous systemic barriers to care. This young nurse began to question her earlier assumptions. Did her negative assessment of these women have something to do with the context in which the “care” was being “delivered”?

Let us look at that context. Hospitals, as many readers may not realize, now discharge new mothers on the second day after they deliver their babies. Most medical complications develop earlier, and it is not deemed cost effective to keep the women any longer. With only thirty-six hours before discharge in many cases, our nursing student was hard-pressed to get through her agenda of testing, teaching, training, and informing these new mothers before it was time to pack them out the door with their infants and a box of disposable diapers. The student squirmed now at recalling how irritated she had been when they seemed more interested in their male visitors than in her instructions on baby-bathing and breast-feeding. Wasn’t the hospital setting guaranteed—perhaps even unconsciously structured—to make the nurses and doctors feel powerful and in control, and their patients powerless and out of control? How could “the teachable moment” possibly happen amid the chaos and alienation these women experienced on the maternity floor, a place that felt like home to the nurses and doctors but stressful and alien to the mothers?

This young nurse is a convert to home visiting, but that is not the point of my story. You may read it as a parable about the epiphany of any young professional who suddenly meets the client, face to face. You may read it as a lesson that stands for the proposition that it is worth the trouble to study humans in context.
You may take it as a fable about the object as subject, the professional as learner, and the client as teacher.

Professor Minow writes of the high value and the perils of privacy. A respect for privacy—while certainly a key value of law—also allows the professional to distance herself from the client's life, making it harder to understand who the client is and what she really needs. And I believe Professor Minow is right that gender has played a role in devaluing and marginalizing home visiting and mother-infant care. It is no accident that the model of the analytical, distant, efficient male scientist has displaced the intimate and practical approaches of early, mostly female social workers and midwives.

I am an incurable optimist. But sometimes it is difficult to believe that we actually can learn from experience. Professor Minow in her retrospective examines a century of history. Consider what a difference twenty-five years could make. Imagine a young mother feeling frightened and insecure. She has no extended family in the city, and this is her first baby. She is not hustled out of the hospital the day after she gives birth, and when she goes home, it is to a subsidized apartment in West Philadelphia where all new mothers (not just at-risk families) are offered home visitors to help them with the transition to parenthood. A visiting nurse helps this young mother and the father to give the infant its first real bath, and tells them again, slowly, about the really important things—like how to burp the baby and the wonders of Desitin ointment in treating that nasty diaper rash. The nurse draws the young family a map of how to get to a neighborhood clinic providing free well-baby care and inoculations. And when they get there, they find no shortages of vaccines and no day-long lines.

I know it can be done, because I was there. The year is not 2019 but 1969 and I was the young mother, living on Spruce Street in subsidized student housing. In my social circles, an "experienced" parent was the "girl" next door whose baby had survived its first year in one piece. Twenty years later, when I was chairing a Philadelphia Bar Association panel on cocaine babies, I asked, "Whatever happened to Philadelphia's visiting nurses?" A former visiting nurse in the audience commented that, yes, there had been

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34 See Woodhouse, supra note 21, at 120 n.15 (discussing a multidisciplinary conference entitled "Cocaine, the Youngest Victims," sponsored by the Children's Rights Committee of the Philadelphia Bar Association, the Support Center for Child Advocates, the Juvenile Law Center, and the Education Law Center in 1990).
a universal program of visiting nurses, but it had been eliminated in
the seventies because it was decided that health education could be
delivered more efficiently in a hospital setting.

Learning from experience involves not only discovery, but rediscovery. As Minow suggests, we may need to relearn things we once knew and have forgotten. The benefits of home visiting teach us that, even in our high-tech age, families cannot thrive unless they are embedded in neighborhoods and communities. They cannot be immunized against disaster or taught to parent in thirty-six hours in the hospital, but instead need ongoing external networks of support.

Learning from experience may also call upon us to unlearn lessons we thought we had mastered. As our miracles begin to fail us, one of those lessons we need to unlearn is the superiority of technologically complex answers like diagnosis and antibiotics over simple answers like conversation, touching, and soap.

Learning from experience also involves a dogged refusal to give in to pessimism and that hopeless sense of "been here, seen this" déjà vu. Joycelyn Elders said it well: "Being in public health is like dancing with a bear, and when you're dancing with a bear you can't get tired and sit down." Often, it is not so much the measurable progress you are achieving, but the evil you are holding at bay, that represents the signal achievement of public health.

Finally, learning to respect experience may embolden some of us to challenge studies that dismiss the soft textures of family and social interaction and credit only hard models built around cold numbers. Models driven by easily measurable data about costs, benefits, and efficiencies risk overlooking the harder-to-quantify benefits of a decentralized, preventive approach to both mental and physical family health. I suspect that planners give too little weight to the intangible benefits like role modeling, storytelling, and general preventive medicine, both mental and physical, that a really friendly visitor can leave behind.

I would argue, in fact, that Americans tend to make the opposite mistake, to give too much weight to the intangible threat of moral decay that critics find lurking behind every family support pro-

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55 Dr. Joycelyn Elders, Keynote Address at Bridging the Gaps: Philadelphia Community Health Internship Program Symposium (Oct. 30, 1993), quoted in HEALTH ACTION REPORT, supra note 33, at 3.

56 Professor Minow seems to give some weight to this concern, but I am persuaded that we do far more harm to Americans' spirit of self-reliance by short-sighted income
other universal social services is the conviction that collective responsibility will inevitably undermine societal values of individual responsibility. I am more inclined, as I observe trends in America, to believe that the high premium we place on self-interest as the cheap fuel for growing our economy and society may be instilling an ethic of individual as well as collective selfishness.\footnote{See John Eekelaar, Are Parents Morally Obligated to Care for Their Children?, reprinted in Parenthood in Modern Society: Legal and Social Issues for the Twenty-First Century 51 (John Eekelaar & Petor Šarčević eds., 1993) (discussing the social and individual obligations owed to children).} Clearly, there are benefits to home visiting (remember "quality time") that cannot be measured by available tools, especially those tools that ignore the subjective and measure only the objective. One of these benefits may be the modeling of a society taking responsibility for its children and embracing a value other than narrowly self-interested conduct. I cannot prove, but I believe, that delivery of the same services in a home-based and community-based context is good for something that lies at the heart of family values. It offers the promise, although the dangers are also significant, of cementing social connections between those who give and those who need care. Home visiting can serve as hard proof that families are valuable enough and important enough to command time and attention, as well as money, both personal and public.\footnote{See ABA Presidential Working Group on the Unmet Needs of Children and Their Families, America's Children at Risk: A National Agenda for Legal Action 9-12 (1993) (discussing the need to focus attention on the problems of children and families in crisis before children are subject to the judicial system); Center on Social Welfare Policy and Law, Living at the Bottom: An Analysis of 1994 AFDC Benefit Levels (1994) (highlighting the dismal level of aid provided to meet even the basic needs of American children).}

I did not have the pleasure of knowing Judge Bazelon, but it seems clear that whether he saw the law as rooted in sameness or difference, in substance or process, the Bazelonian perspective valued human experience. It is cause for optimism to see legal scholars like Minow bringing their analytical skills and common sense intuitions to the arena of policymaking about women and children. She has taken the lessons she learned at that round table in Judge Bazelon's chambers into the larger world, and she now challenges us to bring a Bazelonian humanistic science to bear, not
only on the glamorous and high-tech issues of the day, but also on the most basic, ordinary, deepest, and most intimate work of society. Martha Minow, like her mentor, continues dancing with the bear, and even calling new tunes, long after others have checked their party shoes and gone home.