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Critical Race Lawyering
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WHITE LAWYERING: RETHINKING RACE, LAWYER IDENTITY, AND RULE OF LAW

The triumph of what might be termed the standard version of the professional project would, I believe, be the creation, by virtue of professional education, of almost purely fungible members of the respective professional community. Such apparent aspects of the self as one's race, gender, religion, or ethnic background would become irrelevant to defining one's capacities as a lawyer.

- Sanford Levinson¹

I am one-of-a-kind as a person--as is everyone who reads this chapter. I am also a member of the white racial group--as everyone who reads this chapter is a member of a racial group. I am male--as everyone who reads this chapter has a gender-group membership. In these three psychological conditions, we all participate. Even if I were to try to escape my racial-- or gender--group memberships, members of my own and other racial and gender groups would treat me as if I were a member of my groups.

- Clayton P. Alderfer²

This Essay will explore what it means to be a white person in the legal profession³ and how recognition of whiteness as racial identity⁴ *2082 requires a dramatic rethinking of professional norms. As white people, we too often view racial issues as belonging to people of color.⁵ We tend to do that in one of two ways. Some whites believe that race generally does not matter except in the rare case of an intentional racist. Other whites view whites generally as racists and look to people of color to tell them how to understand issues of race. This Essay rejects both of these approaches. The Essay argues that for white lawyers, as well as lawyers of color, increased ““competence [in] dealing with racial matters”” and ““speak [ing] openly, frankly, and professionally about relations””⁶ is necessary both to competent client representation and equal justice under law.

*2083 Applying the insights of intergroup theory, the Essay suggests that whether they view themselves as color-blind or racist, white lawyers understandably have a tendency to treat whiteness as a neutral norm or baseline, and not a racial identity, and tend to view racial issues as belonging primarily to people of color, whether lawyers or clients.⁷ This approach is consistent with, and reinforces, the prevailing professional norm that lawyers should “bleach out” their racial, as well as their other personal, identities.⁸

As this Essay explains, this unfortunate symbiosis of whiteness and professionalism undermines the work of lawyers both in their representation of clients and in their systemic efforts to promote the rule of law.⁹ The latest research in the field of organizational behavior suggests that the assumption of lawyer neutrality so central to lawyer professionalism is not only wrong descriptively, but that it also undermines the very goals it seeks to promote. In particular the pathbreaking research of Robin Ely and David Thomas demonstrates that in a diverse society and legal profession an integration-and-learning perspective that openly acknowledges and manages racial identity would far better promote excellent client representation and equal justice under law than the currently dominant commitment to color blindness.¹⁰

I. Intergroup Theory

Intergroup theory offers a way to “understand, explain, and predict relations between groups . . . in organizations.”¹¹ It suggests that group identities, such as racial identity, influence conduct in organizations.¹² The organizations comprising the legal system *2084 include the system itself, as well as constituent organizations such as law schools, law firms, courts, bar groups, and the profession as a whole.¹³ Within these organizations, individuals “are shaped by at least three sets of forces: their own unique personalities, the groups with whom they personally identify to a significant degree, and the groups with whom others associate them-- whether or not they wish such an association.”¹⁴ The two major groups in organizations are “identity groups and organization groups.”¹⁵

As I noted in an earlier article, “[p]rofessional socialization as a lawyer is an organizational group identification.”¹⁶ Membership in organizational groups is “based on task, function and hierarchy.”¹⁷ Persons in organizational groups share “similar primary tasks, participate in comparable work experiences and, as a result, tend to develop common organizational views.”¹⁸ Being a member of the lawyer organizational group “involves similar tasks, comparable experiences, and comparable organizational views. Among the factors that make law a particularly powerful group experience is the shared three years of law school, often at a young age, combined with a long and often continuous membership in the profession.”¹⁹

While all lawyers are members of the lawyer organizational group, that group further divides into other organizational groups, such as partners and associates, or litigators and judges.

Identity group membership, such as race, derives from identities external to the organization. As a general matter, “[m]embers of identity groups share common biological characteristics, participate in equivalent historical experiences and, as a result, tend to develop similar world views.”²⁰ Identity group membership is sufficiently powerful that it influences conduct within organizations.²¹ Its power *2085 derives from its pervasive role in an individual’s life. Identity group membership often begins at birth and continues throughout an individual’s life “or, as in the case of age, changes as the result of natural development.”²² While powerful, organizational group memberships generally develop later than identity groups and “can change as people enter and leave organizations” or shift their role within organizations.²³

According to intergroup theory, “individuals and organizations are constantly attempting, consciously and unconsciously, to manage potential conflicts arising from the interface between identity and organization group memberships.”²⁴ As Clayton P. Alderfer has noted, “[r]elations among identity groups and among organizational groups are shaped by how these groups and their representatives are embedded in the organization and also by how the organization is embedded in its environment.”²⁵ Embeddedness is congruent “where power relations at a particular level within an organization are similar to those at other levels of the organization, or in society as a whole,” and incongruent where they are not.²⁶ Incongruent embeddedness causes increased strain for the individual and the organization.²⁷

II. Drawing a Picture of the White Lawyer

In 1991, I was part of a team that created an intergroup theory exercise for the first-year class at the University of Pennsylvania Law School.²⁸ I use a version of this exercise in my ethics seminar as a way to begin a unit on lawyer identity and justice. The students' task is to work in identity groups to create a picture²⁹ describing their identity group's experience as law students.³⁰

To facilitate the formation of identity groups, the exercise starts by dividing the students into four race- and gender-based groups: women of color, men of color, white women, and white men.³¹ The basis for this division is the hypothesis that for most students, their race and gender are the most salient identities. I then suggest that the students consider dividing their groups further according to other identities that result in significantly different experiences. These identities could include the various subgroups within the people of color group, including Asian, Black, or Latino; as well as identities found in all groups, such as sexual orientation, class, disability, and whether the student went directly from college to law school.³² When the identity groups complete their pictures, they post them on the wall and describe them. The class discussion begins with the role of identity group differences in the law school experience and moves to the role of these differences in the legal system and their implications for the rule of law.³³

For this Essay, I have essentially done what I have often asked my students to do. My picture of the law school offers a collage of views. To illustrate the ease I feel as a white person in a position of authority in a predominantly white institution, I would draw a picture of myself discussing the question of whether to invite students to call them by their first name in class with colleagues who are white women and people of color--I do and they do not. This ease sometimes makes me miss ways in which issues of race and gender influence my work. As I draw this picture, I realize that in recent years, I have become so complacent that I have not spent time thinking about how having a white man as the facilitator influences the students and me, and I am considering returning to a past practice of inviting faculty of color into the conversation with the students.

My picture will also identify how some students--usually but not always white--will reject identifying themselves on the basis of race and how some students--usually but not always students of color--will indicate that race is a significant part of their experience as law students. Students of color, but never yet a white student, will describe the experience, while working during the summer, of having lawyers mistake them for secretaries or messengers.

I would draw a similar picture of my Housing Rights Clinic. When the white students--or I--wear a suit and go to court to teach the Housing Rights Clinic, the first assumption of court personnel is that we are lawyers. Almost every year, we will have an incident where court personnel or opposing lawyers assume that a student of color is a party and not a legal representative.

These relations in the legal system mirror, in turn, relations in society as a whole. I would depict what I think of as well-dressed white man's privilege--the ability often (though less often since 9/11) to walk confidently past a security guard without being questioned, in contrast to friends of color who have had the opposite experience of more intense scrutiny. I would add to the societal section a picture of the judge of color who tells how white people assume he is a doorman when he holds a door for them as a courtesy.

My picture is informed both by my personal experience and by the literature on race relations. As a general descriptive matter, white people are the dominant racial group in legal organizations. They represent 83.2% of judges,³⁴ 89.2% of lawyers,³⁵ and 79.5% of law students,³⁶ percentages which exceed the 75.1% of the American population that is white.³⁷ In elite legal jobs, the white domination is even greater. Whites represent almost 98% of partners in the 100 top law firms.³⁸

As the dominant racial group, whites can view ourselves as having no particular racial identity. An African-American friend recently described his impression that newspaper stories describing lawyers usually identified the race of lawyers of color but mentioned no race for white lawyers. As a member of the dominant group in the legal profession, the white lawyer is the norm.³⁹ With regard at least to our race, we start by looking around the room and feeling like we belong, as is so often the experience of white students, particularly the men, in my seminar who do not see race as a useful way to discuss their experience. We feel comfortable with authority. Accordingly, I do not worry that my students will challenge my

authority when I invite them to call me by my first name.⁴⁰

Another aspect of viewing ourselves as having no particular racial identity is seeing issues of race as that of people of color and not of white people.⁴¹ I represent this phenomenon in my picture through my white students who do not see themselves as having a white identity and who object to exploring issues of race. Clayton P. Alderfer has observed that “[w]hite people do not easily discuss race relations. For most whites, the range of feelings goes from uncomfortable to severely uncomfortable.”⁴² He finds that whites’ “most common behavioral pattern is avoiding the issue, if at all possible. When that response is not feasible, the next line of defense is to deny the presence of racial dynamics.”⁴³

The experience of law students and lawyers of color is quite different. As a minority group in the legal profession, they have “no choice except to learn about white culture if they are to survive.”⁴⁴ When people of color look around the room, they know they are not the dominant culture and do not necessarily assume the same fit and the same authority. Enhancing this effect is the congruence of white dominance in the legal profession with white dominance in a society where whites have a greater share of wealth and power.⁴⁵ When white lawyers, judges, and court personnel assume my students of color are tenants and not legal representatives, or assume a summer associate of color is a member of the support staff, they are applying generalizations about race relations congruent with the relative distribution of racial power found in society in general.⁴⁶ The incongruence of the authority position of being a lawyer, or of having a position of authority within the legal profession, complicates the organizational tasks of lawyers of color.

While race makes a significant difference in our experiences as lawyers, intergroup theory reminds us that it is not determinative.⁴⁷ *2089 These experiences, like those relevant to organizational groups and other identity groups to which we belong, provide us with data. How we manage that data--whether we acknowledge it consciously and how we respond to it--is a matter of choice on both an individual and group level.⁴⁸ One way I choose to manage my white identity is to acknowledge and discuss issues of race with my students and colleagues and, indeed, to write this Essay as a way of communicating with a broader group of legal academics, lawyers, and law students. Although this Essay represents a preliminary account of the white experience in the legal profession, this part offers at least two conclusions: White racial identity exists and whites tend to avoid acknowledging their identity.

III. The Symbiosis of Whiteness and Professionalism Undermines White Lawyers’ Work

Despite the persistence of racial identity group influences, white lawyers tend to deny the influence of their racial identity group on their work as lawyers. When professionalism’s ideological commitment to color blindness reinforces this tendency, the resulting symbiosis undermines the capacity of white lawyers to represent clients to the best of their ability.

A. The Symbiosis of Whiteness and Professionalism

A dominant value common to the organizational identity of lawyers is professionalism’s commitment to the color blindness of lawyers’ conduct.⁴⁹ In Sandy Levinson’s famous formulation, professional socialization “bleaches out” racial differences among lawyers, as well as other individual characteristics.⁵⁰ Under this view, all lawyers should be--and in most instances are--fungible. Not only should race play no role in how a lawyer approaches her work, but with few exceptions it will play no role. White lawyers who follow the *2090 dominant approach will actually believe that this is an accurate account and that they themselves are neutral as to race. Accordingly, they will reject the notion that they should examine the influence of their white identity on their lawyering.

Of course, in doing so, they are reinforcing their general tendency as white people to avoid issues of race. While a small minority of whites embrace their white racial identity, with both its positive and negative aspects,⁵¹ most whites tend to see themselves as the neutral norm, rather than as a particular racial identity.⁵² Race is for people of color.

Some whites with this perspective will view law practice, like society, as essentially color-blind.⁵³ In this world, racial influence is rare, generally extending only to those few whites who are openly racist. Accordingly, when people of color raise

issues of race, they “play the race card”⁵⁴ and create phony issues to promote their own interests.

Other whites with a similar understanding of racial dynamics may reach an opposite conclusion. They believe that white racism is a significant societal problem. White people, lacking a proper claim to racial identity and colluding in white racial dominance, have little to offer on racial issues. Under this view, people of color have--and whites lack--the ability to understand, or to engage in productive discussions regarding, race. White people should defer to people of color who are experts on race.⁵⁵

*2091 Professionalism’s “bleaching out” approach and these tendencies of white people mutually reinforce certain conduct. They discourage white lawyers from acknowledging that their race is an influence and from exploring the extent to which their white identity plays a role in their work settings. They further discourage white lawyers from engaging in dialogue regarding issues of race with each other, as well as with people of color. In a diverse legal system, where white lawyers work with colleagues, adversaries, judges, clients, and witnesses of color, the potential negative impact of these practices on a lawyer’s work is quite significant.

B. How the Symbiosis Undermines Lawyer’s Work: An Illustration

White law professor Clark Cunningham has provided an extraordinarily thoughtful and nuanced analysis of the representation he and two white students provided an African-American man facing a misdemeanor charge of disturbing the peace arising from a traffic stop.⁵⁶ The police officer had described the African-American client as having told the police he had been stopped “because he was black” and the Judge “described [the] client as ‘hollering racism.’”⁵⁷ Nonetheless, even though Cunningham suspected that “what happened . . . was a ‘racial incident,’ . . . as a lawyer [he] did not talk about ‘the case’ that way, and therefore [he] ceased to think in terms of racial issues”⁵⁸ Accordingly, Cunningham and the students did not discuss with their client, or argue to the court, that the treatment of their client had a racial dimension.⁵⁹ After the prosecution dismissed the case, the client angrily assailed Cunningham and the students for patronizing him and treating him the same way that other white authority figures did.⁶⁰

Cunningham attributes the failure to address the racial aspects of the case to two factors. First, the client never raised the claim with his white lawyers. Cunningham suggests that his African-American client *2092 might not have believed he could share with his white lawyers the view he expressed after the completion of the case--that the white lawyers would have been just as skeptical as other white authority figures were.⁶¹ Second, Cunningham and his students did not reach the racial issue because as lawyers they turned first to readily available “race neutral” defenses.⁶²

What Cunningham does not explore is the possibility that race influenced his own conduct and that of his students. Perhaps as whites and lawyers, they began assuming the norm that race is not a factor. Therefore, they would not on their own initiative raise the possibility that race played a role either in the matter or in their relationship with their client. Indeed, their expectation that the African-American client would raise issues of race if they existed suggests that the white lawyers might have applied the assumption that race is an issue for people of color and not for whites.

The lawyers’ white identity could also have attributed to their failure to follow up on specific evidence indicating that they should explore how racial identities influenced the case. Here, the police report revealed that the African-American client had suggested that his race was a factor in his stop. When the white judge described the charge against the African-American defendant as an “attitude”⁶³ charge, he may very well have been signaling that the charge resulted from the defendant’s inappropriate and racially based response to the police officers. Even though Cunningham as a progressive white person had an “impression” that the incident was racial, he may not have pursued this intuition⁶⁴ because the embeddedness of the authority relationship with his client was consistent with that of the white police officer and judge. After the case ended, the African-American client certainly noted that this was his perception--that the white lawyers had treated him in the same paternalistic way as the other white authority figures.

Last, Cunningham’s explanation that the white lawyers naturally turned to a race-neutral strategy represents a symbiosis of whiteness and of professional values. The professional ideal that lawyers and law should be neutral provides support for

preferring a race-neutral strategy if readily available, as in this case. It also supports the tendency of whites to avoid confronting racial issues. In this way, whiteness and professional values are mutually reinforcing.

This example is but one illustration of how the symbiosis of whiteness and professionalism undermines white lawyers' ability to provide their clients with optimal representation. Of course, as intergroup theory suggests, quality lawyering requires attention to *2093 race on the part of all lawyers, not just white lawyers, and in all situations, not just cross-racial ones. The dominant professional paradigm of "bleaching out" race (and other differences) is wrong both as a matter of description and as a matter of maximizing the effectiveness of a lawyer's work.

IV. Rethinking the Construction of Professional Identity and Rule of Law

Two central goals lawyers share through their organizational group identity as members of the legal profession are commitment as an individual or firm to excellence in representing clients, and commitment as a community to maintaining a legal system that adheres to the rule of law. In order for lawyers to improve their ability individually and communally to attain these goals, the legal profession should discard the bleaching out assumption in favor of an integration-and-learning perspective that acknowledges the influence of identity group affiliations on lawyers' work.⁶⁵

A. The Integration-and-Learning Approach Works Better Than a Color-Blind Model

In two recent studies, leading organizational scholars Robin Ely and David Thomas have demonstrated that the "integration-and-learning" paradigm is more effective in achieving organizational goals than the "discrimination-and-fairness" model currently dominant in the legal profession.⁶⁶ In the integration-and-learning approach, members of a work force "are receptive to the notion that racial differences may underlie team members' expectations, norms, and assumptions about *2094 work and that these differences are worth exploring as a source of insights into how the group might improve its effectiveness."⁶⁷ Co-workers "openly acknowledge and negotiate their differences in service of their goals."⁶⁸

In contrast, in the discrimination-and-fairness approach, such as the "bleaching out" paradigm dominant in the legal profession,⁶⁹ "cultural diversity is a mechanism for eliminating racial injustice, and . . . is of no use in furthering the group's work."⁷⁰ Under this paradigm, "group members aspire to be color blind" and confine "discourse about race . . . to the possibility of racial biases in the group."⁷¹

Ely and Thomas found significant advantages for the integration-and-learning approach.⁷² In one study, they examined organizations employing competing models. The integration-and-learning workplace benefited from "cross-cultural exposure and learning and . . . work processes designed to facilitate constructive intergroup conflict and exploration of diverse views"; while the discrimination-and-fairness workplace displayed "low morale of employees, lack of cross-cultural learning, and the inability of employees of color to bring all relevant skills and insights to bear on work."⁷³ In the integration-and-learning model, "all employees fe[lt] fully respected and valued for their competence and contributions"; this is in contrast to the discrimination-and-fairness workplace, where "[e]mployees of color *2095 fe [lt] disrespected and devalued."⁷⁴ Similarly, "racial identity at work" in the integration-and-learning model was "a source of value for people of color, a resource for learning and teaching, [and] a source of privilege for whites to acknowledge," while in the discrimination-and-fairness model, racial identity was a "[s]ource of powerlessness for people of color [and a] source of apprehension for whites."⁷⁵

Although race-related conflicts occurred in both organizations, under the integration-and-learning model, members of different identity groups perceived themselves as having "equal power and status" and "open[ly] discuss [ed] differences and conflict."⁷⁶ In contrast, under the discrimination-and-fairness model, Ely and Thomas found "[i]ntractable race-related conflict stemming from entrenched . . . status and power imbalances; [with] no open discussion of conflict or differences."⁷⁷

In another landmark study, Ely and Thomas compared the performance of more than "275 retail branches of a bank."⁷⁸ They found that the integration-and-learning branches "significantly outperformed" the discrimination-and-fairness branches in key

work performance criteria--“in new sales revenue and in total performance.”⁷⁹ Moreover, “racial diversity was negatively associated with all three performance measures in branches” with a color-blind approach, and “positively associated with them in branches with a positive racial learning environment.”⁸⁰

B. Applying the Integration-and-Learning Model to Legal Practice

The answer for the legal profession is to replace the “bleaching out” model, a discrimination-and-fairness approach, with an integration-and-learning strategy. As a preliminary step in this direction, this Essay will offer a framework for applying the teaching of Ely and Thomas to client representation and rule of law.

1. Integration-and-Learning in Client Representation

The integration-and-learning approach requires reflection and discussion in all aspects of client representation. As lawyers increase their “competence [in] dealing with racial matters,”⁸¹ they should consider how their identity group, as well as the identity groups of *2096 others with whom they are working, influences their relationships with colleagues, clients, adversaries, and court personnel. Lawyers should then, with their colleagues and clients, make explicit that issues of race are open for discussion and “speak openly, frankly, and professionally about relations.”⁸² With this framework, lawyers will learn much more from their colleagues and clients, who in turn will learn much more from them.⁸³ As Ely and Thomas demonstrate, this framework will result in lawyers treating--and being perceived as treating--each other and their clients with more respect, moving beyond erroneous assumptions to more accurate analysis and more effective strategies, and working more successfully as a team with colleagues.⁸⁴

Ely and Thomas remind us that these strategies do not avoid conflict. Rather, they offer a more effective way to manage conflicts that are likely to occur or to exist even without open acknowledgement. As Ely and Thomas advise managers, lawyers should seek to maintain the trust necessary to implementing the integration-and-learning approach “by demonstrat[ing] commitment to the process and . . . by setting a tone of honest discourse, by acknowledging tensions, and by resolving them sensitively and swiftly.”⁸⁵

If the white lawyers had applied this approach in the case study described above, they would have acted quite differently. First, they would have asked themselves whether their white identity influenced how they perceived and were perceived by their African-American client, the white police officer, and the white judge. Second, from the beginning of the relationship and continuing throughout, they would have invited their client to engage with them openly on issues of race. Had they done so, they might have recognized the racial issues in the case themselves, have learned of those implications from their client, and have examined those issues in cooperation with their client. They most likely would not have missed the racial tension with their client, which existed throughout the representation but was only revealed by the client after the case was over.

While resembling some of the approaches in the literature on “cross-cultural lawyering,”⁸⁶ this approach has a different emphasis. *2097 Like cross-cultural lawyering, it rejects color-blindness and encourages self-reflection.⁸⁷ Like the better work on cross-cultural lawyering, it rejects the notions that cross-cultural lawyering is exclusively an issue for white lawyers or in cross-cultural situations.⁸⁸ Nonetheless, as a matter of emphasis, this rejection is much clearer under an integration-and-learning approach that views all lawyers and all clients as members of both organizational and identity groups at all times.⁸⁹

In one respect, though, the integration-and-learning approach is irreconcilable with cross-cultural lawyering. Where cross-cultural lawyering seeks a “non-judgmental approach towards yourself and client,”⁹⁰ the integration-and-learning approach rejects this goal as a form of unrealistic and counterproductive color blindness or culture-blindness. It instead requires informed judgments, together with “open[],frank[], and professional []” exchanges regarding those judgments.⁹¹ These very different goals also result in a different emphasis with regard to learning. While both approaches value learning of all types, cross-cultural strategies place a greater relative emphasis on learning about different cultural styles, while the integration-and-learning model places a greater relative emphasis on learning between and among lawyers and clients themselves during their relationships.⁹²

2. Rethinking Rule of Law

Intergroup theory also requires rethinking the connection between “bleaching out” and rule of law. As discussed above, the term “bleaching out,” a term with obvious racial resonance,⁹³ describes professionalism’s commitment that all lawyers are fungible⁹⁴ and therefore free of influence from aspects of the self external to organizational group identity, including race as well as gender, religion, and other identity group characteristics.⁹⁵ The organizational *2098 group value of professionalism requires that race and other aspects of the self “become irrelevant to defining one’s capacities as a lawyer.”⁹⁶

This conception, in turn, derives from the mutually reinforcing perspectives of role morality and rule of law. Professional role morality presumes that “the professional’s conduct is governed by the morality dictated by the profession and not from outside the profession.”⁹⁷

The dominant conception of rule of law makes the command of role morality even stronger for lawyers than for other professionals. Under this view, “[r]ule of law implies that the quality of lawyering and of justice an individual receives does not depend on the group identity of the lawyer or judge.”⁹⁸ This conception “posits that the clash of opposing views before a neutral fact finder is the best way to ascertain truth and justice.”⁹⁹ For the system to work properly, “all parties [must] receive equal representation” and for that to happen, lawyers must “function as extreme partisans who should not bring their own [identity] to bear on their representation.”¹⁰⁰

The theory of organizational behavior implicit in the “bleaching out” paradigm runs directly counter to intergroup theory. The professional socialization of organizational group affiliation within the legal profession denies the very existence of identity groups. But, as intergroup theory reminds us, demanding the exclusion of identity group influence from the classroom, courtroom, and law firm will not make it so.¹⁰¹ Individuals within organizations have both organizational group and identity group affiliations. No matter the organizational values, identity group influences persist.

Moreover, as an empirical matter, Ely and Thomas’s findings demonstrate that “bleaching out” paradigms are less effective in promoting organizational goals than a perspective that acknowledges the persistence of identity group influences. They found, for example, that a color-blind approach tends to perpetuate imbalances and injustices between identity groups that exist within society as a whole and fails to encourage people to achieve the highest functioning in pursuing common goals.¹⁰² In contrast, the integration-and-learning *2099 approach results both in a more equal distribution of “power and status” and a more effective strategy for achieving organizational goals.

The potential implications for the legal profession are profound. If our organizational goal is equal justice under law, an integration-and-learning approach will more likely have greater success than the dominant “bleaching out” paradigm. As Martha Minow has observed, in a world where differences matter, “a commitment to equality--to treating like[] [cases alike under the rule of law,]--will be caught in a contradiction.”¹⁰³ She, like Ely and Thomas, argues that “you cannot avoid trouble through ignoring difference; you cannot find a solution in neutrality.”¹⁰⁴ The task for the legal profession is to promote equal justice in the best way in light of the persistence of group identities.

This effort has yet to be made on any significant scale. Existing efforts to promote equality, such as judicial commissions on the status of racial minorities, continue to work within the limited confines of the “bleaching out” paradigm. The task for the future is for the legal profession to replace “bleaching out” with the goal of creating an integration-and-learning community for lawyers, so that we can join to explore the potential for rule of law in light of how we are all different from one another, and yet how we are all the same in sharing the goal of equal justice under law.

Conclusion

As intergroup theory teaches us, race provides data essential to understanding and managing organizational goals. To be a responsible and constructive member of legal organizations, a white lawyer must therefore acknowledge that whiteness is a racial identity and not a background norm. This acknowledgement, in turn, has two major implications. First, in assessing the

legal workplace and legal system, a white lawyer (like all lawyers) must assess the role race plays and engage in learning with people of all races to determine how best to further organizational goals in light of racial differences. Second, the persistent influence of identity group membership in legal organizations requires, on both practical and theoretical grounds, discarding the dominant “bleaching out” approach to professionalism and rule of law in favor of an integration-and-learning approach to representing clients and creating a community that recognizes racial identity as a strength and not a failing.