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JEWS LAWYERING IN A MULTICULTURAL SOCIETY: A MIDRASH ON LEVINSON

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INTRODUCTION

Kol hakavod to Professor Levinson for his Article exploring Jewish lawyering. His provocative and insightful reflections cluster around two questions. First, what does it mean to be a Jewish lawyer? Second, how do group identities, including religion as well as race and gender, influence professional behavior? This Comment seeks to elaborate on, and in some instances refine, Levinson’s pioneering analysis.

The first question affects me personally and deeply as a Jewish lawyer and law professor. My Judaism is central to how I determine what is “ethical.” For me, wrestling with what it means to be an ethical lawyer requires understanding what it means to be a Jewish lawyer. As a teacher of Professional Responsibility, I ask my students to consider their faith commitments as one possible source for their own vision of the lawyer’s role, and I provide them with scholarly articles on Christian lawyering. Next year, I will include Professor Levinson’s Article.

The second question has serious ramifications for all of us. Professor Levinson places the issue of religious lawyering in the context

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2 Literally “all the honor,” Alcalay, supra note 1, at 1019, 475, 984, and defined as “exclamation of approval,” Shimson Inbal, User-Friendly Dictionary Hebrew-English 210 (1988), this use of kol hakavod combines a sense of both congratulations and honor. Telephone Interview with Rabbi Eric H. Yoffie (Nov. 17, 1992).

of the ongoing debate regarding difference. He does a profound service by confronting the prevailing assumption that professional identity "bleach[es] out" group identity. He also makes a major contribution by asking how the influence of religious identity compares with the influence of other identities, such as race and gender.

This Comment seeks to further both of Professor Levinson's inquiries. With regard to the first inquiry, part I of this Comment suggests ways to expand our understanding of who is a Jewish lawyer. Parts I.B and I.C add to Levinson's five models by proposing a sixth model titled "Jewish Social Justice Lawyering," and extending Levinson's fifth model to include non-Halakhic Jewish perspectives. Part I.D suggests reorganizing Levinson's models into a system of groups and subgroups.

With regard to the second inquiry, part II of this Comment examines the volitional and nonvolitional influence of group identity. In so doing, part II.B explores Levinson's suggestion that religion will have a more powerful influence on conduct than other group affiliations. It suggests that the influence of volitional factors, whether religious or political, will be quite diverse. Part II.C further applies intergroup theory to suggest that, whether based on volitional or nonvolitional factors, group identities influence professional conduct.

Next, part II.D of this Comment considers the contradiction between the persistence of group identity and professional norms derived from devotion to the rule of law. It suggests that as a practical matter the broad acceptance of the goal of the rule of law, combined with the diversity within groups, and the commonality across groups, of approaches to lawyering, obscure this contradiction. Nevertheless, because the contradiction endures, this Comment urges that the profession consider replacing the goal of "bleaching out" with the objective of creating community within the legal profession.

Last, in light of both of Levinson's inquiries, part III of this Comment considers the application of Jewish lawyering. It suggests that given the diversity of Jewish perspectives, the most compelling and significant application of Jewish lawyering is to provide guidance to individual Jews who seek to reconcile their Jewishness with their professional role as lawyers.

4 Id. at 1578, 1601.
5 Id. at 1583-85.
6 Id. at 1604-05, 1611-12.
I. REVISITING THE SCOPE OF JEWISH LAWYERING: WHO IS A JEWISH LAWYER?

A. Levinson’s Models

Levinson proposes “Five Models of the Jewish Lawyer.” The models are not exclusive and indeed will overlap. Model One identifies all persons who are both Jews and lawyers. In the context of Model One, Levinson acknowledges, but does not answer, the question of how we define who is a Jew. Levinson also asks, and does not answer, whether we can make generalizations about the lawyering of Jewish lawyers without raising the specter of anti-Semitism. All Jewish lawyers fall within Model One.

Model Two consists of “Jewish Lawyering as an Expression of Social and Political Solidarity.” It describes those lawyers “who feel a high degree of membership in, and presumably a loyalty to, a specifically Jewish community, regardless of whether there is an explicitly religious element to this identification.” Levinson describes this as “ethnic” Jewish lawyering which would lead Jewish lawyers to “draw their client base from the ethnic community and... feel some special duties to defend fellow ethnics or co-religionists (if that is the proper term) from attack from the ‘outside’ community.” In this category, he includes the Zionism of Brandeis and Frankfurter, as well as the refusal of Alan Dershowitz to teach at Harvard Law School on Saturdays even though he “had personally become nonobservant.”

In Model Three, “Judaism Enters the Legal Workplace (But Leaves the Internal Norms of Legal Practice Untouched).” Levinson analogizes this model to Sandy Koufax’s refusal to pitch the opening game of the World Series on Yom Kippur. Under this model, Judaism as a religion would influence observance of holidays and per-

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7 Id. at 1583.
8 Id. at 1585.
9 Id. at 1585-86. Individuals disagree as to whether their Jewish identification is religious or ethnic, or both religious and ethnic. See, e.g., CHARLES E. SILBERMAN, A CERTAIN PEOPLE: AMERICAN JEWS AND THEIR LIVES TODAY 71-76, 165-68 (1985). See also infra note 115. This Comment will refer to ethnic Jewishness as identification with the Jewish people.
10 See Levinson, supra note 3, at 1587-88. In addition, Levinson notes that demographic analysis of Jewish lawyers might provide information regarding the occupational preference of Jews and the attitude toward Jews of the legal profession. Id. at 1587.
11 Id. at 1590.
12 Id.
13 Id. at 1591.
14 Id. at 1590.
15 Id. at 1592.
16 Id. at 1594.
17 Id. at 1579-83, 1594-95.
haps dress, but not the way individual lawyers practice (or the way Sandy Koufax pitched).\textsuperscript{18} Model Four describes Jewish lawyers who practice before Jewish religious courts,\textsuperscript{19} a group which Levinson describes as "tiny"\textsuperscript{20} in number.

In Model Five, Judaism as a religion provides a "Constitutive Aspect of the Practice of Law."\textsuperscript{21} For a Model Five lawyer, "the very way . . . [he or she] relates to his [or her] clients seems to be affected crucially by the lawyer's self-conception as a Jew."\textsuperscript{22} In discussing this model, Levinson focuses on lawyers, who as Jews, follow \textit{Halakakh}.\textsuperscript{23} He suggests a number of situations where Halakhic Jews would lawyer differently from non-Jews, including where a Jew seeks to sue another Jew in a secular court, where Jewish or interfaith couples seek divorce advice, and where protection of client confidentiality would result in harm to others.\textsuperscript{24} Levinson suggests that Judaism based on Halakhic legal duty provides a more powerful influence than philosophic or moral duties,\textsuperscript{25} or than differences based on race and gender.\textsuperscript{26}

\section*{B. The Jewish Social Justice Lawyer}

Within his five models, Levinson takes a liberal approach to the question of who is a Jew.\textsuperscript{27} One can apply the spirit of Levinson's approach to add a sixth model of lawyers whose Jewishness has influenced their decision to lawyer for social justice goals. Unlike Levinson's Model Two lawyers who lawyer for Jewish communal interests, Model Six lawyers advocate social justice issues on behalf of both Jewish and non-Jewish persons.\textsuperscript{28} Like Levinson's other models,

\begin{itemize}
\item \textsuperscript{18} Id. at 1595.
\item \textsuperscript{19} Id. at 1596.
\item \textsuperscript{20} Id. at 1600.
\item \textsuperscript{21} Id.
\item \textsuperscript{22} Id. at 1604.
\item \textsuperscript{23} \textit{Halakakh} literally refers to the "legal part of Jewish traditional literature." \textit{See Al-
\textsuperscript{calay}, supra note 1, at 532. According to the \textit{Encyclopaedia Judaica}:}

\begin{quote}
Orthodox[ ] [Judaism] considers the \textit{halakhah}, in its traditional form, to be absolutely binding, whereas Reform [Judaism], while prepared to be guided by the legal decisions of the past in some areas, rejects the absolute binding force of the traditional \textit{halakhah}. Conservative Judaism adopts a midway position, treating the traditional \textit{halakhah} as binding but feeling freer to interpret it and attempting to preserve the dynamic principle of legal development . . . .
\end{quote}

\textit{7 Encyclopaedia Judaica} 1166 (1971).
\item \textsuperscript{24} \textit{See} Levinson, \textit{supra} note 3, at 1602-11.
\item \textsuperscript{25} Id. at 1604-05.
\item \textsuperscript{26} Id. at 1611.
\item \textsuperscript{27} Id. at 1585-86.
\item \textsuperscript{28} Cf. Mark Tushnet, \textit{Religion in Politics}, \textit{89} \textit{Colum. L. Rev.} 1131, 1131 (1989) (review-
ing \textit{Kent Greenawalt, Religious Convictions and Political Choice} (1988)) ("As
Model Six is not exclusive. For example, a lawyer could fall within Models One, Two, Three, and Five, as well as Six. 29 Indeed, the basis for Model Six lawyering could be the pervasive influence of Jewish religious values pursuant to Model Five. What bonds Model Six lawyers together is the connection between their Jewishness and their vision of social justice. 30 Of course, social justice lawyering is not exclusive to Jews. Religious, as well as nonreligious persons, may experience similar connections between their belief systems and social justice lawyering.

In the Jewish community, a social justice commitment could perhaps be derived from Jewish religious values, 31 personal identification with the discrimination and persecution the Jewish community has experienced, 32 or the Jewish tradition of communal service to the poor, ranging from social service societies to socialism. 33 An example of the Jewish social justice vision is Elie Wiesel’s recent Rosh Hashana message:

A Jew must be sensitive to the pain of all human beings. A Jew cannot remain indifferent to human suffering, whether in former Yugoslavia, in Somalia or in our own cities and towns. The mission of the Jewish people has never been to make the world more

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29 I would include myself in each of those Models.

30 Levinson rejects a sixth model of Jewish lawyering that would include a commitment to “civil rights or . . . the interests of the downtrodden.” Levinson, supra note 3, at 1584. He does so because of the difficulty of defining Jewish values, and the implication that “Jewish lawyers who do not practice civil rights or similar law [are] devoid of Jewish values.” Id.


32 See, e.g., Irving Howe, World Of Our Fathers 409-13 (1976); Shapiro, supra note 31, at 218-22.

33 See, e.g., Howard Fast, The Jews: Story Of A People 133-35 (1968) (describing charity as major function of diaspora Jewish community organization, including when requested charity to non-Jews); Howe, supra note 32, at 287-315, 622-26 (describing Jewish socialism).
Jewish, but to make it more human.\textsuperscript{34}

A number of well-known Jewish lawyers have applied social justice commitments—grounded to one degree or another in their Jewishness—to their choice to lawyer for social justice causes. Prominent early examples include Louis Brandeis, Felix Frankfurter, and Louis Marshall. Historian of the legal profession Jerold Auerbach argues that Brandeis, Frankfurter, and Marshall helped promulgate "[t]he identification of Judaism with Americanism, within a common tradition that emphasized the rule of law and the quest for social justice."\textsuperscript{35}

Together with a commitment to the Jewish people, this devotion to social justice led these lawyers, in terms of Levinson's Model Three, to advocate for equal rights for the Jewish community on national and international levels.\textsuperscript{36} Similarly, the commitment to Judaism as constitutionalism was consistent with the engagement of all three in the advocacy of social justice for non-Jews. For example, Brandeis fought for economic justice.\textsuperscript{37} Marshall advocated on behalf of African Americans seeking equal rights and Catholics seeking to maintain parochial schools in Oregon.\textsuperscript{38} Frankfurter supported efforts for economic justice, as well as the cause of Sacco and Vanzetti, who Frankfurter asserted had been wrongfully convicted of murder because of their ethnicity, immigrant status, and political views.\textsuperscript{39}

Although this social justice lawyering is consistent with what Auerbach describes as their Jewish commitment to constitutionalism,\textsuperscript{40} it is unclear the extent to which any of the three would describe their social justice lawyering as resulting from their Jewishness. The degree to which their social justice lawyering derived from identification with the Jewish people or with the ethical precepts of the Jewish

\textsuperscript{34} Elie Wiesel, \textit{What Being Jewish Means to Me}, N.Y. TIMES, Sept. 27, 1992, § 4, at E17 (publication paid for by the American Jewish Committee).

\textsuperscript{35} \textsc{Jerold S. Auerbach, Rabbis and Lawyers} 17 (1990); \textit{see also id.} at 147, 162-67, 186. Unlike Brandeis and Marshall, Frankfurter was "torment[ed]" about his Jewish identity. \textit{Id.} at 162-67; \textit{see also Robert A. Burt, Two Jewish Justices: Outcasts in the Promised Land} 39 (1988). Auerbach is quite critical of this synthesis and suggests that it distorts Jewish teaching. \textit{See Auerbach, supra}, at xviii-xix.

\textsuperscript{36} \textit{See Auerbach, supra} note 35, at 17-18, 111-17, 123-49, 154-67; \textsc{Albert Vorspan, Giants of Justice} 22-39, 40-57 (1960). This is not to say that the depth and content of their commitments were equivalent. Brandeis and Frankfurter were Zionists. Marshall, while fighting for the rights of Jewish Americans and an end to oppression abroad, was not a Zionist. \textit{See id.} at 47-51, 56. Moreover, Frankfurter has been severely criticized for his failure to lobby to end the Holocaust of European Jewry. \textit{See Levinson, supra} note 3, at 1590 n.36.

\textsuperscript{37} \textit{See, e.g., Vorspan, supra} note 36, at 25-27.

\textsuperscript{38} \textit{See id.} at 55.

\textsuperscript{39} \textit{See Burt, supra} note 35, at 56-58.

\textsuperscript{40} \textit{See Auerbach, supra} note 35, at 17-18.
religion would similarly be difficult to determine.\textsuperscript{41} Although Marshall would have described himself as a religious Jew,\textsuperscript{42} Brandeis and Frankfurter would not have described themselves the same way.\textsuperscript{43} It is conceivable, however, that even Brandeis or Frankfurter might have identified with the ethical precepts of Judaism while disregarding the ritual. All three identified with the Jewish people.\textsuperscript{44}

An alternative hypothesis, related to circumstance rather than choice, is found in Professor Robert Burt's provocative study of Brandeis and Frankfurter.\textsuperscript{45} Burt suggests that nonvolitional influences were dominant in shaping their approaches to social justice. In Burt's view, Brandeis, as a Jew who had achieved high status, sought "to carve a different social space for himself that confounded the distinction between insider and outsider."\textsuperscript{46} He sought "to interpret [the] outsider's needs and concerns to the insiders of the day, to dissolve social boundaries by inspiring sympathy and fellow feeling on both sides."\textsuperscript{47} In contrast, while Frankfurter similarly stood at the boundary of insider and outsider, he chose as a judge to be a "guardian" of those boundaries against the claims of outsiders.\textsuperscript{48}

Two examples of contemporary Jewish social justice lawyers who acknowledge the influence of Jewish religious ethical precepts on their lawyering are Helen Neuborne and the late Joseph L. Rauh, Jr., who "saw his work as an extension of the Jewish prophetic tradition."\textsuperscript{49} Rauh was a leading civil liberties lawyer who defended victims of the "Red Scare" of the 1950s,\textsuperscript{50} a leading civil rights lawyer who served as General Counsel to the Leadership Conference on Civil Rights,\textsuperscript{51} and a "godfather[ ]" to the Civil Rights Act of 1964.\textsuperscript{52}

Like Rauh, Helen Neuborne, Executive Director of the National

\begin{footnotes}
\item[41] See supra note 9.
\item[42] See \textit{Vorspan}, supra note 36, at 46.
\item[43] See \textit{Auerbach}, supra note 35, at 124-26, 154, 164.
\item[44] See supra note 36.
\item[45] See generally \textit{Burt}, supra note 35.
\item[46] Id. at 87.
\item[47] Id.
\item[48] Id. at 88.
\item[49] Rabbi David Saperstein, Tribute to Joe Rauh, Remarks at the Commission on Social Action of Reform Judaism Meeting (Oct. 25, 1992) (transcript on file with author). Joseph Rauh was an honorary lifetime member of the Commission on Social Action and a recipient of an award from the Union of American Hebrew Congregations. \textit{Id}.
\end{footnotes}
Organization for Women Legal Defense and Education Fund ("NOW LDF"), grounds her commitment to social justice lawyering in Jewish values. She describes her Jewishness as both a "secular" and "religious" devotion to "right moral order" predicated on a duty of "service to the community," especially the disadvantaged, and a duty to advance equality within society. These values have guided her decisions to work as a legal aid lawyer representing children, a public official in the Mayor's office, and her current position as Executive Director of NOW LDF. In her view, a civil rights lawyer is "somewhat like a Rabbi in teaching and advocating social justice values that are also Jewish values."

An example of a lawyer who expressly acknowledges both Jewish peoplehood and religious values as inspiration for his choice to do social justice lawyering is Alan Dershowitz. He states quite clearly:

My Jewishness is a very important part of my life. Indeed, though I live and participate quite actively in the secular world, my Jewishness is always with me, both consciously and unconsciously. It is not with me in the way that religion guides the lives of believers and practitioners of orthodox religions. My Jewishness provides few unambiguous rules of belief or action.

This strong identification leads him to strenuous advocacy of Jewish communal causes, which places him within Levinson's Model Two.

53 Telephone Interview with Helen Neuborne, Executive Director, NOW LDF (Nov. 3, 1992).
54 Id.
55 Id.
56 Telephone Interview with Helen Neuborne, Executive Director, NOW LDF (Nov. 13, 1992).
58 See Levinson, supra note 3, at 1591-93 (discussing Dershowitz as exemplifying a Model Two lawyer). Dershowitz writes that "[o]ccasionally, my Jewishness, and the history of persecution it represents, is the source of my anger—what some have called the permanent chip on my shoulder. More often, it provides the basis for my 'Holocaust mentality'—my constant state of preparedness for potential persecution." DERSHOWITZ, supra note 57, at 10. Describing the common "fundamentals" of the Jewishness of his childhood friends who practice their Judaism in different ways today, Dershowitz writes that

[th]ey grew out of the common historical experiences of the Jewish people, both ancient and modern. They grew out of common values, though the means of achieving these values may be very much in dispute. They grew out of a common concern for the survival of Israel, for the rescue of Jewish communities in danger, for the survival of Judaism.

Id. at 349.

Examples of his advocacy arising from Jewish solidarity include his lawyering on behalf of Soviet Jewish dissidents, id. at 250-83, for leniency for Jonathan Pollard, who was convicted of spying on behalf of Israel, id. at 284-312, and for Rabbi Avraham Weiss in his defamation suit against Cardinal Jozef Glemp arising from comments Glemp made related to Rabbi Weiss’s demonstration against the placement of a convent at the site of the Auschwitz concentration camp, id. at 150-60.
At the same time, Dershowitz's consciousness of the history of persecution and holocaust of European Jews, and of discrimination against American Jews, has led him to advocate more broadly for what he perceives as the cause of social justice. Dershowitz's social justice values are grounded in his consciousness that "Jews tend to thrive in open, pluralistic, moderate, nonnationalistic, secular societies."

The particular causes this leads him to support include gay rights, excluding prayer from public schools, opposing government support for Chanukah, as well as Christmas, displays, and protection of the civil liberties of criminal defendants.

In at least one case, Dershowitz relates his role as a lawyer to his personal experience with anti-Jewish discrimination (and anti-Orthodox discrimination by Paul, Weiss, a predominantly Jewish firm) as a law student seeking employment. He represented an Italian American who claimed that Cravath, Swaine & Moore had discriminated against him on grounds of religion and ethnicity. Dershowitz observes that in that case he helped establish a precedent, eventually adopted by the United States Supreme Court, that "it was unlawful for a large law firm to discriminate on the basis of religion, race, sex, or ethnicity." Dershowitz concludes that

[n]ever again would a law student—whether Jewish, Catholic, female, black, or Hispanic—have to confront the kind of discrimination I had encountered during the time I was at Yale. It would still exist in practice—and in legal theory against gays in some states—but it was no longer permissible in the eyes of the law.

Unlike Dershowitz, Neuborne, and Rauh, Jack Greenberg appears to be a lawyer for whom Jewishness was not a self-conscious

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59 DERSHOWITZ, supra note 57, at 206.
60 In a debate during which Norman Podhoretz had made anti-gay comments, Dershowitz responded that Podhoretz "does not speak for me, he does not speak for the Jewish community. When the Nazis went after gays in Nazi Germany—the rights of gays were inexorably intermeshed with the interests of Jews. Discrimination against gays today is discrimination against Jews tomorrow." Id. at 202-03. See also Evan Wolfson, Civil Rights, Human Rights, Gay Rights: Minorities and the Humanity of the Different, 14 HARV. J.L. & PUB. POL'y 21, 22-24 (1991) (comparing persecution of Jews and gay people).
61 Dershowitz observes that Jews "will be inevitably thrust into second-class status if we accept the first step of prayer in the school, and the second step the religionization, and the third step the Christianization of America." DERSHOWITZ, supra note 57, at 204.
62 Id. at 331-34.
63 Dershowitz reminds Jewish audiences of an incident in Iowa where a Jewish law student was arrested and subjected to anti-Semitic taunts by the police. The student died in police custody allegedly after trying to take a police officer's gun. Id. at 206.
64 Id. at 53-54.
65 Id. at 54.
66 Id. at 55.
67 Id.
influence. Rather, his identification with the Jewish people shaped a view of the world that led him to social justice lawyering. Greenberg played a significant role in the legal battle for equal rights for African Americans during his long and distinguished service at the NAACP Legal Defense and Education Fund. He expressly denies that "religion had anything to do with his becoming a civil rights lawyer."\textsuperscript{68} However, he acknowledges that Jewish peoplehood influenced him. Describing himself as "an ethical, secular Jew,"\textsuperscript{69} he explains the "large presence of Jews in the [civil rights] movement [as] . . . the heritage of labor Zionism and socialism among Jews, like himself, active in public affairs in the 1940s, 1950s, and 1960s, and to the fact that many of the changes benefiting blacks benefited Jews."\textsuperscript{70}

Greenberg also suggests that his experience as a Jew led to identification with the struggle of African Americans. For example, like many of his Jewish contemporaries, he adopted Jackie Robinson as his sports hero. Jackie Robinson, Greenberg says, "was the way we saw ourselves triumphing against the forces of bigotry and ignorance. He did it with tremendous poise and dignity. He had enormous inner reserves and was able to marshal them in terms of a long-term goal."\textsuperscript{71} Jonathan Kaufman describes Greenberg's belief that by fighting segregation of blacks, he was also fighting discrimination against Jews. You could not compare the treatment of blacks and Jews in this country. Greenberg knew that. Jews were far better off. But it was also true that blacks and Jews were often beaten with the same stick, that housing rules that kept out one kept out the other, that people who didn't like one usually didn't like the other. A society in which someone's color or creed didn't matter meant a climate that would benefit both blacks and Jews.\textsuperscript{72}

Greenberg, Dershowitz, Neuborne, and Rauh are examples of lawyers who connect their Jewishness to social justice lawyering. They by no means exhaust Model Six's potential, origins, or implications. One subject for further inquiry might be the influence of this model on those who undertake their social justice commitment through pro bono representations, as distinguished from lawyers who devote a large proportion of their practice to social justice causes. Moreover, the lawyers discussed here generally advocate positions

\textsuperscript{68} Jonathan Kaufman, Broken Alliance: The Turbulent Times Between Blacks and Jews in America 87 (1988).
\textsuperscript{69} Id.
\textsuperscript{70} Id. at 106.
\textsuperscript{71} Id. at 88.
\textsuperscript{72} Id. at 95-96.
that probably would be labeled politically "liberal." Jewish social justice commitments, however, could conceivably translate into positions that reflect other parts of the political spectrum. The purpose of this Comment is not to exhaust analysis of Jewish social justice lawyering, but rather to demonstrate its existence and to promote its further consideration.

C. Inclusion of Non-Halakhic Jewish Lawyering

Like part I.B, this part implements Levinson's liberal approach to the question of who is a Jew. In discussing Model Five lawyers, whose Judaism influences how they lawyer, Levinson focuses on Jews who follow Halakhah, the traditional legal system of Judaism. However, in accord with Levinson's spirit of acknowledging Jewish diversity, Model Five should also include non-Halakhic perspectives.

Reform Judaism, which represents approximately one and a half million American Jews and is the largest Jewish movement in the United States (by a small margin over the Conservative Movement), has adopted a non-Halakhic approach to Judaism. While generalizations about Reform Judaism are difficult, the movement has generally considered Halakhah to have influence as authority, but not as binding law. Within the Reform Movement, the different perspectives on how to determine which obligations are binding on Jews include a covenantal approach grounded in dialogue between God and Israel.

73 However, as for political affiliation, Louis Marshall was a conservative Republican. See VORSPAN, supra note 36, at 55.
74 See Levinson, supra note 3, at 1600-11. Although, on its face, Levinson's Model Five could presumably include a "self-consciously observant" non-Halakhic Jew, Levinson draws exclusively on Halakhic sources and perspectives in discussing it. Id. at 1600.
75 See supra note 23.
77 The relative percentages are Reform 38%, Conservative 35%, Orthodox 6%, Reconstructionist 1%, with the remainder comprising other or unaffiliated categories. Id. at 129. The Conservative movement considers Halakhah binding, but interprets it more freely than Orthodox Judaism. See supra note 23.
78 See 2 EUGENE B. BOROWITZ, REFORM JUDAISM TODAY: WHAT WE BELIEVE 13-14 (1977). According to Rabbi Eugene Borowitz, "Reform Jews, agreeing that the Torah tradition provides invaluable guidance and that scholars are uniquely equipped to discern the lessons of the past, nonetheless emphasize the right of individual Jews to make the final decision as to what constitutes Jewish belief and practice for them." Id. See also MICHAEL A. MEYER, RESPONSE TO MODERNITY: A HISTORY OF THE REFORM MOVEMENT IN JUDAISM 362-63, 375-76 (1988); W. GUNTHER PLAUT, THE RISE OF REFORM JUDAISM: A SOURCEBOOK OF ITS EUROPEAN ORIGINS at xviii-xix, 95-96 (1963). Some Reform leaders have, however, called for the creation of a Reform Halakhah. See, e.g., Walter Jacob, STANDARDS NOW, REFORM JUDAISM, Fall 1992, at 64.
79 See MEYER, supra note 78, at 362-63.
a religious humanistic perspective grounded in individual conscience and a devotion to the “ethical mitzvot [commandments] of the Prophets.”

But while these approaches are diverse, they are similar to Halakhic Judaism in that they provide the basis for “rejection of the authority of the secular state to make the final decision about . . . values.” To many Reform theologians, religion is paramount in all aspects of an individual’s life. The great Reform Jewish theologian Rabbi Leo Baeck wrote that a Jew “directs himself toward God in such a way that no part of his life is without this center, without this contact.” Applying a similar non-Halakhic perspective, the Jewish theologian Martin Buber rejected the notion of role moralities, such as that which would separate professional ethics from personal religious commitment. He observed:

We shall accomplish nothing at all if we divide our world and our life into two domains: one in which God’s command is paramount, the other governed exclusively by the laws of economics, politics, and the ‘simple self-assertion’ of the group. . . . Stopping one’s ears so as not to hear the voice from above is breaking the connection between existence and the meaning of existence.

These conceptions, grounded in faith and religious obligation, quite expressly create the potential for conflict with secular professional ethics. While the commands of these religious concepts at times may be more difficult to determine than Halakhic approaches, they are equally strong obligations, even though they are not “legal duties” derived from a shared, written, and binding legal code.

The existence of non-Halakhic alternatives illustrates the diversity and complexity of attempting to give content to Levinson’s Model Five. Providing this content is a task demanding further attention from lawyers who identify themselves as religious Jews. As we study

80 Id.
81 Plaut, supra note 78, at xix.
82 Levinson, supra note 3, at 1610.
84 Martin Buber wrote that “[m]an can do justice to the relation to God that has been given to him only by actualizing God in the world in accordance with his ability and the measure of each day, daily.” Martin Buber, I AND THOU 163 (Walter Kaufman trans., Charles Scribner’s Sons 1970).
86 Levinson’s discussion indicates that Halakhic approaches themselves can be quite diverse. See Levinson, supra note 3, at 1602-06.
this model further, we can learn a great deal from Christian commentators, such as Professors Joseph Allegretti and Thomas Shaffer, who have described a variety of Christian approaches to lawyering, many of which are either derived from Jewish sources, such as Buber’s theology or the biblical Prophets, or which could otherwise suggest Jewish parallels.

D. Explaining Jewish Lawyering

Before moving from the question of who is a Jewish lawyer, a few further observations are in order, including consideration of a classification scheme different from Levinson’s models. First, it is worth emphasizing that non-Jews could arrive at many of the same practices as Jewish lawyers from different (or shared) roots. This would apply, for example, to the social justice lawyering of Model Six, as well as the decision to breach client confidentiality to prevent harm to others as discussed in Levinson’s analysis of Model Five. On the other hand, while particularistic aspects of Models Three and Five in celebrating Jewish holidays or in questioning whether to represent a Jew in secular courts would not be shared by non-Jews, they might face similar dilemmas regarding their own holidays and co-religionists.

Second, Levinson’s Article and the suggested additions of this Comment do not say much to suggest a Jewish “style” of lawyering. Levinson is very wary of the anti-Semitism traditionally associated with notions of a Jewish “style,” such as the stereotype that Jewish lawyers are more aggressive. In addition to this fear (which I share), the very diversity of Jewish approaches and identity fails, at first blush, to suggest any commonality similar to the “female” style

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87 Allegretti, supra note 30, at 138-40 (separately considering Prophets and Buber as sources of lawyering values); Shaffer, supra note 85, at 28-33 (discussing application of Buber’s theology to lawyering).

88 For example, one could make the argument that Halakhic concepts such as “dina demalkhuta dina (‘the law of the land is the law’),” Levinson, supra note 3, at 1608, or the exception to “lifnei iver, aiding another in the commission of a sin,” id. at 1605, where a “sinner will in fact be able to gain his object even without the help of the particular abettor,” id., could be used to argue in favor of an approach accepting secular authority within the secular sphere similar to Allegretti’s paradigms of “Christ in Harmony with the Code” and “Christ in Tension with the Code,” which involve the religious lawyer adopting professional role morality. See Allegretti, supra note 30, at 133-36. Similarly, the approach of some Ultra-Orthodox Jews who discourage university and professional education, see, e.g., Samuel Heilman, Defenders of the Faith: Inside Ultra-Orthodox Jewry 265-73 (1992), might be compared to that of adherents of Allegretti’s paradigm of “Christ against the Code” who would not become lawyers. Allegretti, supra note 30, at 132-33.

89 See Levinson, supra note 3, at 1609-11.

90 Id. at 1587-88.
identified by Carol Gilligan\textsuperscript{91} which forms the foundation of scholarship suggesting a feminist style of lawyering.\textsuperscript{92} Within models, one could conceive of influences on style. At this time, however, without further study, no Jewish style is readily discernible.

Third, within Levinson’s work is the basis for an alternative classification of Jewish lawyering. Levinson recognizes that Jewish lawyering might vary depending upon how a Jewish lawyer views herself and how she is viewed by others,\textsuperscript{93} as well as by the extent to which Jewish identity influences professional conduct.\textsuperscript{94} I will use the term “volitional” to describe group identities self-consciously chosen by the Jewish lawyer. “Nonvolitional” will refer to group influences resulting from the perception of others, or of which the individual is unaware. With regard to the influence of Jewishness on lawyering, Levinson observes that it could vary from little or no impact to dominating the professional role.\textsuperscript{95} I will refer to the extent of influence as “pervasiveness.”

Using volition and pervasiveness we can revise Levinson’s models by starting with the whole group of Jewish lawyers (Model One) and dividing it into four volitional subgroups. Group One would reject any connection between Jewishness and lawyering. Group Two would draw a connection between their lawyering and Jewish peoplehood, Group Three would connect their lawyering with Jewish religion, and Group Four would connect their lawyering with both Jewish peoplehood and religion.\textsuperscript{96} A lawyer could fall within more than one subgroup at the same time depending upon the aspect of lawyering involved. For example, an individual could identify with Jewish peoplehood for the purpose of lawyering on behalf of Jewish causes, but reject the suggestion that Jewishness influences the style of her lawyering.

These four groups would include Levinson’s models as well as Model Six. The category of Jewish peoplehood would include Levinson’s Model Two. The category of Jewish religion would include Levinson’s Models Three and Five, with Model Three representing a

\begin{itemize}
  \item \textsuperscript{91} See generally Carol Gilligan, \textit{In a Different Voice} (1982).
  \item \textsuperscript{93} See Levinson, supra note 3, at 1588-91, 1602-04.
  \item \textsuperscript{94} Id. at 1594-96, 1610.
  \item \textsuperscript{95} Id. at 1593-94, 1600-11.
  \item \textsuperscript{96} Leaving open the question of whether one can be an atheist and a religious Jew, an atheist could self-identify with any of the four groups.
\end{itemize}
limited influence on lawyering and Model Five a pervasive influence. Model Six would be a further subgroup within all four groups.

Although the four major subgroups are classified by volitional identification, they are subject to nonvolitional influences as well. For example, even a Jew who denies any influence of Jewishness on her lawyering could have her career affected by anti-Semitism, such as stereotypes that all Jews are "'overly aggressive, hired guns.'"97 Also, a Jewish lawyer, without conscious thought, might choose to avoid practice with a firm identified as "Jewish."98 Similarly, an individual's comfort or discomfort with Jewish identity could influence conduct, as Professor Burt suggests in his study of Brandeis and Frankfurter.99

This approach of groups and subgroups, inspired by Levinson's insights, presents an alternative to his use of models for classification. Only further study of Jewish lawyering will indicate whether they provide a more satisfactory methodology.

II. GROUP AND PROFESSIONAL IDENTITY IN A DIVERSE SOCIETY

Professor Levinson's exploration of Jewish lawyering arises from his interest in whether professional identity "'bleach[es] out' . . . contingent aspects of the self,"100 such as religion, gender, race, and ethnicity, and whether Jewishness relates differently to professionalism since unlike moral or philosophical duties or "attributes like gender, race, or ethnicity" it involves a legal duty.101 Part II.A places Levinson's observation that "bleaching out" is the standard conception of the lawyer's professional role in the context of devotion to the rule of law. Part II.B considers Levinson's suggestion that the legal nature of Jewish religious obligation makes it a more powerful influence on lawyering than other belief systems. Part II.C employs intergroup theory to suggest that in light of the totality of volitional and non-volitional group influences, group identity will continue to persist despite the goal of "bleaching out" differences. Part II.D examines the implications of the persistence of group identity on the goals of the professional project, and considers replacing the objective of "bleaching out" with the goal of creating community.

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97 Levinson, supra note 3, at 1588 (quoting unpublished manuscript of Robert E. Rosen).
98 A Group One lawyer might avoid a firm identified as being Jewish in order to reduce the perception that she is a Jewish lawyer.
99 See generally BURT, supra note 35.
100 Levinson, supra note 3, at 1578 (footnote omitted).
101 Id. at 1611.
A. The Professional Project's Commitment to "Bleaching Out" Difference

Levinson states that the "professional project" of law creates a professional role which "bleach[es] out" . . . merely contingent aspects of the self, including the residue of particularistic socialization that we refer to as our 'conscience.'"\textsuperscript{102} He quotes Monroe Freedman's observation that "professional ethics, . . . by definition, supersede personal ethics."\textsuperscript{103} In this "standard version of the professional project[,] . . . [s]uch 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."\textsuperscript{104}

On an individual level, the standard approach to professional identity has the virtue of liberating us from stereotypes of individuals and the vice of depriving us of group identities. Levinson reflects this ambivalence by asking "... should we hope that . . . Jewishness play[s] no role at all?";\textsuperscript{105} at the same time he proposes that Jewishness can influence lawyering.

On a societal level, the standard approach appears to be tied to the ideal of the rule of law, with its aspiration for a legal system based on neutrality, impartiality, and the treating of like cases alike and different cases differently.\textsuperscript{106} In that legal system, lawyers are dominant. The legal profession has a near monopoly on advocacy and judging, a disproportionately large representation in legislatures and the executive branch, and potency in the world of private business as counsel-

\textsuperscript{102} Id. at 1578 (footnote omitted).
\textsuperscript{103} Id. (quoting Monroe H. Freedman, Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions, 64 Mich. L. Rev. 1469, 1482 n.26 (1966)).
\textsuperscript{104} Id. at 1578-79.
\textsuperscript{105} Id. at 1594.
\textsuperscript{106} Chief Justice Marshall expressed this notion in describing the United States government as "a government of laws, and not of men." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1803). See also Margaret Jane Radin, Reconsidering the Rule of Law, 69 B.U. L. Rev. 781, 781 n.1 (1989) (noting that use of the word "men" in such formulations indicates "that when the ideal developed, and during most of its long history, it was inconceivable that any individuals who were not 'men' could be a part of political life").

The literature on rule of law is extensive. See, e.g., John Rawls, A Theory of Justice 235-43 (1971); Fred Dallmayr, Hermeneutics and the Rule of Law, 11 Cardozo L. Rev. 1449 (1990); Radin, supra. The task of defining what it means to apply law equally is itself complicated by the reality of difference and oppression. See, e.g., Catharine A. MacKinnon, Reflections on Sex Equality Under Law, 100 Yale L.J. 1281 (1991). Moreover, many lawyers and scholars have argued that the rule of law is an illusionary concept. See, e.g., Jerome Frank, Law and the Modern Mind (1930); Mark Kelman, A Guide to Critical Legal Studies 26 (1987); Karl N. Llewellyn, Realistic Jurisprudence—The Next Step, 30 Colum. L. Rev. 431 (1930); Radin, supra.
lors and negotiators.\textsuperscript{107} Rule 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.\textsuperscript{108} Indeed, the selective and often bigoted attacks on some judicial nominees regarding whether their religious affiliation would interfere with their adherence to the rule of law illustrates this concern.\textsuperscript{109}

The apparent connection between the rule of law and the standard professional approach to difference accentuates the quandary suggested in Levinson's Article. If group identity influences lawyering, as Levinson suggests it might, then the standard notion of professionalism free from outside influence is unobtainable. After elaborating on the persistence of group identity in parts II.B and C, this Comment returns to this dilemma in part II.D.

B. The Persistence of Jewish and Other Belief Systems

Levinson asserts that Jewish belief systems can be maintained in a professional role contrary to the standard professional norm that difference does not matter. He suggests that Judaism is more likely to influence a professional role than moral or philosophical belief systems because it is based on a system of legal obligation.\textsuperscript{110} In so asserting, he is apparently referring specifically to Halakhic Judaism.

This argument, however, overstates the comprehensiveness of specific Halakhic legal obligations. Halakhic commentators acknowledge that specific legal duties cover only a limited number of situations. Absent specific legal guidance, more general duties to God

\textsuperscript{107} See, e.g., Talcott Parsons, A Sociologist Looks at the Legal Profession, in Essays in Sociological Theory 370 (1954).

\textsuperscript{108} See, e.g., Dallmayr, supra note 106, at 1469 (“[C]ourts and lawyers cannot maintain lawfulness or the rule of law in a society rent by deep ethnic, economic or other fissures or where there is a widespread sense of corruption, unfairness, and inequity.”); Jennifer Nedelsky, The Challenges of Multiplicity, 89 Mich. L. Rev. 1591, 1603-09 (1991) (reviewing Elizabeth V. Spelman, Inessential Woman: Problems of Exclusion in Feminist Thought (1988) (discussing how consideration of the multiplicity of group identifications potentially perils any notion of rule of law). Professor Dershowitz describes this ideal in the related context of participation in the American political system. Dershowitz suggests that “[c]conditioning one's willingness to vote for an American on the basis of his or her religious affiliation is simply not the American way.” DERSHOWITZ, supra note 57, at 337-38.

\textsuperscript{109} Indeed, Roman Catholic or evangelical Christian judicial nominees “have in the past been subjected to scrutiny” over whether they would “place civil duties above religious ones.” Sanford Levinson, Who is a Jew(ish Justice)?, 10 Cardozo L. Rev. 2359, 2369 (1989) (book review). While the tentative conclusions of this Comment would suggest the unfairness of singling out any particular religious (or nonreligious) identification, as opposed to any other, for scrutiny, the fact of the scrutiny itself indicates societal concern with deviation from a primary allegiance to rule of law.

\textsuperscript{110} See Levinson, supra note 3, at 1604-05, 1610-12.
govern conduct. Similarly, even where Halakhic rules apply, they sometimes provide a floor for conduct which the Halakhic Jew has a duty to go ‘beyond.’

Moreover, non-Halakhic Judaism imposes duties to God as binding as those of Halakhic Judaism, even though they are not based on an authoritative legal code. If the perspectives of non-Halakhic theologians like Martin Buber and Leo Baek are as pervasive and powerful as Halakhic ones, then Levinson’s reliance on the legal nature of religious duty is misplaced.

In light of the less than comprehensive character of specific Halakhic legal obligation and the powerful demands of non-Halakhic Judaism, it would appear that Jewish religious duty cannot be viewed solely as legal obligation. Further exploration of Levinson’s assertion regarding the strength of legally based religious duties would benefit from analysis of non-Jewish religious perspectives to determine whether they are based on legal perspectives, and whether this fact influences the religious commitment of their adherents.

111 See ENCYCLOPAEDIA JUDAICA, supra note 23, at 1166 (“[T]he view... that submission to the halakhah is all that is demanded of the Jew is a travesty of traditional Judaism.”). See, e.g., the commentary of Nachmanides that even where [God] has not commanded you, give thought, as well, to do what is good and right in His eyes, for He loves the good and the right. Now this is a great principle, for it is impossible to mention in the Torah all aspects of man’s conduct with his neighbors and friends, and all his various transactions, and the ordinances of all societies and countries.


112 Nachmanides writes: [God] said in general, And thou shalt do that which is right and good, thus including under a positive commandment the duty of doing that which is right and of agreeing to a compromise [when not to do so would be inequitable]; as well as all requirements to act ‘beyond’ the line of justice [i.e., to be generous in not insisting upon one’s rights as defined by the strict letter of the law, but to agree to act ‘beyond’ that line of the strict law] for the sake of pleasing one’s fellowman.

3 Ramban, supra note 111, at 284 (brackets in original) (footnote omitted).

113 See supra note 23-24.

114 Id.

115 This study is only part of an inquiry into how different religious identities shape lawyering. Is Jewish lawyering distinct from Christian, Moslem, Buddhist, and other religious forms of lawyering? My first reaction is that Judaism is more of an ethnic or cultural identity than other religions. Professor Levinson has similarly asserted that a “secular Jew [is] a distinct social, rather than religious, category,” but that he was unsure as to whether the “category of ‘cultural Catholic’” existed and that he doubted the possibility of a “‘secular Protestant’” model. Sanford Levinson, The Confrontation of Religious Faith and Civil Religion: Catholics Becoming Justices, 39 DEPAUL L. REV. 1047, 1059 (1990). In contrast, John Murray Cudihy and Talcott Parsons have suggested that the concept of modernity represents “a secularization of Protestant Christianity.” John Murray Cudihy, The Ordeal of Civility: Freud, Marx, Levi-Strauss, and the Jewish Struggle With Modernity 9-10 (2d ed. 1974). Professor Cudihy also suggests cultural Catholic responses to modernity which are
But what about the general claim that religious beliefs exert a more powerful influence than other beliefs? Intuitively, the suggestion makes sense. Duties arising from a belief in a Supreme Being would seem to have greater weight than those deduced from reason alone. Indeed, our legal system gives greater deference to religion than to other belief systems. Conscientious objection to military service, for example, is permitted based on religious belief, but not on nonreligious ethical grounds.\textsuperscript{116}

But is religious belief necessarily more powerful? The answer is far from clear. While history and current events illustrate the influence of religion on behavior, they similarly indicate the powerful influence of nonreligious ideologies, such as communism and nationalism.\textsuperscript{117} Politics, philosophy, race, ethnicity, and gender have inspired, and continue to inspire, ideologies that could certainly influence how one lawyers.

The power of a particular belief system probably depends more upon the individual lawyer's commitment to that belief system, and the relevance of that belief system to lawyering. Although for some people commitments to religious belief systems are stronger than other systems, that is not necessarily the case. Similarly, if the belief system, whether religious or not, has little relevance to lawyering it will have little influence on lawyer conduct.

It appears, therefore, that any number of belief systems have the potential for influencing professional conduct and thereby jeopardizing the professional project.

C. Intergroup Theory and the Persistence of Group Identity

Assuming that group affiliations based on belief systems potentially shape professional conduct, Levinson's discussion of religion, race, and gender as influences on professional conduct suggests a further query. Other than volitional allegiance to a group's belief systems, do group identities make a difference in professional conduct? Levinson's inquiry addresses the work of scholars writing from femi-

\textsuperscript{116} See, e.g., Clay v. United States, 403 U.S. 698 (1971).

\textsuperscript{117} See, e.g., ISAIAH BERLIN, The Pursuit of the Ideal, in THE CROOKED TIMBER OF HUMANITY 1, 3-7, 14-15 (Henry Hardy ed., 1990); ISAIAH BERLIN, The Bent Twig, in THE CROOKED TIMBER OF HUMANITY, supra, at 238, 250-254. Indeed, in describing the power of professional socialization, Levinson notes the comment of one of his law school teachers "that the best way to understand a Maoist thought reform camp was to compare it to the first year of law school." Levinson, supra note 3, at 1601.
nist or critical race perspectives who suggest that professional socialization does not "bleach out" distinctions based on gender or race, but rather that perspectives based on gender or race remain.118

Research in the field of intergroup theory supports the contention that group identities, whether or not connected volitionally to belief systems, shape conduct in professions and other organizations.119 Professors Clayton Alderfer and David Thomas describe intergroup theory's understanding that 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 that association."120

According to intergroup theory, organizations consist of "identity groups and organization groups."121 In general, "[m]embers of identity groups share common biological characteristics, participate in equivalent historical experiences and, as a result, tend to develop similar world views."122 In contrast, "organizational groupings are based on task, function and hierarchy."123 They "are assigned similar primary tasks, participate in comparable work experiences and, as a result, tend to develop common organizational views."124 Even within organizations, identity group differences tend to persist. The power of identity groups stems from a number of factors. Identity group membership may begin as early as birth and in any event is often "begun by events over which no one has choice."125 Moreover, "[w]hile organization group membership can change as people enter and leave organizations, identity group membership remains constant or, as in the case of age, changes as the result of natural development


119 Clayton P. Alderfer & David A. Thomas, The Significance of Race and Ethnicity for Understanding Organizational Behavior, in INTERNATIONAL REVIEW OF INDUSTRIAL AND ORGANIZATIONAL PSYCHOLOGY 1, 6-7 (Cary L. Cooper & Ivan T. Robertson eds., 1988).

120 Id. at 7.


122 Id. History has demonstrated that for a religious identity group, such as Jews, "common biological characteristics" are not necessary to the participation in "equivalent historical experiences" leading to "similar world views."

123 Id.

124 Id.

125 Alderfer & Thomas, supra note 119, at 13.
rather than negotiations."\(^{126}\)

Intergroup theory suggests that "individuals and organizations are constantly attempting, consciously and unconsciously, to manage potential conflicts arising from the interface between identity and organization group memberships."\(^{127}\) A useful concept in examining this behavior is "[i]ntergroup embeddedness" which refers to the influence of "group-level effects across different units of analysis."\(^{128}\) It could include consideration of the influence of the various identity group affiliations for each individual. Organizational behavior studies, for example, have suggested that gender and race are both identities that persist and influence conduct and perceptions within organizations.\(^{129}\)

One of the factors which helps determine the salience of identity group memberships within organizations is whether the embeddedness within the organization is "congruent and incongruent."\(^{130}\) Congruent embeddedness occurs 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. Greater strains for the individual and the organization occur where embeddedness is incongruent.\(^{131}\)

Intergroup theory offers a perspective on Levinson's query regarding the influence of group identity on professional identity. Professional socialization as a lawyer is an organizational group identification. Like most organizational groups, it 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.

Organizational theory therefore suggests that despite the strong influence of professional identification, identity group affiliations play a significant role within the profession (and its constituent suborganizations). Indeed, salient identifications other than gender, race, ethnicity, and religion, such as sexual orientation and class background, might have a similar influence.

Although a comprehensive comparison of the influence of religion, as opposed to other group identifications, would ultimately re-

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\(^{126}\) Thomas & Alderfer, supra note 121, at 145.

\(^{127}\) Id. at 145.

\(^{128}\) Id.

\(^{129}\) Id. at 136-37, 151; David A. Thomas, Mentoring and Irrationality: The Role of Racial Taboos, 28 HUM. RESOURCE MGMT. 279 (1989).

\(^{130}\) Thomas & Alderfer, supra note 121, at 146.

\(^{131}\) Alderfer & Thomas, supra note 119, at 15-16.
quire more detailed study, some hypotheses are apparent. One hypothesis relates to the degree to which we are conscious of the influence of group identity. The principle of embeddedness suggests that except where volitional Jewish identification conflicts with professional norms, or where Jews are a small minority within a legal organization or jurisdiction, Jewish identity will be less salient than identities such as race, gender, or sexual orientation. For example, in an organization or society where Jews are often found in professional legal positions, Jewish identity as lawyers would be congruently embedded. In contrast, in an organization or society where women or people of color are often found in low status positions and less frequently in high status position, a professional woman or person of color would be incongruently embedded and therefore face greater internal and external tension between group and professional identity than a white Jewish man like myself.\textsuperscript{132} Even where group identity is congruently embedded, different treatment and perceptions based on Jewish identity could very well exist. As a result of congruence, such differences would be less likely to be noticed or discussed.

Another hypothesis goes to the heart of Levinson’s consideration of the professional aspiration of “bleaching out” group difference.\textsuperscript{133} Like feminist or critical race theory, intergroup theory asserts that group identity influences the way we as lawyers and judges look at the world and at our work, and how we relate to other people within the legal system. Therefore, facially group neutral standards of conduct are not neutral. They will inevitably have group identification content, most probably the perspective of dominant identity groups.\textsuperscript{134} The professional project’s goal of group neutral professional standards is accordingly unrealizable.

D. \textit{The Persistence of Group Identity and the Professional Project}

Where does the persistence of group identity leave us in terms of the professional project and the rule of law? How can lawyers bound by their group identifications create a legal system that provides equal justice under law?

At the extreme, recognition of group influence suggests some disturbing possibilities. If lawyers and judges acted on the basis of group

\textsuperscript{132} See Thomas & Alderfer, supra note 121, at 146.
\textsuperscript{133} See Levinson, supra note 3, at 1578.
\textsuperscript{134} Indeed, the very phrase “bleaching out” has apparently unintended White racial connotations. Cf. Naomi R. Cohn, \textit{A Preliminary Feminist Critique of Legal Ethics}, \textit{4 Geo. J. Legal Ethics} 23, 27 (1990) (“[S]ome current models of legal ethics . . . are based on ‘white male’ models of rules and responsibilities.”) (footnotes omitted).
identity, rather than rule of law, our legal system could become polarized and chaotic. For Jews, the result would be a nightmare. At 2.5% of the population and diminishing in numbers, we are a small minority. Presumably we would receive justice only if the interests and perspectives of the Jewish community were similar to those of the dominant identity groups, or if those groups chose for some reason to provide us with equal justice. Indeed, many scholars argue that the persistence of group identity in the legal system results in the denial of equal justice to people of color and all women.

Perhaps one further reason this disturbing scenario appears unlikely for Jews is that three conditions function to obscure the contradiction between group identification and the professional project. First, as a general matter, explicit conflict between group identity and the professional role is relatively limited. Most lawyers, whatever their group identification, generally accept professional norms—including the goal of rule of law—even where they might conflict with group identification. Moreover, the broad areas of discretion afforded by professional ethics and the diversity of professional norms, permit significant variation in conduct within the framework of the lawyer's professional role.

Second, if group identities, like Jewishness, lead to extremely diverse approaches to lawyering, it would be hard to equate any particular approach with any particular group. Third, this result would be reinforced if diverse group identities, such as Christian, Jewish, and atheist social justice lawyering, resulted in similar conduct. Again, it would be difficult to discern the impact of group identity, and doing so would provide the observer with minimally useful information.

While these conditions might obscure the contradiction between group identity and the goals of the professional project, the theoretical dilemma persists and with it the threat of loss of faith in the legal system. As Professor Martha Minow observes, in a world where differences matter, "a commitment to equality—to treating likes alike—will remain caught in a contradiction."

The legal profession's reiteration of the ideal that group identity

\footnotesize{135 SHAPIRO, supra note 31, at 242.}
\footnotesize{136 Id. at 241-43.}
\footnotesize{137 See supra note 118.}
\footnotesize{138 See Russell G. Pearce, Rediscovering the Republican Origins of the Legal Ethics Codes, 6 GEO. J. LEGAL ETHICS 241, 273-75 (1992).}
\footnotesize{139 See, e.g., GEOFFREY C. HAZARD, JR. & SUSAN P. KONIAK, THE LAW AND ETHICS OF LAWYERING 329-372 (1990) (discussing diverse approaches to the issue of client perjury).}
\footnotesize{140 MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW 374 (1990).}
makes no difference in professional conduct does not refute this challenge. As Professor Minow has noted, "you cannot avoid trouble through ignoring difference; you cannot find a solution in neutrality." 141

The task facing the legal profession therefore is to acknowledge the contradiction and to struggle to best promote equal justice in light of the persistence of group identity. 142 The legal profession could begin by discarding the notion of "bleaching out." Instead, we could follow Professor Minow's suggestion that we should "strive for impartiality by admitting our partiality." 143 Rather than seeking to "bleach out," the "professional project" would seek to "create community" by bringing us together to explore the potential for rule of law in light of "how we are all different from one another and also how we are all the same." 144 Indeed, intergroup theory suggests that organizational goals, such as those of the professional project, are best maximized where identity group differences are openly acknowledged and managed. 145

III. CONCLUSION

Where does this leave the professional project and the field of Jewish lawyering?

By taking seriously Levinson's exploration of the professional project's goal of "bleaching out" difference, we begin to appreciate the range and potential power of group influence on professional conduct. When we acknowledge the contradiction between the project's goal and the reality of group influence, we are led to consider the alternative strategy of creating community. Such a strategy would invite lawyers to begin a community dialogue regarding how each of our group identities, and the responses of others to our identities, interfere with our efforts to realize the goal of equal justice.

While significant to the understanding of group dynamics, consideration of Jewish lawyering probably has limited value as a predictor of an individual lawyer's professional conduct. The actual and

141 Id. at 374-75.
143 MINOW, supra note 140, at 376. She observes that "[w]e cannot come close to the ideal of a government of laws rather than of men without recognizing that it is particular human beings, with particular situated perspectives, who govern and whose perspectives must be made subject to challenge." Id. at 376 n.8.
144 Id. at 376. See also Nedelsky, supra note 108, at 1607-09 (suggesting the development of new institutions and approaches to reconcile group identification and rule of law).
145 Alderfer & Thomas, supra note 119, at 31-33; Thomas & Alderfer, supra note 121, at 147.
potential influence of Jewishness on lawyering is quite diverse, making it difficult to identify any particularly Jewish approach to lawyering. In addition, the absence of significant explicit conflict with professional norms, and the sharing of values with other groups, will also tend to make Jewish identity a less effective indicator of behavior.

On the other hand, even if the influence of Jewish lawyering were largely limited to areas of discretion within professional ethics, the study of what it means to be a Jewish lawyer would have great significance for individuals like myself who are struggling to reconcile our identity as Jews and as lawyers. Professor Levinson's groundbreaking Article encourages our search for solutions. Once again, to Professor Levinson, Kol hakavod.