

The Legal Profession Faces New Faces: How Lawyers' Professional Norms Should Change to Serve a Changing American Population

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If a client earnestly asks a lawyer to participate in a cow-sacrificing ceremony to ensure a propitious legal outcome, should the lawyer sharpen her steak knives and attend?¹ The lawyer might first consult her own conscience. Assuming she has no irreconcilable, personal opposition to sacrificing animals, she might consider legal ethics and the social norms of the legal profession. Social norms about how to work with clients are embedded within the Model Rules of Professional Responsibility. Unfortunately, adherence to these norms more likely satisfies the expectations of other attorneys than the expectations of the client. The legal profession faces the challenge of meeting the needs of a changing American demographic and adapting to serving clients with different cultural norms.

Serving a client with different cultural bearings presents both great peril and opportunity for a lawyer. The explosion of Latino and Asian American populations in recent years increases the likelihood that lawyers will encounter clients who subscribe to different social norms.² A look at lawyers' own social norms reveals that the American bar is fixated on historical lawyering roles, rather than serving the rapidly changing American demographic. Latino and Asian immigrant groups are less likely to comport with the profession's time-worn view that clients are autonomous

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1. This question is inspired by stories of Hmong families in America who continue to perform traditional rituals, such as animal sacrifices, in concert with Western medical treatments. *See generally* ANNE FADIMAN, *THE SPIRIT CATCHES YOU AND YOU FALL DOWN* (1997).

2. *See* Haya El Nasser & Paul Overberg, *Minorities Majority in More Areas*, USA TODAY, Sept. 30, 2004, at 1A (noting that 280 of the nation's 3,141 counties no longer have white majorities); Tyche Hendricks, *Asian Americans, Latinos Setting Pace in Population Growth*, S.F. CHRON., June 15, 2004, at B2 (noting that the Asian and Latino American populations each increased about 13 percent between April 2000 and July 2003, accounting for 19 percent of the American population).

individuals. These groups are not only likely to hold different expectations of the law in comparison to other Americans, but they are also likely to persistently do so because of powerful social norms that continue to shape members of Latino and Asian groups. The legal profession can either adapt to the idiosyncrasies of Latino and Asian Americans or become less relevant to a growing portion of society. Potential clients who see lawyers as foreign will be disinclined to seek legal assistance.³ The danger in becoming decreasingly relevant is twofold. First, contrary to their ethical obligation to aid society, lawyers would fail to serve a significant segment of our population. Second, with respect to legal aid, members of minority groups would become underserved. Underserved cultural groups might respond by relying on extralegal social norms to avoid and resolve conflicts, but these alternatives are ultimately inadequate. Inevitably, groups must interact with the American legal system to settle issues about estates, business contracts, crimes, or conflicts with people outside of their own group.

Fortunately, the legal profession has centralized mechanisms to encourage lawyers to reshape their relationships with clients. The bar association, through its powers to admit lawyers, accredit schools, and revise interpretations of professional responsibility, can initiate new professional norms. The bar can better serve an increasingly multicultural population and ensure the profession's relevance to society by encouraging lawyers to recognize that client satisfaction often depends on cultural expectations and concerns beyond law and conventional legal ethics.

Of course, nobody should pretend that all Latinos or Asians follow a monolithic set of norms.⁴ Latin America and Asia are huge geographies with heterogeneous and diverse populations. As sociologist Mary Patrice Erdmans notes, "Nations are not always built on ethnic unity, and ethnic unity does not always emerge among groups who emigrated from the same geographic region."⁵ Similarly, members of a particular ethnicity residing in the United States may differ in behavior and expectations from more recent immigrants of the same ethnicity, even to the point of political and social tension.⁶ By itself, "[e]thnicity is not a museum that preserves cultural traditions."⁷ The convenience of utilizing broad labels such as *Asian* or *Latino* does not eliminate responsibility to understand how political and

3. An increase in the number of lawyers of Latino or Asian ancestry may help but it is an incomplete answer to this problem. See *infra* Part IV.D.

4. See, e.g., Kevin R. Johnson, "Melting Pot" or "Ring of Fire"? *Assimilation and the Mexican-American Experience*, 10 LA RAZA L.J. 1261, 1267 (1998) (noting the diversity of immigrant norms).

5. Mary Patrice Erdmans, *Immigrants and Ethnics: Conflict and Identity in Chicago Polonia*, in THE CONFLICT & CULTURE READER 169, 174 (Pat K. Chew ed., 2001).

6. *Id.* at 173.

7. *Id.* at 174.

economic forces shape the construction of ethnic identity.⁸ While any discussion of Latino and Asian norms will be imprecise and even inaccurate with respect to certain individuals or subgroups, the common norms I discuss are useful.

This Comment challenges the bar association and the legal profession in general to reform the nature of the professional role and to reset lawyers' expectations about clients. Part I describes the role of law and the legal profession in American society, historically and as effected by the social norms of lawyers. Part II discusses the rise of minority groups in the United States and how current cultural and social norms are likely to impede the assimilation that occurred with previous immigrant groups. Part III suggests that the ascendant American Latino and Asian populations operate under social norms in tension with the majority vision of legal professional norms, even though those minority populations would conceivably benefit by abandoning their conflicting social norms. Changes to the Model Rules of Professional Conduct can propagate new norms in the legal profession that will better serve the American demographic of tomorrow. I focus on certain professional norms that especially merit reform. Finally, Part IV discusses the stakes riding on the adaptability of the legal profession to serve groups that may follow different social norms.

In *The Spirit Catches You and You Fall Down*,⁹ Anne Fadiman documented a collision of cultures and recounted how a Hmong family and county health professionals succeeded or failed to do what was best for the family's epileptic daughter, Lia. Everyone's commitment to Lia was indisputable, but cultural misunderstandings and the professionals' cramped view of their own roles harmed Lia. Her doctors were faithful to their medical training but failed to acknowledge that Lia was a Hmong girl, not just a patient with epilepsy. Lia's family observed social norms that her health professionals neither understood nor accommodated.

Fadiman's narrative focused on the challenges facing medical and social workers, but it should prompt legal professionals to think about how they would have reconciled their own professional norms with the social norms of Lia's family. Again, I do not suggest that a Hmong family is a stand in for all immigrants. Nor should the legal profession treat Asian or Latino Americans monolithically, for certainly different immigrant groups and individuals may differ greatly in behaviors and attitudes.¹⁰ Rather, my

8. While some prefer the term "Hispanic," I elect to use the not quite synonymous term "Latino" to describe people with Latin American ancestry. I retain the word Hispanic when an underlying source uses that term. Also, I do not use "Asian" or "Latino" to describe only immigrants, but also native-born American descendants of immigrants.

9. See generally FADIMAN, *supra* note 1.

10. See Albert M. Camarillo & Frank Bonilla, *Hispanics in a Multicultural Society: A New American Dilemma?*, in AMERICA BECOMING: RACIAL TRENDS AND THEIR CONSEQUENCES 103, 119 (Neil J. Smelser et al. eds., 2001) (noting that data from the 1990 Latino National Political Survey

hope is simply that the legal profession will adjust its norms to encourage lawyers to better serve clients with different behaviors and attitudes about the law.¹¹

I

THE SOCIAL NORMS OF LAWYERS REFLECT THE ROLE OF LAW IN AMERICAN SOCIETY, BUT NOT THE SENSIBILITIES OF TOMORROW'S POPULACE

While discussions of norms and their potency is normally in the context of how those norms operate *within* a community,¹² norms can be important even to those outside the community. When members of one community interact with another community, there can be a conflict of norms. While each community might prefer for its norms to govern the interaction, usually the community with more power in society will be able to impress its norms onto the other.

As I discuss in more depth in Part IV, professions such as law or medicine, which serve clients across cultural lines, must be especially sensitive to minority norms. On one hand, lawyers, the nation's "highest political class" according to Tocqueville, have great power and visibility in society.¹³ With clients' legal rights at stake, lawyers have inestimable leverage to impose their norms on clients and potential clients. On the other hand, a lawyer's successful service depends on the lawyer's attentiveness to the client's interests. The danger is that lawyers' commitment and enforcement of their own norms will preclude full consideration of a client's norms. Such resolve is particularly problematic as minority populations

concluded that Hispanic subgroups prefer to use national-origin terms as ethnic identifiers, rather than the umbrella term Hispanic); James T. Fawcett & Fred Arnold, *Explaining Diversity: Asian and Pacific Immigration Systems*, in PACIFIC BRIDGES 453 (James T. Fawcett & Benjamin V. Carino eds., 1987) (discussing the diversity of Asian immigrants regarding their characteristics and "modes of adaptation in the host society"); Gerald P. López, *Learning about Latinos*, 19 CHICANO-LATINO L. REV. 363, 372 (1998) (noting that before the 1990s, "[i]n the absence of reliable survey data, claims of virtually every ideological sort were made with great aplomb about what exactly Latinos think and believe"). For a discussion of common interests among Asians and Latinos, see Kevin R. Johnson, *Racial Hierarchy, Asian Americans and Latinos as "Foreigners," and Social Change: Is Law the Way to Go?*, 76 OR. L. REV. 347, 354-57 (1997).

11. Of course, the legal profession is not alone in failing to adapt to changing demographics. See Lopez, *supra* note 10, at 365 (noting that "[i]n the coverage more typically provided by major magazines, newspapers, and television networks, Latinos are treated, at best, as afterthoughts and throw-ins and analogues, at worst, as wannabes and who-knows-what-they-are and impostors. Of course, we haven't been treated any better by the major political parties.").

12. See, e.g., Lisa Bernstein, *Private Commercial Law in the Cotton Industry: Creating Cooperation Through Rules, Norms, and Institutions*, 99 MICH. L. REV. 1724 (2001) (discussing the use of commercial norms within the community of cotton producers and processors); Lior Jacob Strahilevitz, *Charismatic Code, Social Norms, and the Emergence of Cooperation on the File Swapping Networks*, 89 VA. L. REV. 505 (2003) (discussing cooperative norms within the community of online file swappers).

13. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 124 (Signet 2001).

grow larger and reshape those norms that define being American. This Part begins by identifying those norms of American lawyers that are likely to diverge from Asian and Latino norms.

A. The Role of American Law and the Enforcement of Norms Within the Legal Profession

Professional norms determine how a legal system operates in practice. Even if two societies have similar, formal laws and rules, “the living law may vary greatly because of differences in legal culture.”¹⁴ American lawyers’ norms come from laws of lawyering, traditions of the bar, ethical principles, economics, and socialization by law schools.¹⁵ These norms indicate that lawyers tend “to be more achievement-oriented, more aggressive, and more competitive than other professionals and people in general.”¹⁶

These norms are informed by two influences, which are often in tension with one another. First, the profession sees nobility in its cause, believing that the “practice of law ‘in the spirit of a public service’ can and ought to be the hallmark of the legal profession.”¹⁷ Justice Sandra Day O’Connor noted that the profession’s norm “entails an ethical obligation to temper one’s selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market.”¹⁸ Second, the profession sees value in its own perpetuation, economically, politically, and socially. While the profession’s economic viability is essential, many Americans view lawyers with distrust and are skeptical about whether lawyers’ current norms exist more to serve themselves than to serve their clients.¹⁹

This sense of righteousness and the survival instinct combine to make the profession rather insular. To restrict entry into the profession, bar associations maintain a restrictive feeder system that involves highly selective law schools and elaborate examinations. These conditions do more than simply limit the number of new lawyers—they limit the values, behaviors, and norms that the profession deems acceptable.²⁰

14. LEGAL CULTURE IN THE AGE OF GLOBALIZATION: LATIN AMERICA AND LATIN EUROPE 2 (Lawrence M. Friedman & Rogelio Perez-Perdomo eds., 2003).

15. DEBORAH L. RHODE & DAVID LUBAN, LEGAL ETHICS xlii-xliii (3d ed. 2001); Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 558-59 (1973) (discussing school’s effect on creating homogeneous norms).

16. See Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1390 (1997).

17. ABA COMM’N ON PROFESSIONALISM, “. . . IN THE SPIRIT OF PUBLIC SERVICE”: A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM 10 (1986).

18. *Shapiro v. Ky. Bar Ass’n*, 486 U.S. 466, 488-89 (1988) (O’Connor, J., dissenting).

19. See Daicoff, *supra* note 16, at 1344-45.

20. ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 14 (1953).

American lawyers' norms are partly embodied in the Model Rules of Professional Conduct. Forty-one states have adopted the Rules, and several other jurisdictions are considering their implementation.²¹ In all jurisdictions, the Rules guide federal, state, and local courts, and lawyers refer to the Rules to decide what constitutes acceptable behavior. The Rules themselves are written in a black letter style, but the more important guidance appears in the normative Comments following each rule. These Comments provide some background about the norms underlying the rules and suggest how to practically apply the rules. According to the foreword of the text, "The *Rules* will help you identify proper conduct in a variety of given situations, review those instances where discretionary action is possible, and define the nature of the relationship between you and your clients, your colleagues, and the courts."²²

In defining the nature of the attorney-client relationship, three norms are especially important with respect to Latino and Asian Americans. First, the profession encourages lawyers to be neutral by separating their own identities from those of their clients. Second, the profession encourages lawyers to presume that clients behave and make decisions as autonomous individuals. Third, the profession strongly emphasizes the need for confidentiality on an individual basis with clients.

B. Professional Neutrality and Role Separation Is an American Legal Norm

The professional norms of neutrality and the separation of one's identity from that of the client persist, though they are not formal requirements in the practice of law. One explanation for these norms is the historical personality of the profession and the types of people attracted to the profession. Another reason is the nature of legal education. Finally, while the Rules and Comments do not require emotional detachment, they do reflect the profession's discomfort with lawyers who identify too closely with the interests or norms of their clients.

Psychological separation of a lawyer's identity from that of the client is customary and a lawyer's representation of a client does not imply any personal endorsement of the client's values, norms, or culture.²³ Because it may interfere with effective representation, the profession frowns on

21. MODEL RULES OF PROF'L CONDUCT (Preface 1999), <http://www.abanet.org/cpr/mrpsc/preface.html>.

22. Description of MODEL RULES OF PROF'L CONDUCT (1999), <http://www.abanet.org/cpr/pubs/561-0142.html> (last visited Apr. 5, 2005) (website no longer available).

23. See Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1, 9 (1975-1976) (discussing why lawyers are comfortable selecting a "role morality" like neutrality).

identifying too closely with the circumstances, personality, or identity of a client.²⁴

A more cynical perspective is that lawyers historically and habitually have viewed themselves as a separate, learned class that wields inordinate power over the ordering of society and the relations between people. As Tocqueville said, “[l]awyers belong to the people by birth and interest, and to the aristocracy by habit and taste.”²⁵ Under this view, lawyers care more about maintaining strong association with each other than associating with the unwashed.²⁶ Furthermore, the need for acceptance by other professionals acts as a social pressure that reinforces the norm.

Regardless of whether this cynicism is warranted, research indicates that many lawyers detach their identity from that of the client. Sociological studies suggest that lawyers tend to be more logical, unemotional, rational, and objective in making decisions and perhaps less interpersonally oriented than the general population.²⁷

Psychologist Lawrence Kohlberg proposed a model with six stages of moral development: obedience and punishment orientation, self-interest orientation, interpersonal accord and conformity, authority and social-order maintaining orientation (law and order morality), social contract orientation, and universal ethical principles (principled conscience). A 1982 study by Lawrence Landwehr found that practicing attorneys overwhelmingly identified with Kohlberg’s stage four morality (law and order).²⁸ In contrast, the population in general, and even the population of similarly educated adults, is less likely to obey laws and norms simply because doing so is important to maintaining society.²⁹ Thus, attorneys rely on rules and regulations (stage four) more than the general population, thereby ignoring interpersonal concerns (stage three), or other broad social principles (stage five).³⁰ Ultimately, a focus on law and order morality naturally de-emphasizes the client’s persona, and as Oliver Wendell Holmes observed, lawyers are inclined to eliminate the dramatic elements of a client’s story.³¹

24. Professor Antoinette Sedillo Lopez describes a clinic student who became close to a disabled client, failing to work closely with the supervising attorney, purportedly because the student felt the supervising attorney would not have sufficiently understood the client’s needs. “The rules do not say that a lawyer should not allow his over-identification with a client to cloud his judgment. Yet, I think most lawyers would agree that his conduct overstepped some professional norms and attorney-client boundaries.” Antoinette Sedillo Lopez, *Teaching a Professional Responsibility Course: Lessons Learned from the Clinic*, 26 J. LEGAL PROF. 149, 154 (2002).

25. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 276 (Phillips Bradley ed., 1990).

26. See CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 10 (Austin Sarat & Stuart Scheingold eds., 1998) (describing professional detachment as a “project of social control”).

27. See Daicoff, *supra* note 16, at 1394.

28. See *id.* at 1396.

29. *Id.*

30. See *id.* at 1396-97.

31. Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 457 (1897).

Legal education has reinforced this tendency to separate oneself from the client. Though the Langdellian idea that law should be formal, systematic, and autonomous no longer dominates the academy as much as it once did, the concept that law should “neglect of the facts of human nature and culture” still influences legal culture, and legal principle continues to be central to legal thought.³² Students historically learned that law making and law finding proceed rationally and logically, based on generic conceptual rules devoid of religious, ethical, political, or other ideological underpinnings.³³

While there has been some increase in the popularity of clinical education and courses about social justice, law schools primarily emphasize the importance of applying rules rather than personally relating to one's clients. Sociologists studying law students have found:

- (1) that law students ‘submerge’ their care orientations in order to ‘align with the rights assumptions of law school,’ suggesting that certain law school contexts tend to ‘silence’ the voice of care;
- (2) that law school does not accommodate or foster the relational side of human nature; and
- (3) that a rights orientation reflects the primary goal of legal education in teaching students to ‘think like a lawyer,’ since thinking like a lawyer means focusing on rights and placing oneself in an emotionally neutral state in order to be an advocate.³⁴

Schools thus discourage future lawyers from relating too closely with their clients, conditioning them to separate their professional role from any personal role that clients (and human beings generally) would find more natural.

Law students learn that norms of the general population have less priority than legal norms. Legal norms gain importance because they have better “pedigree;” that is, they derive their authority from legal institutions.³⁵ Legal education focuses on what is legally important and filters out “a broad range of potentially relevant factors (the putatively moral ones).”³⁶ Professional detachment from the client thus makes it easier to determine what the law demands.

Medical students’ identification with patients as people steadily declines from the first day of school. The first cut into a cadaver is difficult,

32. See Thomas C. Grey, *Modern American Legal Thought*, 106 *YALE L.J.* 493, 496, 516 (1997) (reviewing NEIL DUXBURY, *PATTERNS OF AMERICAN JURISPRUDENCE* (1995)).

33. ADDA B. BOZEMAN, *THE FUTURE OF LAW IN A MULTICULTURAL WORLD* 44 n.5 (1971) (noting that Max Weber was puzzled by law's peculiar tendency to subsume a wide variety of situations under one conceptual label).

34. See Daicoff, *supra* note 16, at 1401.

35. See WILLIAM H. SIMON, *THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS* 79 (1998).

36. See *id.*

but “[t]hree months later, the students are chucking pieces of excised human fat into a garbage can as nonchalantly as if they were steak trimmings.”³⁷ One professor noted that the peak of students’ empathy often is in their first semester, and as students get more skilled, they belittle what they had before they started.³⁸

The Model Rules also reflect role separation and emotional detachment, and because they serve as a guide to lawyers, the Rules reinforce these norms. The first Comment for Rule 1.16 says that “representation in a matter is completed when the agreed-upon assistance has been concluded.”³⁹ This suggests a transactional or arms-length view of relationships with clients. The Rule does not acknowledge that the relationship between an attorney and client extends beyond the conduct of business. While the client certainly has some control over whether to continue retaining a particular attorney, the professional norm is to view a client’s needs as discrete, both in time and in personality. This suggests that even if a lawyer opts to identify with a client, that identification is presumed to cease with the end of representation.

Other Rules similarly suggest that an attorney should separate herself from the client’s identity. According to Rule 1.2(b), a “lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.”⁴⁰ This implies that the norm is one of thin identity, with an intentional barrier between oneself and the defining characteristics of the client. The Comment to this rule is revealingly titled “Independence from Client’s Views or Activities.”⁴¹ The provision of legal services, then, “is not to be determined by a lawyer’s approval of or identification with prospective clients and their causes.”⁴² Role separation and neutrality make it easier for a lawyer to represent clients in general, because the duty of loyalty bars a lawyer from taking a client if representing that client may be materially limited by the lawyer’s own interests.⁴³ By compartmentalizing those interests, the lawyer reduces potential conflict or engagement with prospective clients. Nowhere do the Rules encourage lawyers to select or represent clients based on the lawyers’ inclination to identify with the client.⁴⁴

37. FADIMAN, *supra* note 1, at 275.

38. *Id.*

39. MODEL RULES OF PROF’L CONDUCT R. 1.16 cmt. 1 (2004) [hereinafter MODEL RULES].

40. MODEL RULES R. 1.2(b) (2004).

41. MODEL RULES R. 1.2 cmt. 5 (2004).

42. Norman W. Spaulding, *Reinterpreting Professional Identity*, 74 U. COLO. L. REV. 1, 21 (2003).

43. MODEL RULES R. 1.7(a)(2) (2004).

44. Spaulding, *supra* note 42, at 20-21.

Model Rule 1.2(a) suggests that even after choosing to represent a client, a lawyer's competence in representing her does not depend on an ability or willingness to identify with her: "[A] lawyer shall abide by a client's decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued."⁴⁵ Norman Spaulding observes that this "rule does *not* say that a lawyer shall abide by a client's decisions concerning the objectives of representation insofar as the lawyer identifies with those objectives."⁴⁶ Rule 1.16 describes circumstances when it would be appropriate for a lawyer to withdraw from representation; it too does not contemplate that an inability or unwillingness to identify with a client is a sufficient reason to withdraw representation.⁴⁷ Even Rule 1.1, which explicitly addresses competence, describes competent representation by referring to technical skill rather than an ability to identify with the client. Thus, the professional norm is to separate one's personal and professional identity from those of the client.

The norm that encourages a detached professional identity can have benefits. Attorneys who do not identify closely with clients may be more receptive to nondiscriminatory representation of a variety of people. Thus, professional detachment may improve the distribution of legal services, since more attorneys will be willing to represent any given client.⁴⁸ In this view, the profession and society are better served by a "lawyer willing to diligently represent a client irrespective of any personal, moral, or ideological affinity between them."⁴⁹ Discerning how to identify with clients is difficult and time consuming, and the profession's norm of limited attorney-client interaction allows the lawyer to focus on applying the law to the client's facts. Compared to identification with clients, strict detachment is perhaps easier to manage intellectually and avoids the risk of any erosion of the supremacy of law in relation to the social norms of clients.⁵⁰

45. MODEL RULES R. 1.2(a) (2004).

46. Spaulding, *supra* note 42, at 23.

47. See MODEL RULES R. 1.16 (2004); see also MODEL RULES R. 1.3 cmt. 1 (2004) (stating that "[a] lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer"); Spaulding, *supra* note 42, at 24-25 (arguing that client identification is not grounds for deciding for or against representing a client). *But see* MODEL RULES R. 1.16(b)(4) (2004) (noting that a lawyer who disapproved of the client to the point of repugnance could withdraw from representation).

48. See Spaulding, *supra* note 42, at 6-7 (distinguishing a "service norm" associated with thin professional identity from an "identification norm" associated with thick professional identity).

49. *Id.* at 6.

50. See *id.* at 7. Other potential complications of an attorney's thick identity are that it may conflict with the identity preferred by the attorney's employer and that it may detrimentally color how third parties view the attorney. See *id.* at 16-17.

C. *The Presumption that Clients are Autonomous and Competent Decision Makers*

Individual rights are the conceptual foundation of American law. From that foundation, the resulting professional norm is that lawyers presume all American clients share the same notions of individualism, free will, and autonomy. Part of the American mythology is the concept of the “individual casting off tradition for self-development, transcending particularities and projecting a universal attitude of egalitarian, open society.”⁵¹ In this society, somebody can be complete and actualized as a person only under the rubric of individual autonomy.⁵² Because the individual is capable of suffering and inflicting wrongs, the common assumption is that she is logically capable of making decisions, assuming rights, and discharging responsibilities.⁵³

Historically, Anglo-European law reflects a belief in the isolation and protection of individual rights.⁵⁴ Modern law acknowledges public interest, but public-interest issues are analyzed by considering how application of the law affects individuals, or how the aggregate actions of many individuals will affect the group. Groups can vindicate their interests in the political sphere, but only if an individual has standing. Similarly, public, governmental institutions are founded on the idea that individuals have responsibilities as citizens, and that these individual citizens form social compacts.⁵⁵

Compounding matters, American lawyers and medical professionals learn intricacies of their fields that are often beyond the ken of their clients. Nevertheless, lawyers place the heaviest burden of decision making on the client. Lawyers are not obligated to communicate every detail of every action they undertake for a client, but they have a general duty to communicate with a client about the means and ends of the representation so that the client can dictate the scope of the lawyer’s service.⁵⁶ Abiding by the client’s decisions regarding the objectives of representation is a fundamental professional ethic, except that lawyers cannot knowingly assist clients in criminal or fraudulent conduct, just as doctors cannot let patients self-prescribe dangerous drugs that are not medically indicated.⁵⁷ Undoubtedly, the knowledge gap between the professional and her client may create an unnerving chasm between what the professional thinks is the best course of

51. BOZEMAN, *supra* note 33, at 172-73.

52. DERALD WING SUE & DAVID SUE, *COUNSELING THE CULTURALLY DIVERSE: THEORY AND PRACTICE* 106 (4th ed. 2003) (describing how assumptions of individual autonomy affect counseling practice).

53. BOZEMAN, *supra* note 33, at 37 (noting assumptions underlying the freedom of contract).

54. *Id.* at xiii.

55. *Id.*

56. See MODEL RULES R. 1.4 (2004).

57. See *id.*

action and how the client wants to be represented. This is especially problematic when a client's cultural norms are significantly different from the professional norm.

Lawyers' norms and the Model Rules fail to acknowledge this barrier directly. Comments for Rule 1.4, for instance, suggest that sufficient information for consent is that which meets the reasonable expectations of a comprehending adult. The Rules highlight exceptions for a client who is a child or who "suffers" diminished capacity, but they give no explicit guidance about cultural communication.⁵⁸ The rules have a blind spot toward clients who are intelligent but uncomprehending because of different linguistic and cultural understandings.⁵⁹

D. Autonomy Requires Confidentiality

The focus on clients as autonomous individuals leads to the professional norm of treating communication with clients as strictly confidential. This norm of confidentiality holds even when the nondisclosure of information could severely hurt the interests of an innocent third party. Confidentiality, unlike role separation and the assumption of autonomy, is ultimately up to the client and not the attorney. The client can unilaterally choose to disclose information that destroys confidentiality.⁶⁰ Nevertheless, to the extent that confidentiality is within its control, the legal community strives for strict confidentiality. Model Rule 1.6(a), startling in its succinctness, encapsulates this norm: "[a] lawyer shall not reveal information relating to the representation of a client."⁶¹

In contrast, the scope of attorney-client privilege is narrow since it applies only to communication made by privileged persons in confidence for the purpose of obtaining or providing legal assistance.⁶² Attorney-client privilege, which in Anglo-American law dates back to the 1500s, arose as an evidentiary protection for clients to encourage candid factual disclosure to attorneys.⁶³ In contrast, confidentiality, which emerged little more than a century ago, applies to any communication from any source about the

58. See MODEL RULES R. 1.4 cmt. 6 (2004); MODEL RULES R. 1.14 cmt. 1 (2004).

59. For example, explaining Anglo-American legal concepts such as estates or respondeat superior would be vexing to people who do not conceive of property similarly or who are unaccustomed to our system of social hierarchy.

60. See MODEL RULES R. 1.6 (2004).

61. MODEL RULES R. 1.6(a) (2004).

62. RESTATEMENT OF THE LAW GOVERNING LAWYERS § 68 (2000).

63. See MCCORMICK ON EVIDENCE §87, at 120-21 (John W. Strong ed., 4th ed. 1992) (1954); 8 JOHN HENRY WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW §2292, at 554 (John T. McNaughton rev., 1961) (1904). More recently, studies have suggested that the rationale for attorney-client privilege is weak. See, e.g., Comment, *Functional Overlap Between the Lawyer and Other Professionals: Its Implications for the Privileged Communications Doctrine*, 71 YALE L.J. 1226, 1232 (1962).

representation of a client.⁶⁴ Even though confidentiality has wider applicability, it has fewer exceptions than attorney-client privilege.

Absent a client's consent, the only exceptions to confidentiality are when attorneys need to defend themselves from accusations of misconduct, collect delinquent payments, comply with a law, or "prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm."⁶⁵ Lawyers are thus bound to maintain confidentiality even if a client's criminal act will cause non-imminent death. These very limited exceptions show the deep entrenchment of confidentiality within the legal system.

Given the widespread internalization of this strong norm, lawyers are unlikely to violate confidentiality and risk the censure of other members of the profession. While role separation and the assumption of client autonomy are most obvious to the client, breaches of confidentiality inherently involve third parties, increasing the likelihood that colleagues will learn of the transgression and express their disapproval.

II

MINORITY GROUPS IN THE UNITED STATES ARE ON THE RISE, AND SOCIAL NORMS ARE LIKELY TO IMPEDE ASSIMILATION

The legal profession has its own culture, and American society has adapted to that culture. This Part explores why immigrant populations are not likely to assimilate American legal norms. While the size and placement of these groups differs from that of past immigrant groups, this alone does not explain why assimilation of American legal culture is slower. I acknowledge the great pressure Latinos and Asians face to accept majority norms; however, relying on the conclusions of current scholarship on norms, I explain why these groups are likely to retain norms that are in tension with legal professional norms.

A tenet of American mythology is the "melting pot," which was first described in a play by the Jewish-English immigrant Israel Zangwill.⁶⁶ Under this view, America "melts" immigrants into a single American culture.⁶⁷ From a normative perspective, the American melting pot has two

64. See L. Ray Patterson, *Legal Ethics and the Lawyer's Duty of Loyalty*, 29 EMORY L.J. 909, 941-42 (1980) (noting that corporate lawyer David Dudley Field was the likely norm entrepreneur of confidentiality with respect to lawyers' representation).

65. RHODE & LUBAN, *supra* note 15, at 219; see also MODEL RULES R. 1.6(b)(1) (2004); DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* 177-233 (1988) (discussing and criticizing examples of lawyers refusing to disclose confidences despite injury to third parties). *But see* Spaulding, *supra* note 42, at 65 (observing that some jurisdictions have more exceptions than others).

66. See William Booth, *One Nation, Indivisible: Is It History?*, WASH. POST, Feb. 22, 1998, at A1 [hereinafter Booth, *One Nation*].

67. See E.D. HIRSCH, JR. ET AL., *THE NEW DICTIONARY OF CULTURAL LITERACY* 438 (3d ed. 2002) (defining melting pot). See also Bill Clinton, Commencement Address at Portland State University, 34 Weekly. Comp. Pres. Doc. 1334 (June 13, 1998) (asserting that regardless of a person's

prongs: Americans must agree that immigrants can and should become Americans, and immigrants must agree to become Americans.⁶⁸

As the population of Latino and Asian Americans increases, however, the melting pot has morphed into metaphors such as “salad bowl” or “mosaic,” which connote discrete populations that, together, constitute the American whole.⁶⁹ A critical mass of these immigrant groups has increased the viability of retaining separate social norms in the United States. Of course, some degree of assimilation still occurs, but the ultimate result is that Latino and Asian Americans have maintained a stronger sense of identity and retained social norms that do not conform to the traditional American melting pot metaphor.

A. *Asian and Latino Populations Are Growing Rapidly in the United States*

Recently Asian and Latino populations in the United States have grown much faster than the overall American population.⁷⁰ The United States has admitted more immigrants than any other nation, totaling more than 50 million.⁷¹ Latino immigrants still living account for 16 million of that total, while Asian immigrants make up 8 million.⁷² Also, Latino populations in the United States have high reproduction rates,⁷³ while Americans overall continued to have fewer children.⁷⁴

origins, “if you believe in the Declaration of Independence and the Constitution, if you accept the responsibilities as well as the rights embedded in them, then you are an American”).

68. See Philip Gleason, *American Identity and Americanization*, in CONCEPTS OF ETHNICITY 62-63 (William Petersen et al. eds. 1982); JOHN J. MILLER, THE UNMAKING OF AMERICANS: HOW MULTICULTURALISM HAS UNDERMINED THE ASSIMILATION ETHIC 24 (1998); see also U.S. COMM’N ON IMMIGRATION REFORM, BECOMING AN AMERICAN: IMMIGRATION AND IMMIGRANT POLICY 25-29 (1997).

69. William Branigin, *Immigrants Question Idea of Assimilation*, WASH. POST, May 25, 1998, at A1.

70. COUNCIL OF ECONOMIC ADVISERS FOR THE PRESIDENT’S INITIATIVE ON RACE, CHANGING AMERICA: INDICATORS OF SOCIAL AND ECONOMIC WELL-BEING BY RACE AND HISPANIC ORIGIN (1998) [hereinafter CHANGING AMERICA].

71. The United States continues to admit more immigrants than any other country. U.S. INFO. AGENCY, PORTRAIT OF THE USA (Dennis Drabelle ed., 1997) [hereinafter PORTRAIT OF THE USA]. In addition, the Indochinese Refugee Resettlement Program Act of 1975 and the Refugee Act of 1980 permitted the admission of nearly one million Southeast Asians. Don T. Nakanishi, *Political Trends and Electoral Issues of the Asian Pacific American Population*, in AMERICA BECOMING: RACIAL TRENDS AND THEIR CONSEQUENCES 170, 175 (Neil J. Smelser et al. eds., 2001).

72. U.S. CENSUS BUREAU, CENSUS 2000 BRIEF, THE FOREIGN-BORN POPULATION: 2000, at 2 (2003). For perspective, consider that the two most fabled ports of entry admitted less than 13 million during earlier waves of immigration: Ellis Island admitted 12 million from 1892 through 1954, while Angel Island admitted less than 1 million from 1910 through 1940. PORTRAIT OF THE USA, *supra* note 71; Angel Island Immigration Station Found., Frequently Asked Questions, <http://www.aiisf.org/faqs> (last visited July 12, 2005).

73. See U.S. CENSUS BUREAU, POPULATION CHARACTERISTICS, FERTILITY OF AMERICAN WOMEN: JUNE 2000, at 7 tbl.3 (2001). This partly results from the younger average age of Latino immigrants. See BETSY GUZMÁN, U.S. CENSUS BUREAU, CENSUS 2000 BRIEF, THE HISPANIC POPULATION 7 (2001) (noting that the median age of Hispanics was about twenty-six, nearly ten years

Today, about one of eight Americans is Latino, and by 2050 about one of four Americans will be Latino.⁷⁵ Previously, most growth resulted from immigration, especially after the Immigration and Nationality Act of 1965 facilitated immigration of relatives of people already in the United States.⁷⁶ But now, the second generation accounts for an even larger share of the growth, even as immigration continues.⁷⁷

The Asian population is smaller than the Latino population but is growing at a faster pace. The Asian population increased to 13.1 million in 2000. Since then, the Asian population has increased at a rate almost double that of the country as a whole.⁷⁸ Asians account for one of every twenty Americans today and will likely constitute one of every twelve Americans in 2050.⁷⁹ Immigration continues to fuel most of this growth.⁸⁰

*B. The Size and Location of Asian and Latino American Populations
Increase the Influence of Their Social Norms*

The changing American demographic means that the nation can no longer pretend that a single set of norms operates on everyone. The United States previously had homogeneous norms that did not grow far from their Anglo-European roots.⁸¹ Restricted immigration ensured that Anglo-European norms continued to dominate the American landscape.⁸² Now, alternative norms are sprouting and flourishing in the United States, particularly because of the growing prominence of Asians and Latinos.

As U.S. geographic expansion brought Anglo Europeans into conflict with non-European peoples, Americans emphasized the preeminence of

less than the overall American median age, and that 35% of Hispanics were under eighteen, compared to 25% for the general population).

74. See CHANGING AMERICA, *supra* note 70; U.S. CENSUS BUREAU, TABLE, PERCENT CHILDLESS AND BIRTHS PER 1,000 WOMEN IN THE LAST YEAR: SELECTED YEARS, 1976 TO PRESENT (2003) (showing a decline in the number of births per 1,000 women from over seventy births in the early 1980s to just over sixty births now).

75. U.S. CENSUS BUREAU, *supra* note 72, at 1.

76. D'Vera Cohn, *Immigrants' Children Fuel Growth Among Latinos: Native-Born Population Taking New Paths in Education, Workforce and Beliefs, Researchers Say*, WASH. POST, Oct. 14, 2003, at A2.

77. *Id.*

78. See Press release, U.S. Census Bureau, Facts for Features: Asian Pacific American Heritage Month, May 2004 (Apr. 19, 2004), http://www.census.gov/Press-Release/www/releases/archives/facts_for_features_special_editions/001738.html (noting a 9% increase since the 2000 census); Booth, *One Nation*, *supra* note 66.

79. See Press release, U.S. Census Bureau, Facts for Features: Asian Pacific American Heritage Month, May 2004 (Apr. 19, 2004), http://www.census.gov/Press-Release/www/releases/archives/facts_for_features_special_editions/001738.html.

80. THE NEW FACE OF ASIAN PACIFIC AMERICA: NUMBERS, DIVERSITY AND CHANGE IN THE 21ST CENTURY II (Eric Lai & Dennis Arguelles eds., 2003) [hereinafter THE NEW FACE OF ASIAN PACIFIC AMERICA].

81. Camarillo & Bonilla, *supra* note 10, at 125.

82. See Immigration & Nationality Act of 1965, Pub. L. No. 89-236, § 201, 79 Stat. 911 (1965) (phasing out longstanding quotas limiting non-European immigration).

Anglo-Saxon culture and norms. Shortly before the Mexican-American War, a Maryland congressman described the American doctrine of manifest destiny as “the destiny of the white race, . . . the destiny of the Anglo-Saxon race.”⁸³ Mexicans in the West became “foreigner[s] in [their] native land,”⁸⁴ people “thrown among those who were strangers to their language, customs, laws, and habits.”⁸⁵ Even deep into the twentieth century, the immigration quotas favored Anglo-Saxons, with low limit ranging from one hundred to a few thousand for immigrants from Asian, African, Southern European, and Eastern European nations.⁸⁶

The current increase in recent immigrants and their progeny is increasing the prominence of norms other than the historically dominant Anglo- and European-American norms. Instead of wholesale assimilation, Latino and Asian American populations are retaining their own norms. This results partly from demographic factors. First, having a critical mass of Latinos or Asians aids cultural retention. A larger number of community members with similar customs makes it easier for other members to retain those norms because they are useful.⁸⁷ Second, having a concentration of community members with similar norms makes it easier to avoid dealings with outsiders, particularly in places where people live and work. For example, in Los Angeles, the nation’s second largest city, Latinos were more segregated residentially in 1990 than ten or twenty years before.⁸⁸ Certain industries and workplaces also are “ethnic niches” because other groups may not be interested in certain occupations and because people often find jobs through their networks of association.⁸⁹

More subtle than the sheer number or concentration of Latinos and Asians is their influence on historical American norms. While the melting pot metaphor presumes that citizenship demands assimilation, the mosaic metaphor creates a broader concept of “cultural citizenship” that extends even to peoples who have lived on the historical margins of society.⁹⁰ As Latino and Asian American populations grow, their norms are more likely to spur the evolution of traditional American norms.

83. HOWARD ZINN, *A PEOPLE’S HISTORY OF THE UNITED STATES* 155 (2003) (quoting Congressman Giles of Maryland in 1847); see also RONALD T. TAKAKI, *A DIFFERENT MIRROR: A HISTORY OF MULTICULTURAL AMERICA* 176 (1993) (describing Anglo-American views of manifest destiny).

84. FOREIGNERS IN THEIR NATIVE LAND: HISTORICAL ROOTS OF THE MEXICAN AMERICANS 178 (David J. Weber ed., 1973).

85. *Id.* at 199.

86. See TAKAKI, *supra* note 83, at 282.

87. PETER BRIMELOW, *ALIEN NATION: COMMON SENSE ABOUT AMERICA’S IMMIGRATION DISASTER* 273 (1995) (arguing that “[a]llowing further massive Hispanic immigration may be one of the wrong policies that will wreck the assimilation of those already here”).

88. See Booth, *One Nation*, *supra* note 66.

89. *Id.*

90. Camarillo & Bonilla, *supra* note 10, at 126; LATINO CULTURAL CITIZENSHIP: CLAIMING IDENTITY, SPACE, AND RIGHTS 15 (William V. Flores & Rina Benmayor eds., 1997).

Moreover, the concentration of Latinos and Asians in certain regions of the United States will heighten the groups' visibility, and thus influence, on American society.⁹¹ Counties and states where Latinos and Asians are dominant provide a base from which these groups can preserve and propagate their cultures. Americans already appreciate the cultural flavor that Latinos and Asians have contributed, as manifested by ethnic restaurants, arts, and festivals.⁹² As the numbers of these groups increase, their ability to alter American norms will also become more pronounced.

C. *Social Pressure and Economic Opportunity Will Still Encourage Assimilation*

Why would immigrant populations such as Latinos and Asians not quickly adopt traditional American attitudes about the law and social interactions? After all, many immigrant cultures assimilate after one or two generations have been born in American.⁹³ For instance, by 2020, almost half of the growth of the Latino population will be from the second generation.⁹⁴ Similarly, the Asian American population over the next twenty years is likely to show slower growth from immigration and a concomitant rise in the proportion of U.S.-born Asian Americans.⁹⁵ Young Americans, regardless of ethnic background, tend to learn English and majority American habits quickly through exposure to schools, pop culture, and consumerism.⁹⁶

Undoubtedly the pressure to assimilate will continue. Some pressure is attributable to societal expectations of the majority, and some is attributable to the economic opportunities that await those who play by traditional American rules. Also, some pressure arises from a pragmatic desire to move seamlessly through American society.

Many Americans desire a return to the metaphor of the melting pot to set societal expectations.⁹⁷ The societal expectation regarding assimilation

91. See GUZMÁN, *supra* note 73; JESSICA S. BARNES & CLAUDETTE E. BENNETT, U.S. CENSUS BUREAU, CENSUS 2000 BRIEF, THE ASIAN POPULATION 4 (2002) (noting areas of concentration).

92. See PORTRAIT OF THE USA, *supra* note 71.

93. See Min Zhou, *Contemporary Immigration and the Dynamics of Race and Ethnicity*, in AMERICA BECOMING: RACIAL TRENDS AND THEIR CONSEQUENCES 200, 218 (Neil J. Smelser et al. eds., 2001) (noting that the small number of immigrants up until the 1970s readily assimilated) [hereinafter Zhou, *Contemporary Immigration*].

94. Cohn, *supra* note 76.

95. THE NEW FACE OF ASIAN PACIFIC AMERICA, *supra* note 80, at 10 (noting projections that the percentage of foreign-born Asian Americans will fall to 55 percent in 2020 from 68 percent in 2000).

96. Branigin, *supra* note 69.

97. See MILLER *supra* note 68, at 24; see generally ARTHUR M. SCHLESINGER, JR., THE DISUNITING OF AMERICA: REFLECTIONS ON A MULTICULTURAL SOCIETY 107-10 (1998). But see Stephan Thernstrom, *Rediscovering the Melting Pot—Still Going Strong*, in REINVENTING THE MELTING POT: THE NEW IMMIGRANTS AND WHAT IT MEANS TO BE AMERICAN 48-49 (Tamar Jacoby ed., 2004) (arguing that the melting pot metaphor did not originally connote assimilation with Anglo norms).

stems in part from a belief that traditional American norms are preferable or superior.⁹⁸ In the absence of assimilation, many Americans also fear that “if linguistic and cultural separatism rise above a certain level, the unity and political stability of the nation will in time be seriously eroded.”⁹⁹

There is also a profit incentive to assimilate. Many of the nation’s socioeconomic opportunities remain almost entirely for the benefit of citizens who adhere to traditional Anglo- or European-American social norms.¹⁰⁰ For instance, while business experts instruct companies to be aware of diversity, they also emphasize historical American protocols and behaviors when describing how to succeed in business.¹⁰¹ Different customs are treated as foreign rather than acceptably American.¹⁰² A “white male style” is dominant in modern business organizations: “a set of norms and values they expect newcomers to adhere to prior to granting them full ‘club’ membership.”¹⁰³ But dominant cultural values may be at odds with Latino social norms.¹⁰⁴ Similarly, some common Asian norms regarding hierarchy, authority, and collaboration may conflict with dominant American business norms.¹⁰⁵ While assimilation is no guarantee of success,¹⁰⁶ according to the Department of Labor, “[b]usiness leaders identify perceptions based on

98. See Victor Nee & Richard Alba, *Toward New Definition*, in *REINVENTING THE MELTING POT: THE NEW IMMIGRANTS AND WHAT IT MEANS TO BE AMERICAN* 88 (Tamar Jacoby ed., 2004); see also Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 CALIF. L. REV. 863, 875 (1993) (quoting George Tryfiates of English First, which lobbies against multilingual accommodation in the public sector). Cf. SCHLESINGER, *supra* note 97 (emphasizing the benefits of English-only policy).

99. SELECT COMM’N ON IMMIGRATION & REFUGEE POLICY, 97TH CONG., U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST 417 (J. Comm. Print 1981); see also Branigin, *supra* note 69, (noting that “the more emphasis there is on the factors that set people apart, the more likely that society will end up divided”).

100. Nee & Alba, *supra* note 98, at 91-92 (describing individual self-interest in structural assimilation); DEBORAH WOO, *GLASS CEILINGS AND ASIAN AMERICANS: THE NEW FACE OF WORKPLACE BARRIERS* 33-35 (2000); see also KENNETH L. KARST, *BELONGING TO AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION* 82-85 (1989).

101. See, e.g., LETITIA BALDRIGE, *LETITIA BALDRIGE’S NEW COMPLETE GUIDE TO EXECUTIVE MANNERS* 90-96, 299-301 (1993); DANA MAY CASPERSON, *POWER ETIQUETTE: WHAT YOU DON’T KNOW CAN KILL YOUR CAREER* 9 (1999) (suggesting that position or money by themselves cannot offer the business opportunities gained by complying with expected norms).

102. See, e.g., BALDRIGE, *supra* note 101, at 252-271; PEGGY POST & PETER POST, *EMILY POST’S THE ETIQUETTE ADVANTAGE IN BUSINESS: PERSONAL SKILLS FOR PROFESSIONAL SUCCESS* 460-61 (1999).

103. MAURICIO GASTON INSTITUTE FOR LATINO COMMUNITY DEVELOPMENT AND PUBLIC POLICY, *BARRIERS TO THE EMPLOYMENT AND WORK-PLACE ADVANCEMENT OF LATINOS: A REPORT TO THE GLASS CEILING COMMISSION*, U.S. DEPARTMENT OF LABOR 48 (1994).

104. *Id.*

105. See, e.g., Amado Cabezas et al., *Empirical Study of Barriers to Upward Mobility for Asian Americans in the San Francisco Bay Area*, in *FRONTIERS OF ASIAN AMERICAN STUDIES* 85, 96 (Gail M. Nomura et al. eds., 1989); Deborah Woo, *The Glass Ceiling and Asian Americans: A Research Monograph* 100 (1994).

106. See Woo, *supra* note 105, at 102.

cultural differences as significant barriers impeding the advancement of minorities and women in corporate structures.”¹⁰⁷ Thus, retaining separate norms has a direct economic cost.

Lastly, the reality of prejudice also creates a pressure to assimilate. The existence of prejudice can encourage minorities to assimilate in an effort to seem more white. Conforming to symbolic gestures such as hanging an American flag or displaying a Christmas tree can obviate neighbors’ uncomfortable questions about patriotism or religion. Thus, failing to follow traditional American norms can have a significant opportunity cost.¹⁰⁸

D. Latino and Asian Americans Are Likely to Retain Many of Their Own Norms

The growing visibility of Latinos and Asians in the American population can make other Americans wonder if these groups will integrate into the rest of American society.¹⁰⁹ Groups often assimilate politically or structurally—with integrated workplaces, neighborhoods, and schools—while retaining distinct cultural norms.¹¹⁰ This puzzling circumstance leaves many Americans fearing for the survival of “traditional” Anglo norms.¹¹¹ George Wilson, a University of Miami sociologist studying white attitudes around Miami, observed, “A lot of the whites I talk to say they feel challenged by the rapid ethnic and cultural change. A whole population of whites has gone from a clear majority to a clear minority in a very short time.”¹¹²

Demographic trends make it easier for Latinos and Asians to continue following their norms, even when they conflict with traditional American norms. The old model of assimilation may not even be possible once minority norms grow so prominent that there is no longer any dominant set of mainstream norms into which to assimilate.¹¹³ In addition, the social pressures to assimilate have decreased as the influence and prevalence of

107. GLASS CEILING COMM’N, A SOLID INVESTMENT: MAKING FULL USE OF THE NATION’S HUMAN CAPITAL 49 (1995); see also TAYLOR COX, JR., CULTURAL DIVERSITY IN ORGANIZATIONS: THEORY, RESEARCH & PRACTICE 130 (1993) (noting studies suggesting that Anglo-American managers are more ethnocentric than their counterparts in Europe, Australia, and Britain).

108. See, e.g., LIONEL SOSA, THE AMERICANO DREAM: HOW LATINOS CAN ACHIEVE SUCCESS IN BUSINESS AND IN LIFE (1998) (criticizing Latino norms that Sosa believes prevent Latinos from succeeding commercially in the United States).

109. See Corey Kilgannon, *Ethnic Friction Over Signs That Lack Translations*, N.Y. TIMES, Jan. 10, 2004, at B5.

110. Kevin Brown, *Do African-Americans Need Immersion Schools?: The Paradoxes Created by Legal Conceptualization of Race and Public Education*, 78 IOWA L. REV. 813, 836 n.88 (1993).

111. William Booth, *A White Migration North from Miami*, WASH. POST, Nov. 9, 1998, at A1 [hereinafter Booth, *White Migration*]. One woman who fled the increasingly Latino Miami area for a nice and neat, white neighborhood in Weston, Florida, praised her new community by saying: “It’s more like America.” *Id.*

112. *Id.*

113. Booth, *One Nation*, *supra* note 66.

Latino norms has increased. Many groups sense that the United States is unique in tolerating ethnicity.¹¹⁴ If a group believes that it can be perceived as American without abandoning that group's own traditional norms, it has little incentive to do so.¹¹⁵

In addition, cultures are inherently inertial. This trait is independent of demographic factors such as size and geographical clustering. Culture, including knowledge, beliefs, norms, and behaviors shared by members of a group, develops partly because of human need for stability.¹¹⁶ Among the constant changes that humans experience in the world, this stability provides some reassuring predictability in the human environment.¹¹⁷ People within a culture can understand how others will react and communicate. In fact, these cultural frameworks seem so innate to people who grow up with them that the culture operates subconsciously on behavior.¹¹⁸ This feeling of cultural innateness, spanning generations, resists rapid change. Even comprehending the operation of different cultural norms is difficult for most people because "groups have a tendency to interpret their own patterns of interaction as though they were universal."¹¹⁹ While exposure to people from other cultures can gradually alter one's own culture, this evolution is slow and selective.¹²⁰

Geography also plays a role in helping some groups, especially Mexican Americans, retain their norms. Aside from the concentration and numbers of Mexican Americans, the fact that so many are from contiguous Mexico means that the community can retain much broader and stronger cohesion than previous ethnic groups whose cohesion mostly ended at the edge of their neighborhood. Mexican Americans are not limited to Chinatowns or Little Bombays, but rather perpetuate their sense of community regionally. Asian populations in the western states, augmented by high immigration rates since 1965, may also have geographic cohesion

114. Booth, *One Nation*, *supra* note 66 (noting that "[i]t is a particularly American phenomenon, many say, to label citizens by their ethnicity"). One 1992 study showed that most young Latinos and Vietnamese in Southern Florida and Southern California chose to identify themselves not as simply "American," but as hyphenated Americans (for example, Mexican-American or Vietnamese-American). *Id.*

115. See NATHAN GLAZER & DANIEL PATRICK MOYNIHAN, *BEYOND THE MELTING POT: THE NEGROES, PUERTO RICANS, JEWS, ITALIANS, AND IRISH OF NEW YORK CITY* xxxiii (2d ed. 1970) (describing acculturation).

116. EDWARD T. HALL, *BEYOND CULTURE* 41-43 (1977).

117. See *id.* at 41; see also MERRIAM-WEBSTER ONLINE DICTIONARY (online edition, last visited Dec. 2, 2005), <http://www.m-w.com/dictionary/culture> (defining "culture" as "customary beliefs, social forms, and material traits of a racial, religious, or social group").

118. HALL, *supra* note 116, at 42-43.

119. *Id.* at 75 (discussing nonverbal communicative patterns of groups).

120. See Booth, *One Nation*, *supra* note 66 (noting that "[m]any immigrant parents say that while they want their children to advance economically in their new country, they do not want them to become 'too American'"). Mexican Americans sometimes refer derisively to other Mexican Americans who are too white as "gabachos." Johnson, *supra* note 4, at 1292.

with the Pacific Rim because of the increased availability and affordability of transportation and communication across the Pacific in recent decades. In contrast, previous groups immigrating to America faced long journeys or high costs to maintain ties to their ethnic homelands.

Nevertheless, these phenomena—demographic trends, cultural inertia, and geographical idiosyncrasies—probably do not fully explain why Asians and Latinos, particularly those whose families have been in the United States for a long time, retain their norms. As discussed above, the pressures to assimilate remain high, and retaining contrary norms has a significant cost. An analysis of social norms can help explain why Asian and Latino Americans hold onto those contrary norms. First, the norms are significantly different from traditional American norms, so they are useful to maintain because they signal cooperation within the ethnic community. Second, the norms are practical in their own right, as distinct from traditional American norms. Third, traditional American norms may be too different from Asian and Latino norms to foster assimilation. These factors will be especially pertinent with respect to traditional Anglo-American legal norms.

1. *Adhering to Traditional Group Norms Is Useful in Signaling Beneficial Cooperation and Solidarity with the Ethnic Community*

Following minority community norms can signal solidarity with other community members.¹²¹ It is this community that establishes standards of behavior and maintains economic and cultural institutions that can enforce those standards.¹²² Adhering to these norms is a symbolic act that communicates to other community members that one is a cooperator and deserving of trust.¹²³ As Eric Posner observed in the context of a job interview, “Failure to conform to relevant social norms raises suspicions about one’s character and reliability in relationships of trust, even when there is no direct relationship between the deviant behavior and the requirements of the job,” because that failure is a powerful signal.¹²⁴

2. *Traditional Group Norms Have Practical Benefits that Can Outweigh the Benefit of Complying with American Norms*

Following traditional group norms can be efficient for Asians and Latinos for two reasons. First, the cultural community can provide socio-economic benefits to members in good standing. Second, because of

121. See generally Eric A. Posner, *Symbols, Signals, and Social Norms in Politics and the Law*, 27 J. LEGAL STUD. 765 (1998).

122. Min Zhou, *Assimilation, The Asian Way*, in REINVENTING THE MELTING WAY: THE NEW IMMIGRANTS AND WHAT IT MEANS TO BE AMERICAN 139, 147 (Tamar Jacoby ed., 2004) [hereinafter Zhou, *Assimilation*].

123. See Posner, *supra* note 121, at 768-69.

124. ERIC A. POSNER, LAW AND SOCIAL NORMS 13 (2000).

lingering mistrust by the American majority, Asians and Latinos probably would not reap the full benefits from following the majority norm.¹²⁵ While Asians and Latinos may opportunistically follow selective majority norms where Americans overall treat them as full cooperators, these groups are likely to retain many of their own norms.

In addition to the benefit of signaling cooperation, adhering to distinct minority norms can be beneficial when sufficient numbers of other community members also adhere to them. In this regard, some norms scholars distinguish between mere habits (such as using chopsticks as utensils) or inclinations (such as speaking Spanish) and norms (such as giving a dowry), which carry a sense of obligation because of social enforcement.¹²⁶ This enforcement of community norms means that noncompliant individuals face a penalty of shame, ostracism or uncooperativeness from others. Compliant individuals, on the other hand, share in the efficiencies created by the community.¹²⁷

For complex communities, especially decentralized ones, norms are more important in guiding members' behavior than the law.¹²⁸ Community members who deal with one another repeatedly will tend to develop norms that are efficient rules of cooperation.¹²⁹ A member who conforms to the rules is considered a trustworthy member in good standing.

This seems especially true for non-Anglo communities that face pressure to assimilate. These communities are often discrete and insular because of race, language, geography, or custom. Thus, members easily recognize each other. Members' typically limited interaction with the majority culture will encourage the maintenance of minority norms. A minority member may choose to follow the majority's norms about driving in traffic for the pragmatic reason that driving is highly interactive with the majority, but follow minority norms about matrimony. The minority norms that survive against the pressures of assimilation tend to be those that are essential to the communities' success.¹³⁰ Moreover, following those minority norms may be more efficient for members than following the rules "coerced" by assimilation.¹³¹

Asian and Latino communities will likely retain many norms that conflict with those of the majority because of the nature of their communities. Over ninety percent of Asian and Latino immigrants live near urban

125. Robert Cooter, *Normative Failure Theory of Law*, 82 CORNELL L. REV. 947, 948-55 (1997) (discussing the sufficiency of social norms, false consensus, and the need for justification of social obligation).

126. *Id.* at 954.

127. *Id.* at 952-53 (discussing evolutionary models that reward normative commitment).

128. *Id.* at 949.

129. *Id.* at 950, 952 (discussing repeated games and examples of small group norms).

130. *Id.* at 948 (discussing the sufficiency of social norms in the market for social norms).

131. *Id.* at 955 (discussing false consensus and the need for justification of social obligation).

centers, and benefit from the social networks inherent in living in such close proximity with each other.¹³² A higher percentage of immigrants live in the five largest American metropolitan areas now than during the immigration wave of the early twentieth century.¹³³ Nowadays, “[m]ost newcomers do not arrive alone or in a vacuum, and most turn to relatives and friends for assistance in meeting practical needs.”¹³⁴ This informal network orients members and also “enforces informal rules that help individuals improve their chances through cooperation with others in the immigrant community.”¹³⁵ Since a disproportionate number of immigrant children grow up in underprivileged and linguistically isolated neighborhoods, they are more likely to encounter other immigrants than members of the American majority.¹³⁶ This perpetuates the reinforcement of traditional cultural norms.

Reinforcement of cultural norms does not only affect recent immigrants or people who live within ethnic enclaves. Whereas the small number of second- and third-generation Americans of Asian or Latino ancestry melted into the white middle class prior to the 1970s, recent immigrants and their children have resisted that assimilation.¹³⁷ Even people who do not live in an ethnic enclave benefit from the extended economic and social institutions of that community by adhering to the community’s norms.¹³⁸ Group members who live elsewhere can still benefit from the community’s ability to provide business and employment opportunities and culture-specific goods and services.¹³⁹ For instance, suburban Korean American families who do not live in Los Angeles’ Korea town often benefit from the cultural norms they share with inner city Koreans through continued ties to Korean churches, the ethnic economy, and Korea town educational and recreational programs.¹⁴⁰

The increased acceptance of the mosaic model to replace the melting pot makes it casier for even non-immigrant Asians and Latinos to retain their traditional cultural norms.¹⁴¹ Even for second- or third-generation Americans, strongly identifying with one’s ethnic group is not only viable

132. Zhou, *Contemporary Immigration*, *supra* note 122, at 93.

133. *Id.* at 215 (thirty-seven percent in 1990, versus twenty-five percent in 1910).

134. Nee & Alba, *supra* note 98, at 92.

135. *Id.*

136. Zhou, *Contemporary Immigration*, *supra* note 122, at 93.

137. *Id.* at 218.

138. See Zhou, *Assimilation*, *supra* note 122, at 148 (describing the inflow of money into enclave communities and the variety of economic and social opportunities that the communities provide in exchange).

139. *Id.*

140. See *id.* at 151-52.

141. See Hing, *supra* note 98, at 879-80. Hing grew up among both Latinos and Asians and describes his appreciation of both groups’ norms.

but even socially desirable today.¹⁴² The majority of Latino and Asian Americans are more likely than Anglo Americans to perceive their ethnicity as a definitive part of their social identities.¹⁴³

Ironically, being a minority among Anglo- and European-Americans can inspire even deeper commitment to preserving Latino and Asian cultural norms,¹⁴⁴ because some minority cultures may then perceive some parts of majority culture to be undesirable. Minorities may dislike how popular culture debases education, undervalues long-term relationships, promotes competition and confrontation, and emphasizes conspicuous consumption. Thus, the minority may see great value in retaining certain contrary norms.¹⁴⁵

Furthermore, majority attitudes about whether Latinos and Asians are good Americans can prevent these minority groups from feeling fully assimilated.¹⁴⁶ The rise in immigration has caused Americans to perceive Asians and Latinos as more likely to be immigrants.¹⁴⁷ At the same time, discrimination in immigration policy has made Asian and Latino immigrants feel less welcome than their European counterparts.¹⁴⁸ Because American society sees them as “perpetual foreigners,” many Asian and Latinos see greater opportunity for success in following their own cultural norms.¹⁴⁹

For these reasons, following the minority norms may be more efficient than following majority norms. Consequently, “[f]eelings of oppression and exclusion, heightened by a perceived hypocrisy of

142. See Herbert J. Gans, *The American Kaleidoscope, Then and Now*, in REINVENTING THE MELTING POT: THE NEW IMMIGRANTS AND WHAT IT MEANS TO BE AMERICAN 40 (Tamar Jacoby ed., 2004).

143. Michael A. Omi, *The Changing Meaning of Race*, in AMERICA BECOMING: RACIAL TRENDS AND THEIR CONSEQUENCES 249 (Neil J. Smelser et al. eds., 2001); see also Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 LA RAZA L.J. 42, 44 (1995) (noting that “the great heterogeneity among Latinos in terms of race, color, immigration status, country of origin, socioeconomic background, and other variables limits the utility of a strictly race-based strategy as pursued in *Brown*”).

144. Gans, *supra* note 142, at 40.

145. See Zhou, *Assimilation*, *supra* note 122, at 153 (describing how Vietnamese Americans allow their children to interact with other Americans but maintain cultural norms about education and extracurricular activities).

146. Gans, *supra* note 142, at 40-41.

147. See Zhou, *Assimilation*, *supra* note 122, at 153 (describing how Vietnamese Americans allow their children to interact with other Americans but maintain cultural norms about education and extracurricular activities).

148. See Hyung-Chan Kim, *American Naturalization and Immigration Policy: Asian American Perspective*, in ASIAN AMERICANS AND CONGRESS: A DOCUMENTARY HISTORY 2 (Hyung-Chan Kim ed., 1996) (stating that “[i]t is important, albeit painful, for us to recognize that American immigration and naturalization policy has been extremely discriminatory against non-white people until 1965”). For example, the Refugee Act of 1980 was likely intended to exclude the admission of refugees from Southeast Asia. Harvey Gee, *The Refugee Burden: A Closer Look at the Refugee Act of 1980*, 26 N.C.J. INT’L L. & COM. REG. 559, 578 (2001) (book review).

149. See Zhou, *Assimilation*, *supra* note 122, at 153.

American culture that values freedom and materialism but that has limited economic opportunities for some immigrant populations” can lead to rejection of majority norms.¹⁵⁰ Ordinarily, following majority norms that allow access to the statehouse, the board room, the country club, and the “skull and bones” secret society would be economically rational.¹⁵¹ However, practical issues of prejudice and the lack of full acceptance in the American economy and society make the retention of minority norms the better choice.¹⁵² Community members may “encourage their communities to work, spend, and live in the community in a self-help fashion.”¹⁵³ While some Americans criticize ethnic groups in America, the retort to this criticism is simple, “blacks and Hispanics and Asians and women merely have been doing what everyone else has been doing—namely, organizing into interest groups and making demands.”¹⁵⁴

3. *Rules Are Too Far from Existing Norms for Latinos and Asians*

The American norm is that law should apply to everyone and that people should obey the law.¹⁵⁵ In some instances, the law can change the behavioral norms of minority communities. For practices that the majority of Americans find especially disturbing—such as sex or marriage involving minors, prostitution, polygamy, abusive punishment of children, or drug use—minorities with norms deviating greatly from the majority are likely to face severe consequences leading to abandonment of the conflicting minority norm.

In the absence of severe enforcement, the minority community’s compliance with the law depends more on whether its own norm is significantly different from the law. If the minority norm is similar to the law, then the minority community may abide by the law since there is little extra burden to do so. But if the minority norm is quite different from the law, the minority community has little incentive to change its norm.

When the rule at stake is not a law but rather a social norm of the majority, these responses can be even more pronounced. The voluntary nature

150. See Zhou, *Contemporary Immigration*, *supra* note 93, at 236-37 (describing immigrants rejecting “academic pursuits” and “middle-class mores and . . . authority”).

151. See Hing, *supra* note 98, at 899.

152. *Id.* at 894-95. Preserving minority cultural norms may also result in greater efficiency and competitiveness for the country overall, since minority communities may be better able to exploit international opportunities. *Id.* at 882-83.

153. *Id.* at 895-96.

154. JONATHAN RAUCH, *GOVERNMENT’S END: WHY WASHINGTON STOPPED WORKING* 40 (1999).

155. See, e.g., George C. Christie, *On the Moral Obligation to Obey the Law*, 1990 DUKE L.J. 1311, 1312 (1991) (observing that the “average person in the Western world accepts that one has a general moral obligation to obey the law”); James M. O’Fallon, *Adjudication and Contested Concepts: The Case of Equal Protection*, 54 N.Y.U. L. REV. 19, 21 (1979) (noting that “the guarantee of equal protection of the laws is best understood in terms of a legal right to equal concern and respect from the legislature”).

of social norms may encourage minorities to consider rejection of majority norms on the ground that they stray too far from their own.¹⁵⁶ This idea may be especially pertinent for Anglo-American legal norms, which are often quite foreign to the norms of Asians and Latinos. These groups are even less likely to comply with the majority legal norms if they believe that compliance represents heavy-handed “Anglo conformity.”¹⁵⁷ Reconciling the legal profession with these cultures embroils difficult questions of client autonomy, neutrality, and role separation, as I discuss next.

III

LATINO AND ASIAN PERCEPTIONS OF LAW ARE IN TENSION WITH LAWYERS’ PROFESSIONAL NORMS

Adherence to the professional norms of role separation, assumption of clients’ autonomy, and strict confidentiality may avoid the disapproval of fellow lawyers, but these legal norms are in tension with the cultural expectations of many American minorities. Even though Latino and Asian populations could benefit by assimilating majority legal norms, they are unlikely to do so.

The different cultural expectations of Latinos and Asians emerge from two influences. First, the role and operation of the law, lawyers, and government differs greatly between the United States and many foreign countries. Immigrants view the American legal system through the lens of their previous experience. Second, Latino and Asian societies historically have not emphasized individualism and arms-length transactions to the extent they have been emphasized in the United States.

Legal issues are often quite consequential because of their ability to limit personal freedom and economic opportunity; thus, it might make sense for Latinos and Asians to adopt the norms of American lawyers. This would make their dealings with the law more efficient and reduce the risk of misunderstandings. Nevertheless, as discussed in Part II, Latino and Asian norms are sticky and likely to persist in ways unlike previous groups of new Americans. Because minority norms are not likely to wane, lawyers should adapt to the different cultural expectations of Latino and Asian Americans.

Effectively enforced norms are difficult to change, but the legal profession must adapt itself to provide adequate legal services to Asian and Latino Americans. Professionalism provides dispositions that lawyers then

156. See Dan M. Kahan, *Gentle Nudges vs. Hard Shoves: Solving the Sticky Norms Problem*, 67 U. CHI. L. REV. 607, 610-11 (2000).

157. See Branigin, *supra* note 69.

use to understand their situations and help them make choices.¹⁵⁸ Following these dispositions is a sign of being a conscientious lawyer.¹⁵⁹ Only if the profession makes a coordinated effort to modify its norms, including the set of dispositions, will sufficient numbers of lawyers adopt the modified norms. As Eric Posner terms it, there needs to be a “norm entrepreneur” to suggest that an alternative norm is not only acceptable but a sign of competent representation.¹⁶⁰ Through modifications to the Model Rules of Professional Conduct, the bar can be Posner’s norm entrepreneur, encouraging lawyers to adjust their norms regarding neutrality, client autonomy, and confidentiality.

Notably, professional norms must change, not just lawyers’ knowledge of other cultures. It is insufficient for lawyers to simply essentialize how each ethnic group feels about neutrality or confidentiality.¹⁶¹ Lawyers cannot easily become ethnographers and must be careful not to make biased generalizations about individuals based on their ethnicity.¹⁶² For instance, assuming a client would prefer a harmonious outcome could wrongly lead the lawyer to pursue Alternative Dispute Resolution at any cost, even to the detriment of a client’s more fundamental interests.¹⁶³ Categorizing cultures in such a reductionist fashion reinforces “the belief that culture can be diagnosed and treated, that exotic or unfamiliar beliefs and behaviors of members of already disempowered subgroups should be controlled and adjusted to resemble norms of the dominant group.”¹⁶⁴ The starting point for serving culturally diverse clients is not to examine their beliefs, but rather to examine the professional’s own assumptions and normative behaviors.¹⁶⁵ This process of self-reflection and self-critique is

158. Robert L. Nelson & David M. Trubek, *New Problems and New Paradigms in Studies of the Legal Profession, in LAWYERS’ IDEALS/LAWYERS’ PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION* 22-23 (Robert L. Nelson et al. eds., 1992).

159. See Posner, *supra* note 121, at 768-69 (describing signaling cooperation as a reason to follow a norm).

160. *Id.* at 774-76.

161. Linda M. Hunt, *Beyond Cultural Competence: Applying Humility to Clinical Settings*, 24 PARK RIDGE CTR. BULL. (2001), <http://www.parkridgecenter.org/Page1882.html> (criticizing clinical approaches that represent specific ethnic cultures as a codified body of characteristics that can be identified and then either modified or manipulated to facilitate clinical goals).

162. See Kevin Avruch & Peter W. Black, *Conflict Resolution in Intercultural Settings*, in THE CONFLICT AND CULTURE READER: PROBLEMS AND PROSPECTS 7, 8 (Pat K. Chew ed., 2001) (noting the importance of understanding the people involved in conflict, not merely generalized culture); Laura Nader, *Harmony Models and the Construction of Law*, in THE CONFLICT AND CULTURE READER 68-70 (Pat K. Chew ed., 2001); Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics And Biases*, 9 CLINICAL L. REV. 373, 382 (2002) (noting that it is unreasonable to expect dominant-culture lawyers to become fully culturally knowledgeable).

163. See Nader, *supra* note 162, at 53-54.

164. See Hunt, *supra* note 161.

165. See *id.* (“rather than learning to identify and respond to sets of culturally specific traits, the culturally competent provider would be taught to develop what might be called cultural humility”); Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 64-99 (2001) (arguing that it is necessary to challenge assumptions underlying professional norms).

perennial. The new professional norms would effectively encourage lawyers to listen respectfully to each client and decipher whether the old norms of interacting with clients would serve this particular client well.¹⁶⁶

The first step in developing new professional norms is to identify how the old professional norms of interacting with clients are likely to conflict with Latino and Asian norms.

A. Neutrality Fails to Engender Trust of Latino and Asian American Clients

Latino and Asian Americans are likely to harbor doubts about lawyers and the institution of law to a greater degree than other Americans. Like most Americans, sufficiently dire circumstances can compel minorities to seek a lawyer. In other circumstances, such as when a minority group member simply wants to understand her rights, latent distrust may deter her from taking full advantage of the lawyer's services. The discussion below identifies some roots of distrust, and what Latinos and Asians may need to overcome their suspicions. Even for Asian and Latino clients who are willing to give lawyers the benefit of the doubt, it would be wise to modify the professional norms about how to interact with clients because such modification would only serve to improve the lawyer's services.

1. Suspicion of the Law and Lawyers

Most people are not familiar with the intricacies of law and do not rely primarily on law to order their relationships, and law is often insufficient to encourage cooperation.¹⁶⁷ Law cannot address all the permutations of human interaction. Consulting a lawyer is expensive, and does not guarantee that the people with whom one chooses to cooperate will be trustworthy in the future. When "the court system cannot distinguish cooperation from defection with any accuracy, and it is costly to use, people will not rely on it for ensuring cooperation."¹⁶⁸ Instead, people may be more inclined to take more care in choosing with whom they interact by relying on common group norms. This is especially true for minority groups that by appearance, language, or culture are reasonably discrete and identifiable.

In addition, many Latino and Asian countries from which many Americans originated do not have a tradition of legal institutions that people trust for complex ordering. Someone who is used to life without relying

166. See Melanie Tervalon & Jann Murray-Garcia, *Cultural Humility Versus Cultural Competence: A Critical Distinction in Defining Physician Training Outcomes in Multicultural Education*, 9 J. HEALTH CARE OF POOR & UNDERSERVED 117, 117-25 (1998) (discussing cultural humility in the medical context); Tremblay, *supra* note 162, at 376-78 (advocating a similar approach of cultural humility and self-critique in the context of dealing with multicultural, legal clients).

167. See generally AZARA L. SANTIAGO-RIVERA ET AL., *COUNSELING LATINOS AND LA FAMILIA* 116 (2002).

168. POSNER, *supra* note 124, at 15.

on the services of a lawyer is unlikely to appreciate the value of lawyers after taking up residence in the United States. Many Asians and Latinos are accustomed to different sociopolitical systems based on different attitudes about government, suffrage, and rights.¹⁶⁹

Asian American immigrants have their own norms about how to resolve disputes and order their societies in the absence of lawyers. Because these norms are time-tested, immigrant children will tend to carry on those norms. Even direct attempts to teach immigrants about American norms “probably have little or no impact on their preexisting political belief systems, their general sense of political efficacy and trust toward government, or their knowledge of the traditions, current policy debates, and political party agendas of American politics.”¹⁷⁰

Latinos often come from cultural backgrounds where law and lawyers carry less significance than in the United States. Mexican immigrants, for example, may be inclined to see law’s role as more symbolic or referential because poorly written legislation and legal formalism promote pervasive distrust of legal institutions in Mexico.¹⁷¹ The Mexican legal infrastructure is inertial and lacks either the incentive or the critical mass necessary to change.¹⁷² Other Latin American countries have historically subjugated the law-making and adjudicating bodies below the executive branch of government, such that the law had limited utility in protecting citizen rights.¹⁷³ In the United States, use of lawyers and litigation has had mixed results for Latino interests, and even victories have been “slow in coming.”¹⁷⁴ Latinos are likely to “view the [American] court system as more paternalistic and as a territory which is unfamiliar and unwelcoming to them.”¹⁷⁵ Lawyers are an extension of this incomprehensible system, wielding both great

169. Nakanishi, *supra* note 71, at 188 (noting that “[f]oreign-born Asians and Pacific Islanders, like other groups of immigrants . . . largely acquired their core political values, attitudes, and behavioral orientations in sociopolitical systems that were different in a variety of ways from that of the United States”).

170. *Id.* at 188-89.

171. Sergio Lopez-Ayllon & Hector Fix-Fierro, “Faraway, So Close!”: *The Rule of Law and Legal Change in Mexico, 1970-2000*, in LEGAL CULTURE IN THE AGE OF GLOBALIZATION: LATIN AMERICA AND LATIN EUROPE 286-87 (Lawrence M. Friedman & Rogelio Perez-Perdomo eds., 2003).

172. *Id.* at 286, 336.

173. WHAT JUSTICE? WHOSE JUSTICE?: FIGHTING FOR FAIRNESS IN LATIN AMERICA 7-9, 26-27 (Susan Eva Eckstein & Timothy P. Wickham-Crowley eds., 2003) (discussing government institutions in Chile, Peru, Venezuela, Argentina, Guatemala, Brazil, Colombia, and Mexico, noting continuing corruption, and the norm of *plata oplomo*, bribe or face punishment).

174. Johnson, *supra* note 143, at 47 (reviewing litigation of concern to the Mexican-American community from 1930 on); see also REYNALDO ANAYA VALENCIA ET AL., MEXICAN AMERICANS AND THE LAW 13-16 (2004) (noting that Mexican Americans were used to discriminatory barriers and an unclear official identity in the United States until *Hernandez v. Texas*, 347 U.S. 475 (1954), so there was no full citizen engagement or reliance on law for social ordering).

175. Jessica R. Dominguez, Comment, *The Role of Latino Culture in Mediation of Family Disputes*, 1 J. LEGAL ADVOC. & PRAC. 154, 160 (1999).

knowledge and power, while not always respecting the non-legal culture. Lawyers must not infer that it would be futile to incorporate greater sensitivity to the norms followed by minority groups.

2. *Need for Deeper Relationships in Order to Trust the American Legal System*

People who distrust the legal system may still come to trust lawyers enough to enlist legal help. The most efficient way for a lawyer to earn trust is through behavior that signals trustworthiness. With respect to minorities, this behavior includes respect for the client's norms. In particular, Asians and Latinos are more likely to care about a service provider's genuine interest in their identities. Asian and Latino clients may not require or expect their lawyer to have the same ethnic or cultural background, but a lawyer who tries to understand the clients' background will have an obvious advantage.

Unfortunately, many lawyers do not aim to understand clients' ethnic norms. This tendency is evidenced by sociological research about the profession. For example, Professor Daicoff observes:

Clients may perceive lawyers as cold, uncaring, uncommunicative, disinterested in anything but the 'relevant facts,' overly rule-oriented, aggressive, competitive, and hard-driving These lawyer attributes, although they may be adaptive for the practice of law because they allow the lawyer to avoid feeling unduly emotional about his or her clients' cases, may be maladaptive in the client counseling part of legal practice.¹⁷⁶

An important norm for Latinos and Asians is the expectation of deep, long-term relationships as the prerequisite for the establishment of trust. This norm stands in marked contrast to the American consumer norm of arms-length transactions. While everyone wants respect, the traditional American norm defines respect as fair, equal treatment in a transaction. For many Latinos and Asians, the personal relationship, and not the transaction itself, matters most.¹⁷⁷ For instance, the "Japanese place a very high importance on personal interactions and spend a great deal of time building relationships and developing trust."¹⁷⁸ "Make a friend first and a client second" is a common Korean saying.¹⁷⁹ In Chinese, the word *guanxi* represents the shared understanding that is a prerequisite for any successful relationship. Isolating "business" issues and ignoring the personal relationship between

176. Daicoff, *supra* note 16, at 1411-12.

177. SUE & SUE, *supra* note 52, at 112 (arguing that in the context of counseling, it is unreasonable to expect Hispanic clients to volunteer information and trust counselors prior to prolonged contacts).

178. SANJYOT P. DUNUNG, *DOING BUSINESS IN ASIA* 16 (2d ed. 1998) (noting that cold calling prospective customers is exceptional in Japan).

179. *Id.* at 64.

the parties is not the norm.¹⁸⁰ Many Indians are troubled by American disinterest in grounding business relationships with personal stories and ideas in addition to simple abstraction of facts and legal issues.¹⁸¹

Similarly, gaining the trust of Latino clients does not require a “bottom-line” approach, but rather closer identification with Latino cultural norms.¹⁸² The Latino norm of *personalismo*, the expectation of sharing personal information even in commercial and professional contexts, demands a level of intimacy much closer than the professional distance that is the American lawyer’s norm.¹⁸³ Because of the unreliability of governmental and financial institutions in some Latin American and Asian countries, people place even more emphasis on developing small scale social relationships of trust.¹⁸⁴ Latino or Asian clients are likely to believe that a lawyer’s sincerity in building personal understanding and trust outweighs any need to adhere to the professional norm of role separation and neutrality.¹⁸⁵ Since Latinos are more likely than the majority to focus on the process of developing relationships and community, outside professionals such as lawyers can only succeed with Latino clients by building trust over time.¹⁸⁶ This trust depends on contact and listening.¹⁸⁷

Trust not only plays an important role in the legal context, it is also important in the medical field. In the case of Lia’s family, the medical personnel were very committed to the technical side of their craft, but role separation hurt their ability to meet Lia’s needs. The doctors and nurses exhibited great patience and compassion, but they maintained an overall neutral attitude toward Lia’s family. Certainly language barriers played some role in preserving the distance between the doctors and the family, but the distance was not insurmountable. The one American professional who gained the family’s unquestioned trust was a social worker who took the time and effort to visit and interact socially with the family even when “official” business did not require it. In contrast, nurses who visited the family with the intent to only instruct them on medication procedures were unsuccessful. Since the hospital had treated significant numbers of Hmong and many doctors thumbed through ethnographic textbooks, the medical

180. See *id.* at 153-54.

181. See *id.* at 345.

182. See GUS GORDON & THURMON WILLIAMS, *DOING BUSINESS IN MEXICO* 97 (2002).

183. See SANTIAGO-RIVIERA ET AL., *supra* note 167, at 116 (describing *personalismo* and the sharing of personal details through *platicar*, or “small talk”).

184. See PAULA HEUSINKVELD, *INSIDE MEXICO: LIVING, TRAVELING, AND DOING BUSINESS IN A CHANGING SOCIETY* 12-13 (1994).

185. See *id.* at 56 (noting the importance of loyalty to individuals over institutions).

186. John Paul Lederach, *Preparing for Peace: Conflict Transformation Across Cultures*, in *THE CONFLICT AND CULTURE READER* 20 (Pat K. Chew ed., 2001) (describing *confianza*, a relationship of trust over time, and the tendency of Central Americans to seek someone with *confianza* to be an “entry” into resolving problems).

187. *Id.* (describing *platicar*, a way of being with one another, to validate a relationship of trust).

professionals were not totally ignorant of Hmong culture. This learning, however, was no substitute for the personal interaction of the social worker. The family appreciated the social worker's attempts to interact with the family by respecting Hmong norms.

3. *Lawyers Should Consider Whether Traditional Norms Serve Minority Clients' Interests*

Lawyers should welcome the opportunity to help minority groups navigate legal complexities, but must be careful not to foster reputations as quick-fix professionals for emergencies. Not having built trust with Lia's family, Lia's doctors became frustrated when her parents would wait until her seizures were cataclysmic, and only then bring her to the hospital with an expectation that doctors could cure her symptoms quickly. Lia's parents did not mean to distress the doctors. Yet they seemed to feel that their ancient ways were usually adequate and perhaps even superior because they addressed problems holistically. To Lia's family, religion and medicine and society were one. Illness was not personal and physical, but rather signified that "the entire universe was out of balance."¹⁸⁸ Merced's doctors failed to learn this and had little chance of restoring that balance through limited clinical meetings with patients.¹⁸⁹

In the context of the legal profession, Model Rule 1.16 suggests that "representation in a matter is completed when the agreed-upon assistance has been concluded."¹⁹⁰ However, this limited view of the law's role could alienate clients and under-serve their interests. Additional wording or comments to Rule 1.16 should encourage lawyers to consider whether continuing some type of relationship beyond legal formalities would help engender their clients' trust and thus make future representation more effective. For instance, a comment could note that when formal representation is complete, lawyers should consider interacting with clients socially or at least expressing an interest in the clients' social and family activities.

Consistent with lawyers' values that underlie the norm of neutrality serving the Hmong would not require embracing their beliefs or goals regarding cow sacrifices.¹⁹¹ Better service only requires recognizing that success entails more than a favorable legal outcome. Better service also requires actively building long-term relationships before crises occur. Lawyers must attempt to understand and empathize with clients' world-view in order to be effective advisors.

188. FADIMAN, *supra* note 1, at 61.

189. One example of the hospital's ignorance of Hmong patients' culture, which views everything as sacred, is Lia's medical form, which stated "None" in the box for listing the patient's religion. *Id.*

190. MODEL RULES R. 1.16 cmt. 1 (2004).

191. See MODEL RULES R. 1.2(b) (2004) (noting that a "lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities").

To avoid this mistrust, lawyers must recognize, accommodate, and perhaps even participate in non-legal, community solutions such as rituals.¹⁹² Model Rule 2.1 does advise that “moral, economic, social and political factors . . . may be relevant to the client’s situation.” Additional wording or comments should emphasize that cultural factors are particularly important for minority clients. This would help set lawyers’ expectations that competent representation could require their active acknowledgment or participation in those social and cultural factors.

Contrary to the existing professional norm, competent representation may require a thicker relationship with prospective clients, a greater willingness to identify with them. For populations unfamiliar with American law, Model Rule 1.1’s emphasis on technical competence is misplaced.¹⁹³ Lia’s doctors had great technical skill and had good reputations with non-Hmong patients. But Lia’s family trusted their social worker, who spent non-billable time with the family, much more than doctors and nurses who reduced Lia “from a girl to an analyzable collection of symptoms” and perhaps thought that emotional detachment improved their technical competence.¹⁹⁴ Of the forty professionals treating Lia, the social worker was the only person who asked her parents what they believed caused Lia’s problems. Understanding those beliefs would have allowed the professionals to work more in concert with the traditional solutions the family pursued. Similarly, to succeed in helping their clients, lawyers must understand the cultural context of their client’s legal problem and not simply develop a technically brilliant but culturally insensitive solution.

Law and medical schools rarely discuss such cultural issues, thereby reinforcing role separation.”¹⁹⁵ Role separation in law allows one to represent unpopular causes in a partisan, uncompromised manner. Regardless of the justification, this aloofness may undermine efforts to prevent problems from arising in the first place. Lia’s doctors performed admirably on a technical level. With better cultural communication, however, they might have diagnosed and treated Lia’s epilepsy earlier when it was more tractable. Also, Lia’s family might have better understood Western medicine and better complied with the doctor’s prescriptions. Instead, Lia’s epilepsy culminated in a two-hour seizure, emergency treatment, and septic shock that left her alive but permanently handicapped.

192. See, e.g., SUE & SUE, *supra* note 52, at 347 (noting that while white Americans prefer a neutral mediator who lacks any personal relationships with the people involved in the dispute, “Hispanic Americans responded more favorably to the following in the resolution of a domestic conflict: The meeting is held in a church or school within the neighborhood. The mediator . . . may be acquainted with the parties. Perspectives are gathered from extended family members”).

193. See MODEL RULES R. 1.1 cmt. 1 (2004) (describing competence as depending on “the relative complexity and specialized nature of the matter, the lawyer’s general experience, the lawyer’s training and experience in the field in question, the preparation and study the lawyer is able to give the matter”).

194. FADIMAN, *supra* note 1, at 147.

195. *Id.* at 275.

In law, Rule 1.2(b) allows for separation between oneself and one's client, but it does not forbid getting to know one's client.¹⁹⁶ The legal profession should acknowledge that competence in representing a client's interests is not solely technical as suggested by Rule 1.1,¹⁹⁷ but rather requires enough immersion into the client's culture to understand how legal strategies interplay with cultural institutions, taboos, and expectations.¹⁹⁸ The legal profession should follow medicine's lead, which has begun to recognize the importance of encouraging practitioners to develop cultural understanding with clients because successful service demands it.

This does not mean that lawyers should always create thick identification with clients. A norm of thick identification would carry the risk of corrupting the lawyer's service.¹⁹⁹ For example, the lawyer might wrongly orient her role toward serving a moral or political cause rather than serving the particular client, contrary to the ethical demands of Model Rule 1.2. Perhaps, the lawyer might promote services or a relationship that the client does not want. The lawyer might be less willing to serve clients of other cultural backgrounds, possibly reducing access to legal aid overall. However, in lieu of a norm of thick identification, a norm of cultural humility would better promote cultural understanding with respect to clients. Not all clients, including some Latino and Asian clients, will expect or demand thick identification. In some areas of the law and for some clients, especially those who are accustomed to arms-length dealings, thin-identity lawyers are optimal. But lawyers must not retain the present norm that presumes that clients do not expect or demand thick identification. Lawyers must ask themselves whether a particular client's cultural needs require a thick or thin identification.

C. Latino and Asian Decision Making Is Not as Individual Focused as the Professional Norm Presumes

The American assumption of client autonomy is also in tension with Latino and Asian norms. Lawyers place a heavy focus on the prerogative of the individual to make decisions. In contrast, Asian and Latino cultures

196. See MODEL RULES R. 1.2(b) (2004) (stating that "[a] lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities").

197. Cf. JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR 138-39 (rev. ed. 1994) ("The client, of course, also wants his or her lawyer to be technically competent, but the matters that law addresses often require a trust that goes beyond confidence in professional skill. The client must trust the lawyer's discretion and may even feel a need to have the lawyer sympathize with the client's position."); John T. Noonan, Jr., *The Lawyer Who Overidentifies With His Client*, 76 NOTRE DAME L. REV. 827, 829 (2001) (seeing "identifying with the client, with the client's troubles or problems, with the client's expectations and goals" as essential to the lawyer's role).

198. FADIMAN, *supra* note 1, at 266.

199. See Spaulding, *supra* note 42, at 23-30 (critiquing the effects of thick identity).

tend to emphasize the responsibility of individuals to consider the interests of the family or other larger groups.²⁰⁰ At the very least, there is a recognition that one's individual actions affect or reflect on the group.²⁰¹ Of course an individual, even when treated as an individual, can consider group interests when making decisions. Many Asians and Latinos, then would prefer a lawyer who respects their norm of owing consideration to the group. An overemphasis on the individual would be "widely experienced either as an unbearable psychological burden or as an irrelevant antisocial guide to thought and action."²⁰²

1. *What's Wrong with Individualism?*

Latino society, which values group interests and social networks, is at odds with a legal profession that emphasizes individual rights, values, and merits.²⁰³ *Familismo* is a Latino orientation that stresses interdependence, cohesiveness, and cooperation with a larger group.²⁰⁴ Considering the interests of the group "stems from a collectivist or allocentric worldview in which there is a willingness to sacrifice for the welfare of the group," and it persists among Latinos who are otherwise acculturated to American norms.²⁰⁵ The norm discourages members from developing a sense of autonomy or pursuing individual interests if doing so entails brazen competition or confrontation.²⁰⁶ Latina mothers, for instance, may sacrifice their own interests for the sake of the family, even in the severe context of family mediation, for the entire extended family has an interest in a child, not just the biological parents.²⁰⁷ Thus, decisions are influenced by a substantial commitment to a larger group.²⁰⁸

Similarly, many Asian cultures de-emphasize individual interests and autonomy in relation to the interests of others.²⁰⁹ Social order historically

200. SUE & SUE, *supra* note 52, at 107 (noting that the Japanese language, for instance, does not have a distinct personal pronoun).

201. *Id.* (explaining that feelings of shame are more prevalent in collectivist cultures where individual actions reflect on the entire family or group).

202. BOZEMAN, *supra* note 33, at 174.

203. See Lopez-Ayllon & Fix-Fierro, *supra* note 171, at 286; see also SUE & SUE, *supra* note 52, at 107 (describing an emphasis of group perspective over an individual perspective).

204. SANTIAGO-RIVERA ET AL., *supra* note 167, at 43; see also Dominguez, *supra* note 175, at 165 (describing Latina norms of self-sacrifice for the benefit of others).

205. SANTIAGO-RIVERA ET AL., *supra* note 167, at 43; SOSA, *supra* note 108, at 88 (describing the "Latino reflex that family comes first").

206. Dominguez, *supra* note 175, at 167.

207. *Id.* at 165 (describing how Latina women are socialized to be self-sacrificing).

208. SUE & SUE, *supra* note 52, at 346 (describing the Latino norm of loyalty to the "extended family," including non-biological group members, even at the expense of some individual or outside concerns); Lederach, *supra* note 186, at 21-22 (noting that Central Americans prefer an *arreglo* arrangement that allows a holistic, dignified solutions in the context of the group).

209. SUE & SUE, *supra* note 52, at 331 (describing the Asian norm of favoring family and group over promoting individual needs and personal identity); see also Ugo Mattei, *Three Patterns of Law: Taxonomy and Change in the World's Legal Systems*, 45 AM. J. COMP. L. 5-44 (1997)

depended less on the vindication of individual rights than on the consideration of group interests by individual decision makers.²¹⁰ For example, China developed a system of jurisprudence without the individual legal rights seen in Anglo-American law.²¹¹ Social rules and moral principles were part of a natural order that had little consideration for minority or individual interests.²¹² The primary purpose underlying the adjudication of disputes was “not to find out who was right . . . but rather to eliminate a threat to or violation of harmony.”²¹³ Thus, the norm required macro-analysis of the dispute, rather than consideration of only the parties directly involved.²¹⁴ In this context, individual identity only has meaning with respect to the group.²¹⁵ For the Hmong, not belonging to the group is a terrible fate, and outcasts are known as *puavs*, or bats, rejected by other birds because they have fur and by mice because they have wings.²¹⁶

For more recent immigrants, heavy reliance on group networks helps ease people into American life and also de-emphasizes individual autonomy. The 1965 Immigration Act allowed family members of legal immigrants to come to the United States, and since the 1970s, more than two-thirds of legal immigrants are family sponsored.²¹⁷ Even employer-sponsored immigrants rely on ethnic-group networks. These networks “facilitate and perpetuate international migration because they lower the costs and risks of movement and increase the expected net returns on such movement.”²¹⁸ Compared to other Americans, immigrants arriving after 1970 are younger, more likely to be underemployed, and more likely to live below the poverty level; hence, social networks can be the difference between success and failure.²¹⁹ As a result, these individuals are thus less likely to make decisions autonomously without considering or consulting other members of the group. The Hmong, for instance, may consult older siblings, the head of the family, extended family, the head of the clan, or

(contrasting other cultures’ norms that emphasize duties over rights, family over individual, and a preference for mediation, custom, and harmony within a hierarchical social structure).

210. BOZEMAN, *supra* note 33, at 162.

211. *Id.* at 148.

212. *Id.* at 140-44 (discussing the natural mandate on the emperor and the maintenance of the social order consistent with this).

213. *Id.* at 144-45.

214. *See id.* at 163-64 (arguing that the development of individual rights and obligations is stymied in an environment where law is not “a favored normative reference for the muting of critical tensions and disputes and the assurance of communal harmony in the group”).

215. SUE & SUE, *supra* note 52, at 107 (noting that the worst punishment is to be disowned by one’s family, because that strips a person of identity).

216. FADIMAN, *supra* note 1, at 196.

217. Zhou, *supra* note 122, at 213.

218. *Id.* (noting that “international migration is perpetuated by extensive and institutionalized migration networks,” which are “formed by family, kinship, and friendship ties”).

219. Booth, *One Nation*, *supra* note 66, at A1.

community leaders for guidance before making decisions about what many Americans would consider personal matters.²²⁰

Immigrant cultural norms regarding autonomy are likely to persist. Despite some cost in individualism, continuing to involve other members of the group before acting signals a desire to cooperate with the group, making other group members more likely to cooperate in return. Involving other members of the group may be more efficient if they have special knowledge or resources—of which an individual client and lawyer may be unaware—to contribute to resolving the individual's problems.²²¹

Another reason why the individual may not be fully autonomous is attributable to a cultural gap between American law and the expectations of minority groups. Language barriers play a role, as do differences in norms about the appropriate level of verbal, emotional, and behavioral expressiveness.²²² “Yes,” may not constitute assent, but rather verbal politeness.²²³ In the counseling context for instance, some professionals perceive Asians as repressed, while the Asian clients simply view American reverence of autonomy and assertiveness as being in conflict with their traditional norms.²²⁴ Also, under the Latino norm of *respeto* (respect for more knowledgeable or esteemed persons), Latinos may simply go along with what they perceive a professional would want them to do.²²⁵

More challenging, however, is the difference in how different cultures conceptualize the world.²²⁶ Immigrants make use of group resources not only for language translation but also for cultural interpretation. In the case of Lia's family, it was not sufficient for a translator to state some Hmong equivalent of epilepsy or anesthesia or prescription. The family needed someone to explain the American medical context and how that related to the Hmong healing arts.²²⁷ It is unreasonable for American professionals to expect every Hmong individual to understand the cultural context of the situation or to respond in assertive, autonomous ways.

220. FADIMAN, *supra* note 1, at 71.

221. See, e.g., *id.* at 196 (noting the clan-level resources and support in Hmong culture); Lederach, *supra* note 186, at 21-22 (noting that Central Americans prefer advice that involves collective wisdom and brainstorming about problems and options, making use of the people in the group).

222. SUE & SUE, *supra* note 52, at 108-09 (noting that Asians and Hispanics have some norms that suppress expressions of what the individual thinks, feels, or needs).

223. FADIMAN, *supra* note 1, at 68.

224. *Id.* at 109 (describing how the norm of American therapists exhibits a cultural bias against clients without a high degree of behavioral expressiveness).

225. SANTIAGO-RIVERA ET AL., *supra* note 167, at 117 (giving example of *respeto*'s effect on individual); Dominguez, *supra* note 175, at 160 (describing Latino deference to the perceived authority of a mediator in a family dispute).

226. See, e.g., FADIMAN, *supra* note 1, at 69; Avruch & Black, *supra* note 162, at 13 (criticizing the temptation to assume the existence of understanding based on common language and noting the false attribution of problems to mistranslation).

227. See FADIMAN, *supra* note 1, at 266 (describing conjoint treatment).

2. *Lawyers Should Rethink Their Assumptions About the Autonomy of Minority Clients and Refrain from Emphasizing Individualism*

Attorneys cannot effectively advise their clients without understanding the client's worldviews, which reveal what interests are important to the client. In the past ten years, some medical schools have begun offering cross-cultural training and encouraging use of "cultural brokers" to promote "culturally sensitive and competent health care."²²⁸

Unfortunately, law schools assume either that lawyers need only represent clients' conventional rights and interests or that lawyers will learn to deal with cultural nuances despite the profession's strong tradition of neutral detachment from clients. This risks forcing clients, against cultural norms that have served them well for centuries, to make decisions in isolation.²²⁹ Facing conflicts in isolation is dissonant with the group perspective that has helped groups such as Latinos and Asians to succeed in the United States.²³⁰ The legal profession should encourage lawyers to evaluate whether a client's cultural norms prevent autonomous decision making and whether advising the client to consult others is appropriate.²³¹ Adding a rule or comment to an existing Model Rules would encourage lawyers to accommodate clients' norms.

The professional norm assuming client autonomy is troubling with respect to language and cultural barriers.²³² The Model Rules fail to acknowledge these barriers directly. Comments for Rule 1.4, for instance, suggest that sufficient information for consent is that which meets the reasonable expectations of a comprehending adult. The rules highlight exceptions for a client who is a child or who "suffers" diminished capacity, but they give no explicit guidance about cultural communication.²³³ The rules thus overlook clients who are intelligent but uncomprehending simply because of foreign linguistic and cultural differences. Lia's doctors, who were unable to convey to her caring parents the importance and method of administering her medicines, eventually had Lia removed to foster care, an especially foreign concept that shattered her parents' trust in professionals.

The comments to Rule 1.4 should highlight the cultural and conceptual barriers that a lawyer may encounter when dealing with certain clients. The comments should also note that it may be appropriate for a lawyer to

228. FADIMAN, *supra* note 1, at 270.

229. *See supra* note 202 and accompanying text.

230. *See supra* notes 204-18 and accompanying text. But promoting group harmony may in fact be worse when it suppresses people into conformity. *See Nader, supra* note 162, at 38.

231. Fadiman describes a Hmong woman with a dangerous ectopic pregnancy. Because of informational barriers and taboos, her husband, parents, and grandparents vetoed surgery. *See FADIMAN, supra* note 1, at 71. A lawyer might need to help a client inform the traditional decisional hierarchy to surmount similar barriers and taboos, finding that distinguishing individual interests from group interests is culturally impossible.

232. *See supra* notes 222-26 and accompanying text.

233. MODEL RULES R. 1.4 cmt. 6 (2004). *Cf.* MODEL RULES R. 1.14 cmt. 1 (2004).

take a more directive stance in discussions with a client, such as suggesting a course of action rather than waiting for the client to make a choice.²³⁴ It is critical for lawyers to understand that simply assuming client autonomy can sway the discussion in ways that work against the client.²³⁵ For example, assuming client autonomy may lead lawyers to underestimate the time and commitment required to help a client sufficiently comprehend the legal issues to make a competent decision.

In response to these issues of client autonomy, a lawyer has few attractive alternative options. A lawyer who feels incompetent in informing a client may: (i) refuse to take the client, (ii) try to limit the scope of representation under Rule 1.2(c) (but this requires *informed* consent), or (iii) withdraw under Rule 1.16(b)(6) because of unreasonable difficulty serving the client. Unfortunately, while these options protect individual lawyers, they do nothing to encourage the profession to help difficult clients like Lia's family. Conscientious lawyers who recognize their competency limits would relegate difficult clients like the Hmong to less conscientious lawyers, or leave them without a lawyer. Just as a patient would suffer without a doctor, a Hmong client would suffer if left with limited or no representation.²³⁶ Thus, a possible solution is to set a professional norm that encourages lawyers to understand the cultural bearings of their clients.²³⁷

D. *Latinos and Asians See Confidentiality as a Group Concern*

Confidentiality is less of an individual concern for Latinos and Asians than for Americans generally. Strong family and group loyalties typical among Latinos and Asians have two implications. First, the owner of information is more likely to be a group rather than an individual.²³⁸ This is in part because decisions involving group interests necessarily makes use of information from multiple group members. Since Latino and Asian

234. See Tremblay, *supra* note 162, at 399 & n.111 (arguing that culturally different clients may find the professional norm of being non-directive in discussions to be unhelpful and frustrating).

235. See Sara Cobb & Janet Rifkin, *Practice and Paradox*, in THE CONFLICT AND CULTURE READER 24-25, 27-28 (Pat K. Chew ed., 2001) (arguing that professionals do not bring a neutral stance to discussions, and that asking questions and summarizing can place undue emphasis on certain events, logic, or positions or create adversarial positions).

236. Lawyers admittedly have some implied duty to try to inform an existing client of adverse legal consequences or to mitigate them upon withdrawing. See MODEL RULES R. 1.4(b), 1.16(d), & 2.1 cmt. 5 (2004); MODEL RULES R. 1.16(c) (2004) (stating lawyer's obligation by court order).

237. This norm admittedly will require much more effort from lawyers and may be particularly difficult for some. Studies suggest that humanistic, people-oriented lawyers are the least satisfied professionally. In addition, law attracts personalities who are more likely to be impersonal with clients. "A disinterest in emotions and in interpersonal concerns appears to exist long before law school, even though it may be intensified during law school. Law schools can change, but promoting change in the self-selection processes of those who decide to come to law school would be much more difficult." Daicoff, *supra* note 16, at 1412.

238. SUE & SUE, *supra* note 52, at 111 (noting the reticence of Asian and Hispanic individuals to disclose information, even about personal matters, that reflects on the group).

decision making is often based on group interests, confidentiality does not preclude the sharing of information within the group. Second, Latino and Asian norms, unlike American legal norms, are less likely to prioritize the interests of individuals regardless of costs to third parties.

Under Latino and Asian norms, group interests do not necessarily trump individual interests, but an individual has an obligation not to act in ways that are harmful to the group.²³⁹ An individual does not necessarily go through a conscious weighing of these interests.²⁴⁰ Instead, cultural norms encapsulate the relative value of individual and group interests.²⁴¹ Sharing pertinent information with the group instead of maintaining strictly individual confidentiality signals willingness to respect the interests of third parties. It can even be more comfortable to disclose information to an attorney in the presence of other group members than to disclose it alone.²⁴²

Cultural norms may de-emphasize individual confidentiality because third parties are presumed to have a strong interest in the information. To a greater degree than for most Americans, Latinos have significant interests in the safety and welfare of their extended families.²⁴³ For example, in Latino child-custody disputes, it would be important for a mediator to share information with parties other than just the parents and children.²⁴⁴ Secrets may be more appropriately kept within a family or group than by an individual.²⁴⁵ This is partly because group members make simultaneous decisions that also affect the interests of other group members. Therefore, failing to share information could result in under-informed and suboptimal

239. See Cindy Holder, *Groups, Rights, and Methodological Individualism: In Defense of Collectivist Rights*, in *CULTURAL INTEGRITY AND WORLD COMMUNITY* 309-13 (Cheryl Hughes & Yeager Hudson eds., 2000) (arguing that group rights may be founded on a necessary respect for the rights of other individuals within one's group).

240. *Id.* at 310-11 (criticizing the argument that individuals weigh direct self interest against self interest derived from the public good of respecting the group).

241. See, e.g., FADIMAN, *supra* note 1, at 242-43 (describing situations where a Hmong norm of sharing information cooperatively overrode conflicting American norms).

242. See Susan L. Morrow et al., *Qualitative Research Methods for Multicultural Counseling*, in *HANDBOOK OF MULTICULTURAL COUNSELING* 595-96 (Joseph Ponterotto et al. eds., 2d ed. 2001) (noting that group interviews can allow an individual to feel more empowered because "group members find they are not alone and have the opportunity to gain support and even generate social action").

243. CARMEN INOA VAZQUEZ, *PARENTING WITH PRIDE LATINO STYLE: HOW TO HELP YOUR CHILD CHERISH YOUR CULTURAL VALUES AND SUCCEED IN TODAY'S WORLD* 61 (2004) (noting that the norm of familismo, respecting the centrality of the family, "embraces not only the nuclear family but extended members and close friends, as well.").

244. See Dominguez, *supra* note 175, at 167 (describing how awarding child custody in a Latino family affects the extended family).

245. See VAZQUEZ, *supra* note 242, at 61 (describing the de-emphasis of the individual with respect to the family, but observing that secrets are kept at the family level); Morrow, *supra* note 242, at 595-96 (noting that group interviews can allow an individual to feel more empowered because "group members find they are not alone and have the opportunity to gain support and even generate social action").

decisions for the overall group.²⁴⁶ Also, enforcement of traditional cultural norms often depends on the sharing of information.²⁴⁷ Thus, in the context of lawyering, sharing information within the group or family about the representation of a client may be optimal even if the client does not volunteer that information to the group, perhaps out of embarrassment or out of ignorance about the interests of other group members.²⁴⁸

Similarly, for Asians, sharing information or soliciting ideas from other group members may be culturally optimal.²⁴⁹ Contrary to the American norm where mature, responsible decision making is a solitary activity, the norm in many Asian cultures requires the participation of others in decision making.²⁵⁰ This, of course, entails less individual confidentiality. In Hmong culture, for example, harmony of the group and respect for the interests of other Hmong demands that an individual's information not be kept strictly confidential.²⁵¹

For immigrants who are less familiar with American norms, another benefit of not having strict individual confidentiality is remaining in the network of fellow immigrants who share information with the group. The collective knowledge of the group is far greater than that of its individual members. Thus, if someone is having difficulty applying for a government benefit, she can get collective help from the group, even if she or her lawyer were unaware that help existed. However, if she keeps her trouble confidential, she will not reap the benefit of the group's knowledge.²⁵² As a side benefit, group members similarly situated become aware of the types of difficulties or issues that arise and can plan or prepare accordingly. All of these benefits depend on the other members of a group learning the type of information that lawyers traditionally would keep confidential.

246. See Vazquez, *supra* note 243, at 62 (arguing that under the Latino norm of familismo, group accord requires decision makers to learn about and consider the entire situation, including effects on others).

247. See FADIMAN, *supra* note 1, at 194-95 (describing use of public information to enforce Hmong norms through shaming); SUE & SUE, *supra* note 52, at 107 (noting that enforcement of norms through shame, which depends on caring what the group thinks, is prevalent in collectivist cultures, whereas Western cultures tend to emphasize guilt, which is individually focused).

248. See SOSA, *supra* note 108, at 133 (describing the Latina norm of quietly making decisions that affect other group members).

249. See SUE & SUE, *supra* note 52, at 331 (noting that considering what group members think may be important when counseling an Asian individual).

250. *Id.* at 108.

251. See FADIMAN, *supra* note 1, at 244 (describing lack of privacy).

252. See, e.g., *id.* (describing Hmong norm of sharing information cooperatively); Steven Weller et al., *Fostering Culturally Responsive Courts: The Case of Family Dispute Resolution for Latinos*, 39 FAM. CT. REV. 185, 185, 194 (2001) (describing the group approach toward mediating solutions to problems in the Latino community).

1. *Lawyers Should Relax Professional Norms of Confidentiality When Doing So Would Resolve Clients' Problems More Effectively*

Just as the professional norm of treating clients as autonomous individuals is sometimes inappropriate, the norm of strict confidentiality may also be inappropriate with respect to Latino and Asian clients. While preserving attorney-client privilege for litigation is generally in a client's interest, maintaining strict confidentiality regarding all aspects of any legal representation may not be. The professional norm of confidentiality may also alienate ethnic communities that place more value on the interests of third parties. Worse, the professional norm may prevent minority groups from allocating group resources to solve individual problems in alternative, non-legal ways, or to obviate those problems in the first place.

Fortunately, because confidentiality is a more recent norm than role separation and the assumption of client autonomy, it may be easier to change.²⁵³ Model Rule 1.6(a) should allow more exceptions when strict confidentiality may be unjustified or even detrimental to the client's interests. When a lawyer knows that the client would consider third-party interests to be important, the lawyer might consider alerting those third parties. When a lawyer knows that other members of the client's community are likely to be able to help solve or prevent problems for the client, the lawyer might serve the client best by talking with those other community members. When the lawyer knows that disclosing information may encourage other decision makers in the community to act in ways that benefit the client's interests, disclosure may be the best course. For cultural reasons, a client may be unable to seek the group's help without an intermediary. When the lawyer suspects that the client is unable or embarrassed to communicate the true interests at stake in a particular problem because of linguistic or cultural barriers, the lawyer may best serve the client by talking to other members of the client's group to really understand the nature of the problem.

There is of course a danger that breaching confidentiality will turn out to be contrary to what the client would have wanted, but as with other ethical problems that lawyers face, the presence of a professional norm or rule does not liberate the lawyer from using careful judgment. Judgment requires effort to know the client and his culture. Adding comments to the Rule would be a useful way for the profession to help guide that judgment.

253. See Melvin A. Eisenberg, *Corporate Law and Social Norms*, 99 COLUM. L. REV. 1253, 1257 (1999) (noting that the persistence of norms depends on internalization of those norms over time by the actors).

IV

THE LEGAL PROFESSION HAS A DUTY TO ACCOMMODATE MINORITY
CULTURAL NORMS

All minority groups merit professional sensitivity. The growing prominence of Asian and Latino Americans has brought the issue of lawyering norms to the forefront. Ensuring the well being of minority populations is in the best interest of the legal profession, the groups themselves, and the nation as a whole.²⁵⁴ Changing the professional norms will encourage attorneys to be aware of the alternative norms of clients, educate attorneys about how to work these with clients, and reassure attorneys that they do not violate rules of professional responsibility by adapting to their clients' norms.

This does not mean that the law should accommodate every idiosyncrasy of various ethnic groups. Sensitivity toward minority norms about interaction is distinct from sensitivity toward minority norms about what constitutes morally acceptable behavior. For instance, professional rules should not oblige criminal defense attorneys to argue that an immigrant defendant's alternative cultural norms eliminate the defendant's moral culpability. A defendant should not be able to beat his wife with impunity by claiming that doing so is a cultural norm. This level of accommodation would destabilize the American justice system by allowing discriminatory treatment based on a defendant's ethnicity. Furthermore, this accommodation would fail to adequately protect victims.²⁵⁵ Permitting minority groups to assert a cultural defense upon violating American laws would undermine the substantive policies of democratic legislatures.

Accommodating Latino and Asian Americans through the adjustment of American professional norms has different implications. Law has a democratic element. If Latino and Asian Americans grow sufficiently in number, they can push legislatures to enact substantive policies consistent with their cultural values. In contrast, professional norms, especially in a profession with restrictive admissions, generally are not responsive to the public's changing cultural norms. It is in this context that lawyers must be especially accommodating to the public's cultural idiosyncrasies, because the public has no way to force lawyers to change their norms to accommodate those idiosyncrasies.

Lawyers must adjust their professional norms for three reasons. First, doing so benefits the moral and economic interests of the profession.

254. C. Davis et al., *U.S. Hispanics: Changing the Face of America*, in 38 POPULATION BULL. 3 (1983).

255. See Doriane Lambelet Coleman, *Individualizing Justice Through Multiculturalism: The Liberals' Dilemma*, 96 COLUM. L. REV. 1093, 1099, 1156-65 (1996) (discussing cases where defendants employed a cultural defense in pursuit of individualized justice). For an opposing argument, see generally ALISON DUNDES RENTELN, *THE CULTURAL DEFENSE* (2004).

Second, the Latino and Asian American populations will benefit by being more attuned to their legal rights and by having greater access to the levers of power. Finally, the nation as a whole benefits when minority populations gain greater appreciation and awareness of American law and norms.

A. *Benefit to the Legal Profession*

The calling to serve others as an attorney is perennially in tension with the economic motivations that naturally arise within an elite profession. Fortunately, adopting broader professional norms transcends this tension and brings both moral and economic benefits.

1. *Moral Considerations*

Lawyers have a responsibility to attend to people's needs. This responsibility demands that lawyers acknowledge the power of the profession and its norms. As Laura Nader observes, "law is often not a neutral regulator of power but instead the vehicle by which different parties attempt to gain and maintain control and legitimization of a given social unit."²⁵⁶ The control of law is a prize, and lawyers therefore have an ethical responsibility to ensure that their professional norms truly serve clients' interests rather than their own. Lawyers' assumptions can lead to hegemonic ideas that society must accept the structure of the legal world.²⁵⁷ If these hegemonic ideas alienate potential clients to the extent that entire populations avoid seeking legal assistance, the profession will shirk its moral obligation of service.

Enforcing and maintaining professional norms should be for the benefit of the client, not the profession. Nader describes the spread of American lawyers to Latin America in the 1960s, ostensibly to provide legal assistance to complement the growth of U.S.-funded development projects.²⁵⁸ The lawyers' norms clashed with the social, economic, and cultural norms of Costa Rica, Colombia, Brazil, and Peru. Lawyers successfully imported norms about legal education and the role of law, but the imposition of these norms primarily benefited lawyers and elites.²⁵⁹ The legal profession must take care not to create the same phenomenon with respect to Latinos and Asians in the United States by stubbornly retaining norms that alienate clients.

If lawyers are to maintain moral high ground in American society, they must adapt to the changing demographic just as other professions have

256. LAURA NADER, *THE LIFE OF THE LAW: ANTHROPOLOGICAL PROJECTS* 117 (2002); BOZEMAN, *supra* note 33, at 38 (noting that law in Western society is the paramount, superior, normative reference, shaping even religion and morality).

257. See NADER, *supra* note 256, at 119.

258. *Id.* at 63.

259. *Id.*

done. In the medical context, Arthur Kleinman of Harvard Medical School recognized that professional schools inculcate norms that fail to acknowledge conflicts with patients' norms and culture.²⁶⁰ The professions can be so effective at enforcing their own norms that they alienate the very people they are trying to help: "If you can't see that your own culture has its own set of interests, emotions, and biases, how can you expect to deal successfully with someone else's culture?"²⁶¹ Kleinman developed a short set of standard, open-ended questions to help medical professionals listen to their patients and understand how best to offer their services.²⁶² The cultural competence movement encouraged health professionals "to explore the traditional cultural concepts and practices of such patients, and to develop culturally appropriate models for clinical interactions, treatment protocols, and health education efforts."²⁶³ This movement is evolving into a cultural humility movement, emphasizing development of respectful partnerships through patient-focused interviewing and exploring similarities and differences between the professional's and the patient's priorities, goals, and capacities.²⁶⁴

As society becomes more like a mosaic, lawyers can only meet the needs of the different parts of that mosaic by understanding how the interaction of differing cultural norms affect a client's behavior.²⁶⁵ Like the medical profession, the legal profession will not gain sufficient trust with the Latino and Asian populations unless it acknowledges that those populations will continue to operate under different expectations and norms about professional-client interactions. Ivan Illich notes, "Professionals tell you what you need and claim the power to prescribe [T]he mark of the professional . . . is his authority to define a person as client, to determine that person's need and to hand the person a prescription."²⁶⁶ If Latinos and Asians dislike the way that legal professionals define their needs and thus the prescriptions, they will underutilize legal services. If professional norms are not changed, even well-meaning efforts by the profession to extend legal aid to Latinos and Asians will fail to effectively serve those populations. In addition to the usual lack of economic access to legal aid, the profession will maintain another obstacle preventing these minority

260. See FADIMAN, *supra* note 1, at 260-61.

261. See *id.* at 261 (quoting Arthur Kleinman warning of moral hegemony by professionals).

262. See *id.* at 260-61. At Harvard, first-year medical students now take a patient-centered course that discusses methods of cultural interpretation, and conundrums such as "Can an American pediatrician truly explain a surgical consent form to newly arrived parents of a Southeast Asian baby?" *Id.* at 271.

263. Linda M. Hunt, *Beyond Cultural Competence: Applying Humility to Clinical Settings*, 24 PARK RIDGE CTR. BULL. (2001), <http://www.parkridgecenter.org/Page1882.html>.

264. *Id.*

265. Hing, *supra* note 98, at 909-10 (arguing that "[i]n a multicultural society, the mainstream should be responsible for developing an understanding and knowledge of other cultures").

266. Ivan Illich, *Disabling Professions*, in *DISABLING PROFESSIONS* 17 (1977).

populations from receiving adequate legal representation and the power that comes with it.

As Dean John Sexton observed,

[W]e can be certain that over the next century the world will become smaller and increasingly interdependent; we can be sure that law will provide the basis of economic interdependence and the foundation of human rights. The rule of law will permeate an emerging global village, touching societies it never has touched. And, importantly, the success of this new community will depend in large part upon the integration and accommodation of disparate traditions through law.²⁶⁷

This integration will occur only through the active efforts of those within the legal profession. In addition, there are economic benefits to integrating cultural norms into the legal profession.

2. *Economic Considerations*

Lawyers work in a service profession. Accordingly, the client's norms and needs should, to the extent possible, dictate the service provided. Except as proscribed by law or by other substantive ethical considerations, it is not the lawyer's place to dictate the shape of the services rendered.²⁶⁸ If Asians and Latinos choose not to seek professional legal services, the profession loses a significant potential market.²⁶⁹ Along with the loss of this market, the profession will fail to build any cachet with a significant segment of America's population.

Economics and social power are not the only interests that should motivate the profession to change its norms. Adapting to Asian and Latino norms can also help legal professionals become more effective lawyers. Developing greater attentiveness to clients' norms about professional distance, autonomy, and confidentiality helps lawyers better serve all clients, not just Asians and Latinos. Recognizing that Asians and Latinos have different interactive norms forces lawyers to think critically about their own norms. Lawyers would then "develop skills for exploring the existence and importance of differences in the basic assumptions, expectations, and goals" that they and their clients bring to any interaction.²⁷⁰ "This kind of reflexive attentiveness should not be limited only to those people who are perceived to be culturally 'other,' but can be useful in any clinical encounter."²⁷¹

267. John E. Sexton, "Out Of The Box" Thinking About The Training Of Lawyers In The Next Millennium, 33 U. Tol. L. Rev. 189, 191 (2001).

268. See *id.* at 189-90.

269. Hing, *supra* note 98, at 909-10 (noting that shrewd businesses try to understand and adapt to other cultures).

270. See Hunt, *supra* note 263 (discussing cultural competence for health professionals).

271. *Id.*

Medical schools that have modified their curricula are producing doctors better suited to serve patients; similarly, law schools should aim to produce lawyers who are better prepared to serve tomorrow's population. If the legal profession recognizes the different norms of Asian and Latino Americans, law schools will be less likely to emphasize the study of law as "a reified and abstract discipline [that] encourages detachment from the concrete situations confronting the real people whose lives create the cases—a tendency of increasing concern to those who view law as a special calling."²⁷² As Dean John Sexton observed, "Lawyers always have been trained in careful reading and precise writing. However, they have not been trained in careful listening; indeed, in some ways traditional legal education discouraged listening—especially to voices that did not speak in the language of law or, to be more exact, in the language of familiar law."²⁷³ To the extent that a change in professional norms spurs lawyers to listen to clients and adapt their services accordingly, the profession will gain better lawyers.

B. *Benefit to the Latino and Asian American Populations*

Latinos and Asians have time-tested cultural norms that will continue to survive in the United States, and engaging the services of legal professionals will benefit those populations. Despite resistance to assimilation, the groups are likely to have increasing encounters with outsiders, producing legal issues that cannot be resolved by relying on the groups' extralegal norms. Furthermore, because law is an eminent institution in the United States, access and use of legal services significantly determines the groups' socioeconomic power. Unless legal professional norms adapt to minority norms sufficiently to encourage minority groups to make better use of legal services, those groups will underutilize lawyers to their own detriment.

First, law is essential in smoothing interactions between minority groups and the rest of society. While the Asian and Latino populations are not evenly dispersed geographically throughout the United States, interaction between these groups and other Americans is likely to increase.²⁷⁴ Latino populations have greatly increased in a number of counties in states that historically had few Latinos.²⁷⁵ Also, because of their younger average age, the proportion of Latinos and Asians in the workforce is more than

272. See Sexton, *supra* note 267, at 196 (criticizing weaknesses of traditional legal education).

273. See *id.* at 200.

274. See CHANGING AMERICA, *supra* note 70 (noting that Asians and Hispanics in the mid-1990s were most likely to live in the West and urban areas, but that economic and social interaction with these groups is increasing).

275. CYNTHIA A. BREWER & TRUDY A. SUCHAN, U.S. CENSUS BUREAU, MAPPING CENSUS 2000: THE GEOGRAPHY OF U.S. DIVERSITY (2001); GUZMÁN, *supra* note 73, at 5 (noting that some counties in North Carolina, Georgia, Minnesota, Iowa, Arkansas, and Nebraska had between 6 and 25 percent Hispanic populations in 2000).

twice their proportion in the population overall.²⁷⁶ The workplace increases interaction with other groups. In these interactions with other groups, failure to comply with the law can be very costly and conflict is more likely in the absence of legal representation.²⁷⁷

Perhaps it is presumptuous to think that the complex culture of the Hmong, who reluctantly immigrated to America because the Cold War destroyed their homeland, would want more expansive legal representation. Resisting invasive cultures such as the Chinese, Laotians, and French for the past 5,000 years by fighting or migrating, the Hmong "never possessed a country of their own . . . and yet they have passed through the ages remaining what they have always wished to be, that is to say: free men with a right to live in this world as Hmong."²⁷⁸ Relying on traditional cultural mechanisms for resolving conflicts without lawyers—respect for the decisional hierarchy, shame, restitution, filial piety, de-emphasis of personal autonomy, and rooster-blood truth serums²⁷⁹—the Hmong have kept their ethnic identity despite having no unifying literacy or doctrinal religion.

However, as Hmong Americans gradually dispersed from enclaves like Merced, California, collisions with American law were inevitable. In 1985, 80 percent of Hmong in Merced had to file with welfare agencies.²⁸⁰ In response to Hmong practice, other cities passed local ordinances banning the raising of chickens or animal sacrifice. A Hmong man in Fresno, California was arrested for a misdemeanor and hanged himself in county jail because he did not know he had a right to a trial and thought he would be imprisoned forever.²⁸¹

Law is also essential in winning socioeconomic progress for minority groups. Specifically, "[h]aving become an overwhelmingly urban population, Hispanics now also stand at the epicenter of social transformations that dramatize the social pathologies of big-city decline."²⁸² Latinos are the most discriminated-against group in housing markets across the country, and Latino neighborhoods face environmental perils. Moreover, Latinos tend to expose themselves to the severest job hazards in the workplace.²⁸³ As a group, Latinos stand to gain or lose most significantly from ongoing economic transformations.²⁸⁴

276. TAKAKI, *supra* note 83, at 421.

277. See generally Bert Eljera, *APAs and the Law: Trial by Fire*, ASIAN WEEK, June 13, 1996, at 12 (describing legal issues of the Asian American community).

278. FADIMAN, *supra* note 1, at 19 (quoting ethnographer Jean Mottin).

279. See *id.* at 194.

280. *Id.* at 197.

281. *Id.* at 195.

282. Camarillo & Bonilla, *supra* note 10, at 125.

283. *Id.*

284. See *id.* at 124-25 ("[S]ocio-economic and educational group progress was achieved in the last quarter of the 1900s, in ways unimaginable to previous generations of Hispanics; but the modest gains

Despite the “model minority” label that the national media applied to Asian Americans, Asians’ “lack . . . access and influence in the nation’s most significant political and social decision-making arenas and institutions.”²⁸⁵ Better legal representation can improve the access and influence of these groups, but only if the groups feel comfortable enough to obtain legal assistance.²⁸⁶

C. *Benefit to the Nation*

Although legal representation in the United States is seen primarily as a private arrangement between lawyer and client, the public will benefit greatly if the legal profession adapts to the growing populations of Latinos and Asians. First, as these groups become more ingrained in American society, the nation has an increasing interest in ensuring their economic welfare. Second, as these groups grow in size and democratic power, the nation has an increasing interest in ensuring that they develop trust in the institution of law. Only lawyers can foster this trust. Unless the profession is sensitive to the norms of Latino and Asian clients, these groups will isolate themselves and rely on traditional norms to the detriment of other Americans who could interact with them.

As these groups grow in prominence, their lack of socioeconomic and political access becomes more troubling.²⁸⁷ Minority groups without opportunity can become a destabilizing force in a democracy.²⁸⁸ Legal representation can help minorities gain access to opportunity, but too often they have a sense of futility about the legal system.²⁸⁹ The sense that legal professionals operate under norms that conflict with their own traditional norms adds to this alienation.²⁹⁰ The United States will benefit most when

made must be sustained and accelerated if members of the nation’s soon-to-be largest ethnic group have a chance to become full shareholders in American society.”).

285. Nakanishi, *supra* note 71, at 173-74.

286. See SUE & SUE, *supra* note 52, at 346 (noting that “[b]ecause of [Latino] familial and social relationships, outside help is generally not sought until resources from the extended family and close friends are exhausted”); SANTIAGO-RIVERA ET AL., *supra* note 167, at 144 (noting that in the context of counseling, some Latinos have refused to seek services from a professional in the absence of any previous trust and social familiarity).

287. Camarillo & Bonilla, *supra* note 10, at 124-25 (“Any consideration of future public policies that does not take into account the human and economic costs of large sectors of society who are undereducated, underemployed, impoverished, and in ill health will surely undermine the foundations of American civilization.”).

288. *Id.* (“For the well-being of American society in general, improving the life chances and opportunities for disadvantaged Hispanics and other poor Americans may indeed be one of the challenges that determine the course of American democracy in the present century.”)

289. See Robert Wuthnow, *The Culture of Discontent, in DIVERSITY AND ITS DISCONTENTS: CULTURAL CONFLICT AND COMMON GROUND IN CONTEMPORARY AMERICAN SOCIETY* 21-22 (Neil J. Smelser & Jeffrey C. Alexander eds., 1999).

290. See *id.*; FRANCIS FUKUYAMA, *TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY* 283, 295-306 (1995) (arguing that American law has focused on individual autonomy, undermining commitment to the group and common responsibility). Unsuccessful attempts historically

these minority groups are able to fully participate in the national economy and society.

Full participation, however, requires that these groups have faith in the American legal system—which is as close to being a unifying national force as a state religion.²⁹¹ As Dean Sexton put it, “The law is our great arbiter, the principal means by which we have been able to knit one nation out of a people whose chief characteristic always has been diversity. [It] has been a principal means for founding, defining, preserving, reforming, and democratizing a united America.”²⁹² Certainly it is in the nation’s interest for lawyers to engage minority populations to ensure continued coherence in the American democracy.²⁹³ The process of adapting legal professional norms to better serve Asian and Latino populations will also give the profession a valuable opportunity to evaluate not only whether the professional norms “may be acceptable for others, but also how acceptable they have proved for us.”²⁹⁴ Just as Americans overall have benefited from the newfound cultural humility that medical professionals have started to internalize, Americans will benefit from cultural humility from lawyers with respect to professional norms.²⁹⁵

Along with this humility comes recognition that values are not synonymous with normative behaviors.²⁹⁶ The profession need not sacrifice core values in adjusting norms about how lawyers interact with clients.²⁹⁷ With other Americans, Latinos and Asians share many fundamental values about justice and fairness, but it is no longer reasonable to expect minority

to transplant Western law and relationships to countries with Islamic, Indian/Hindu, or Asian/Confucian conceptions illustrate the tension between American norms and other norms. See David M. Engel, *Injury and Identity: The Damaged Self in Three Cultures, in BETWEEN LAW & CULTURE: RELOCATING LEGAL STUDIES* (David Theo Goldberg et al. eds., 2001) 12-13 (discussing resistance to Western conceptions of injuries and remedies, time, space, justice, and self); Mattei, *supra* note 209, at 5-44 (contrasting other cultures’ traditional law, in which individual’s internal dimension and societal dimension are not separated, with Western rule of professional law or rule of political law).

291. See Sexton, *supra* note 267, at 194; see also Wuthnow, *supra* note 289, at 33 (noting that egalitarian ideals of democratic liberalism depend on collective faith, more than just emphasis on individual rights or communal responsibility).

292. See Sexton, *supra* note 267, at 194.

293. See Wuthnow, *supra* note 289, at 23-24 (noting risks of disunity attributed to diversity and the concomitant fears of societal fragmentation with no agreement, acrimonious agreement on few issues, or lack of commitment to wider society).

294. See Sexton, *supra* note 267, at 198 (“perhaps the most profound impact of globalization on the enterprise of legal education can be captured in the word ‘humility.’”).

295. See *id.* at 200 (noting benefits of humility in reshaping legal education and norms).

296. Jeffrey C. Alexander & Neil J. Smelser, *Introduction: The Ideological Discourse of Cultural Discontent, in DIVERSITY AND ITS DISCONTENTS* 11-12 (Neil J. Smelser & Jeffrey C. Alexander eds., 1999) (noting that affirming traditional values allows little normative flexibility, while discarding traditional values altogether denies that norms, which are distinct from values, rely on cultural values for legitimacy).

297. See *id.* at 14 (noting that the procedural emphasis of law has benefits such as neutrality but allows too much focus on perpetuating norms regardless of their ties to substantive values and ethical ideals).

groups to assimilate to legal professional norms.²⁹⁸ All that should be required is that groups be able to reconcile their norms with one another and with the public interest.²⁹⁹ The legal profession's norms, like society's, have considerable inertia,³⁰⁰ but the profession has the organization and power to modify its norms, as I discuss in Part III.

D. *Changing Norms and Minority Representation*

To clarify, merely increasing the proportion of Latino and Asian lawyers in the profession is not sufficient to ensure that the needs of Latino and Asian clients are met. The professional norms that attorneys internalize in their legal education and careers transcend ethnicity. While Latino and Asian attorneys may be especially sensitive to the cultural backgrounds of various clients, the professional norm does not currently envision that the practice of law requires any acknowledgment or accommodation of those idiosyncratic backgrounds.³⁰¹ Other lawyers and the bar associations effectively enforce the current professional norms, so minority lawyers cannot stray far from those norms.³⁰²

The legal profession currently operates under the attitude underlying the melting pot metaphor. The expectation is that all Americans will accept the norms of the American legal system, which is based on the notion that law can be objective or at least democratically fair, and therefore no accommodation of minority norms should be necessary. Even for minority bar associations, the emphasis is on "educating" the public rather than accommodating the public.³⁰³ This expectation of uniformity makes sense for substantive law, especially in a country that cherishes equal application of

298. *See id.* at 11 ("In the face of profound structural changes, the most frequent challenge is to create new norms to bring the changed conditions under the umbrella of general values."); Wuthnow, *supra* note 289, at 25 (arguing that despite changes in society, there are still common values about family, freedom, country, voluntary organization, social relationships, and moral integrity).

299. HERBERT J. STORING, *Interest Groups and the Public Interest, in TOWARD A MORE PERFECT UNION: WRITINGS OF HERBERT J. STORING*, 264, 265 (Joseph M. Bessette, ed., 1995).

300. *See* Eisenberg, *supra* note 253, at 1261 (noting how practices without any special justification can nonetheless give rise to expectations that they will continue to be followed, creating inertial norms without strong justification).

301. The ABA has undertaken a variety of recent efforts to increase diversity within the profession. For instance, it began a Colloquium on Diversity, urged employers to hire, retain, and promote minority lawyers, promoted interracial relations among lawyers, and recommended outreach programs to improve minorities' access to the bar. Notably, it did not suggest that professional norms had to change, and the ABA seemed to assume that the presence of minority lawyers alone was sufficient to serve minority communities.

302. It is also wrong to assume that ethnic clients will automatically gravitate toward lawyers of the same ethnicity. *See* Eljera, *supra* note 277 (noting that Asian clients do not necessarily prefer Asian lawyers).

303. *See, e.g.*, Hispanic National Bar Ass'n, Mission Statement (2004), <http://www.hnba.com/foundation/mission/index.shtml> (listing goals such as "To foster respect for the law among Hispanics" and "To educate and inform").

the law.³⁰⁴ But blind worship of uniformity should not overrun minority norms about how to interact with other people. Only by encouraging lawyers to accommodate those minority norms can lawyers adequately serve all Americans.

CONCLUSION

Latino and Asian Americans are likely to retain certain social norms, particularly in dealings with legal institutions. American assimilation continues to erode some aspects of Latino and Asian identity; nevertheless, these populations are more likely to retain idiosyncratic social norms for a longer period than many previous recent immigrant groups and their progeny.

Although American lawyers have long assumed that they can universally apply their professional norms, the changing demographic of the United States is undermining that assumption. By recognizing different cultural norms, professionals can better serve clients without diminishing the importance of either American law or other cultures. Lawyers can minimize or prevent many conflicts by building closer, longer-term relationships with Latinos and Asians and by becoming involved in those populations' cultures to foster trust before crises arise. By encouraging cultural sensitivity to diverse worldviews, the bar can also promote meaningful client autonomy and consideration of clients' interests in the context of their society. Otherwise, the profession will be marginally relevant to some cultures and underserve the legal needs of many Latinos and Asians. Changes to the Model Rules of Professional Conduct can propagate new norms in the legal profession that will better serve the American demographic of tomorrow.

President John F. Kennedy saw immigrants as "the secret of America, a nation of people with the fresh memory of old traditions who dare to explore new frontiers."³⁰⁵ The corollary is that even as immigrant groups explore the new frontiers of becoming American they retain powerful cultural norms. It is the responsibility of lawyers to understand those cultural norms and to devise new legal norms that will better serve the diverse populations of this country.

304. See Coleman, *supra* note 255 (discussing cultural defenses in criminal cases).

305. U.S. INFO. AGENCY, PORTRAIT OF THE USA (1997), <http://usinfo.state.gov/usa/infousa/facts/factover/ch1.htm>.