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# Implementing *Grutter's* Diversity Rationale: Diversity and Empathy in Leadership

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## ABSTRACT

*This Article examines the role of leadership in implementing the diversity rationale affirmed by the U.S. Supreme Court in Grutter v. Bollinger and argues that greater diversity and empathy are needed for effective leadership in diverse settings. In Grutter, the Court held that the University of Michigan Law School's use of race in selecting students for admission did not violate the Constitution's Equal Protection Clause. In so doing, the Court affirmed Justice Powell's diversity rationale as expressed in an earlier case, Regents of University of California v. Bakke, in which he noted that " 'the nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples." By endorsing this diversity justification, the Grutter Court acknowledged the interdependent relationship between diversity and leadership. The Court, however, did not describe the specific skills needed to lead in diverse environments and how such skills may be developed at school and afterward in the workplace. A number of businesses and other amici curiae reiterated Justice Powell's reasoning in their amicus briefs in Grutter, largely supporting the Law School, but these amici also neglected to discuss the process by which leadership skills would be acquired and implemented in settings comprised of different groups of people. This Article aims to fill in the missing piece of the discussion and emphasizes the importance of diverse and empathetic leadership in supporting diversity efforts. If, as Grutter affirms, we want to build a nation with leaders broadly exposed to ideas as diverse as our nation's population, then we must tailor the purpose and practice of leadership toward the realization of this goal.*

## I. INTRODUCTION

The United States Supreme Court has recognized that our country's leaders

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must know how to operate in our diverse society, identifying an important link between leadership and diversity.<sup>1</sup> In *Grutter v. Bollinger*, the Court held that the University of Michigan Law School's use of race in selecting students for admission did not violate the Fourteenth Amendment's Equal Protection Clause.<sup>2</sup> In reaching this holding, the Court affirmed Justice Powell's diversity rationale as expressed in an earlier case, *Regents of University of California v. Bakke*,<sup>3</sup> in which he noted that " 'the nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples."<sup>4</sup> The Supreme Court highlighted the importance of leadership and leadership preparation when it endorsed Justice Powell's justification. But the Court did not elaborate on the interdependent relationship between diversity and leadership and how leadership skills in a diverse setting may be developed and learned at school and afterward in the workplace. Yet it seems clear that diversity matters for leadership training, as a number of businesses and other amici curiae reiterated Justice Powell's reasoning in their amicus briefs supporting the Law School in *Grutter*.<sup>5</sup> Like the *Grutter* Court, however, these amici also neglected to discuss the process by which leadership skills would be acquired and implemented in a diverse environment.<sup>6</sup>

To address this missing piece of the analysis, we must examine the role of leadership and think about how to diversify our leadership ranks as well as ensure that our present, as well as future, leaders are indeed exposed to diverse perspectives. This is necessary to fulfill the promise of better leadership in a diverse context, as argued and acknowledged in *Grutter*. This Article asserts that more diversity is needed in leadership and that all leaders must draw out diverse viewpoints using a process of empathetic learning in guiding their institutions. By infusing organizational leadership with greater diversity and empathy, organizations will be better able to achieve substantive diversity and, in turn, be better able to achieve substantive equality. Although research on leadership is an integral part of the diversity discourse, only brief attention has been paid to leadership issues in antidiscrimination literature and in legal literature more broadly.<sup>7</sup>

This Article argues that effective leadership is needed to bring about change in workplace cultures that subtly discriminate against historically excluded groups. Leadership is key to promoting meaningful diversity, as well as full equality, raising questions about which groups tend to occupy leadership positions and how the work of leading might be done differently to create the type of institutional cultures needed to support a deeper understanding of diversity. Specifically, employers and organizations need to embrace a meaningful conception of diversity—what I have termed a "core diversity" paradigm—to address embedded discriminatory norms and advance substantive gender and racial eq-

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1. See *Grutter v. Bollinger*, 539 U.S. 306, 324–25 (2003).

2. *Id.*

3. 438 U.S. 265 (1978).

4. *Grutter*, 539 U.S. at 324.

5. See *infra* Part II.

6. *Id.*

7. See *infra* Part III.

uity in the workplace.<sup>8</sup> Core diversity encourages employers and organizational leaders to reconceptualize the purpose and value of having a diverse membership so as to better enable all members to shape the organization's work.<sup>9</sup> Under the core diversity model, organizations would rethink and remake the way they do their central work by incorporating the perspectives of socially-subordinated groups, such as women and people of color, to advance both equity and business concerns.<sup>10</sup> Core diversity cannot take root, however, unless organizational leaders take an active role in adopting this approach.

Consistent with core diversity, the Supreme Court's diversity justification in both *Bakke* and *Grutter* recognizes the vital connection between issues of diversity and leadership. But to implement the Court's diversity argument, organizations need further guidance on how leaders should take the value of diversity into account in a tangible and thoughtful way. The fruits of diversity will not necessarily be widely shared on their own and, in any event, such dissemination should not be left to chance. Consequently, leaders must help encourage a process of broad perspective-sharing and seek to earnestly understand others' viewpoints, especially those views and voices that do not speak with the voice of the dominant group. Building on my previous work, this piece argues that core diversity requires a careful look at the way leadership is exercised and highlights the particular importance of diverse and empathetic leadership.<sup>11</sup>

This Article contends that organizations must diversify their leadership ranks and that organizational leaders ought to develop their capacity for empathy in order to effectively lead in diverse settings. Women and minority groups continue to face challenges in ascending to leadership posts, and in particular elite leadership posts, due to conventional expectations regarding leadership and the ways in which leaders tend to emerge and succeed. Opportunities for formal leadership must be strengthened to allow for better representation of diverse individuals at the leadership level, and any differences in the leadership styles of diverse leaders should be studied to discern how these differences influence organizational culture and habits. To support a culture of core diversity and substantive equality, this Article further maintains that the act of leading must include an empathetic aspect, which requires both a focused effort on the part of organizational leaders and a collective effort on the part of organizational members in modeling and reinforcing certain behavior. Finally, the practice of leadership should be broadened to include both formal and informal leadership, to

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8. See generally Rebecca K. Lee, *Core Diversity*, 19 TEMP. POL. & CIV. RTS. L. REV. 477 (2010). I point out in this work that most employers implement models of diversity that promote only what I call "surface diversity" and "marginal diversity," both of which focus on diversifying the organization's ranks but which stop short of valuing diversity in full form. To move toward substantive equity, I argue that organizations need to rethink their practices by advancing what I term "core diversity." Under the core diversity model, the organization would actively question its norms concerning its core work and incorporate the knowledge and perspectives of traditionally-excluded members—including women and people of color—to eliminate embedded forms of bias found within organizational traditions and practices.

9. *Id.*

10. *Id.*

11. Lee, *supra* note 8, at 507–12 (discussing the importance of organizational leadership in order to achieve core diversity).

recognize that leadership can occur both with and without authority, and to treat the work of leading as a shared responsibility.

Part II of this Article examines the *Grutter* decision and the diversity rationale endorsed by both the Supreme Court and the amici curiae who submitted briefs in support of the University of Michigan Law School's admissions policy. Part II also analyzes how this diversity argument supports the core diversity approach. In thinking about how to implement the diversity rationale, this Article then explores the relevance of leadership and its challenges in Parts III and IV. Part V discusses the need to exercise leadership with greater empathy and offers various scenarios demonstrating what it means to lead either with or without much empathy. Finally, Part VI explains the benefits of an expanded view of leadership.

Leaders must challenge institutional norms that suppress equality and diversity in order to enhance the participation and success of diverse members at all levels, including at the formal leadership levels. If, as *Grutter* reaffirms, we want to build a nation with leaders broadly exposed to ideas as diverse as our nation's population, then we must tailor the purpose and practice of leadership toward the realization of this goal.

## II. UNDERSTANDING DIVERSITY AND LEADERSHIP IN *GRUTTER*

In *Grutter v. Bollinger*, the U.S. Supreme Court held that the University of Michigan Law School ("the Law School") did not violate the Constitution's Equal Protection Clause by considering race as a factor in admissions decisions.<sup>12</sup> Petitioner Barbara Grutter, a white Michigan resident and unsuccessful applicant to the Law School, sued the school in addition to the Regents of the University of Michigan and several University officials and administrators, alleging race discrimination in violation of the Constitution's Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and § 1981.<sup>13</sup> She alleged that the Law School improperly factored in race during the admissions process, giving an advantage to particular minority students while disadvantaging students from other racial groups with comparable qualifications.<sup>14</sup> The Law School had a formal policy on student admissions which was devised with the aim of admitting a diverse student body while complying with the Supreme Court's decision in *Bakke*<sup>15</sup> concerning whether race may be considered in higher education admissions.<sup>16</sup> The Law School's policy required a broad evaluation of each applicant using the information in the applicant's file, including the applicant's personal statement, recommendation letters, an essay about how the applicant would enrich the Law

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12. *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003). Justice O'Connor wrote the majority opinion, joined by Justices Stevens, Souter, Ginsburg, and Breyer, and joined in part by Justices Scalia and Thomas. *Id.*

13. *Id.* at 317. The Fourteenth Amendment's Equal Protection Clause states that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. Title VI prohibits race discrimination in schools. 42 U.S.C. § 2000d (2006). Section 1981 prohibits race discrimination in the making of contracts. 42 U.S.C. § 1981 (2006).

14. *Grutter*, 539 U.S. at 317.

15. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

16. *Grutter*, 539 U.S. at 314.

School community and add to the school's diversity, the applicant's college grade point average, and the applicant's Law School Admission Test score.<sup>17</sup> Under this policy, the Law School took into account many kinds of diversity that could help an applicant's chance for admission and, as part of its assessment, maintained a "longstanding commitment to . . . 'racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against, like African-Americans, Hispanics and Native Americans, who without this commitment might not be represented in our student body in meaningful numbers.'"<sup>18</sup> The diversity factors considered by the school, however, were not limited to racial and ethnic diversity.<sup>19</sup>

During a bench trial in federal district court, the Law School's then Director of Admissions, Dennis Shields, explained that he and his staff were not trying to meet a numeric or percentage goal in admitting applicants from underrepresented minority groups but took into account the race of the applicant, in addition to all other relevant considerations, to recruit a "critical mass of underrepresented minority students . . . so as to realize the educational benefits of a diverse student body."<sup>20</sup> Shields' successor, Erica Munzel, also testified, stating that a "critical mass" was needed so that underrepresented minority students could engage in the classroom without feeling surrounded by only non-minority classmates, but that attaining a critical mass does not require having a certain number or percentage of minorities.<sup>21</sup> The testimony by Law School Dean Jeffrey Lehman explained critical mass in the same terms.<sup>22</sup> Law School faculty members supplied additional testimony, and experts for both sides presented evidence.<sup>23</sup>

The district court, using a strict scrutiny standard, held that the Law School's use of race in student admissions violated the Equal Protection Clause because diversifying the student population was not deemed a compelling interest under *Bakke*; moreover, even if it was a compelling interest, the Law School's use of race did not meet the narrowly-tailored requirement.<sup>24</sup> As a result, the district court granted the petitioner's request for declaratory relief and her request for an injunction to bar the Law School from considering race in its admissions process.<sup>25</sup> The Sixth Circuit, in an en banc ruling, reversed the district court's decision and vacated the order of injunction, explaining that diversity had been found to be a compelling interest under Justice Powell's opinion in *Bakke*, the controlling precedent.<sup>26</sup> The Sixth Circuit further held that the Law School narrowly tailored its use of race by regarding this use of race as a possible "plus factor," and that its admissions policy closely resembled the admissions policy used

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17. *Id.* at 315.

18. *Id.* at 316.

19. *Id.*

20. *Id.* at 318.

21. *Id.*

22. *Id.* at 318–19.

23. *Id.* at 319–20.

24. *Grutter v. Bollinger*, 137 F. Supp. 2d 821, 872 (E.D. Mich. 2001), *rev'd en banc*, 288 F.3d 732 (6th Cir. 2002).

25. *Id.*

26. *Grutter v. Bollinger*, 288 F.3d 732, 752 (6th Cir. 2002) (en banc).

at Harvard, which was upheld by Justice Powell in *Bakke*.<sup>27</sup>

*Bakke* addressed the issue of whether race may be considered in medical school admissions by reserving a number of seats in the entering class to be filled by minority students from particular groups.<sup>28</sup> This highly divided case produced no majority opinion, but Justice Powell cast the fifth vote that struck down the racial set-aside policy while also lifting the state court's injunction prohibiting all use of race in university admissions.<sup>29</sup> Justice Powell's opinion, which provided the Court's judgment, validated the medical school's use of race to promote the specific interest of achieving a diverse student body.<sup>30</sup> *Bakke* thus held that a "State has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin."<sup>31</sup> In recognizing diversity as a substantial interest, Justice Powell stressed that the "'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples."<sup>32</sup> He added that race or ethnicity is just one of many significant factors that a school may take into account to achieve a diversified class of students.<sup>33</sup>

Referring to the *Bakke* decision, the Supreme Court in *Grutter* supported Justice Powell's position that diversity constitutes a compelling interest; thus, universities may use race in selecting students for admission.<sup>34</sup> The Court accordingly held that the Law School's interest in diversifying its student population was compelling, deferring in some measure to the Law School's assertion that having a critical mass of underrepresented students is necessary to further its pedagogical goals while also taking into account materials submitted by amici in support of the Law School's policy.<sup>35</sup> The Court further determined that the policy met the narrow-tailoring requirement in achieving its stated purpose, as required by the Equal Protection Clause's strict scrutiny analysis, because the Law School's program used race or ethnic background as a "plus" factor in considering each applicant on an individualized basis within the context of the entire admissions pool and did not adhere to any quota or set numbers in admitting students from a particular background.<sup>36</sup> The Court, therefore, held that the Law School's admissions program did not violate the Equal Protection Clause and,

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27. *Id.*

28. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 269-70 (1978).

29. *Bakke*, 438 U.S. 265.

30. *Id.* at 320.

31. *Id.*

32. *Id.* at 313 (quoting *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967)).

33. *Bakke*, 438 U.S. at 314.

34. *Grutter v. Bollinger*, 539 U.S. 306, 325 (2003).

35. *Id.* at 328-30.

36. *Id.* at 333-37. In finding that the Law School's plan was narrowly tailored, the Court also explained that the Law School sufficiently took into account race-neutral options and, because the Law School engages in a highly individualized evaluation of each applicant to consider diversity factors other than race, the program did not unduly burden non-minority applicants. *Id.* at 340-41. The Court further found that the Law School's policy satisfied the Fourteenth Amendment's time limit for race-conscious admissions programs because the Law School indicated that it would end its race-conscious program "as soon as practicable." *Id.* at 343.

accordingly, did not run afoul of either Title VI or § 1981.<sup>37</sup>

Justice Powell expressly made a connection between leadership and diversity by stating in *Bakke* that the country's leadership must be grounded in familiarity with different people and differing viewpoints.<sup>38</sup> In *Grutter*, the Supreme Court further noted that universities and law schools produce many of our country's leaders and, hence, must help prepare them for future leadership responsibilities.<sup>39</sup> The *Grutter* Court stated that universities play a critical role in equipping students for the workforce and civic involvement and that the hope of a unified nation requires civic engagement by individuals from various racial and ethnic groups.<sup>40</sup> Indisputably, attaining a racially and ethnically diverse environment is a necessary precondition to reaping the benefits that diversity has to offer. But neither the *Bakke* nor the *Grutter* decision explained exactly how such leadership skills would be developed and utilized in a diverse environment, whether at school, afterward at work, or in broader society. This Article argues that diversity's full benefits must be actively reaped—that is, active engagement with diversity must be encouraged and, moreover, cultivating leadership skills with respect to diversity-related issues is needed. Although bringing diverse groups together naturally increases opportunities for inter-group interaction and discussion, studies have shown that a real sharing of ideas and viewpoints may require guidance and thus should not be left to occur by chance.<sup>41</sup>

#### A. The *Grutter* Amici Briefs in Support of the Diversity Rationale

Justice Powell's diversity justification was echoed by prominent American businesses that predominantly supported the Law School as amici in the case.<sup>42</sup> These amici argued that the modern global economy requires leadership skills that rely on "exposure to widely diverse people, cultures, ideas, and view-

37. *Id.* at 343–44. Both Title VI and § 1981 prohibit only racial discrimination or racial classifications that would also violate the Equal Protection Clause. *Id.* See 42 U.S.C. § 2000d (2006); 42 U.S.C. § 1981 (2006).

38. *Bakke*, 438 U.S. at 313.

39. *Grutter*, 539 U.S. at 332.

40. *Id.* at 331–32. For an interesting and divergent take on the *Grutter* Court's embrace of affirmative action in light of the Court's reliance on an "occupational need rationale" and the applicability or non-applicability of this rationale in different professions, see generally Bryan W. Leach, Note, *Race as Mission Critical: The Occupational Need Rationale in Military Affirmative Action and Beyond*, 113 YALE L. J. 1093 (2004).

41. See generally Chris Chambers Goodman, *Retaining Diversity in the Classroom: Strategies for Maximizing the Benefits that Flow From a Diverse Student Body*, 35 PEPP. L. REV. 663 (2008); Meera E. Deo, *The Promise of Grutter: Diverse Interactions at the University of Michigan Law School*, MICH. J. RACE & L. (forthcoming 2011) (using survey and focus group data collected at the University of Michigan Law School in 2010 to demonstrate that despite positive numbers of students of color on campus, diversity-related discussions do not often occur in the classroom).

42. *Grutter*, 539 U.S. at 330–31. See, e.g., Brief of Exxon Mobil Corp. as Amicus Curiae Supporting Neither Party at 4, *Grutter*, 539 U.S. 306 (No. 02-241); Brief for 65 Leading American Businesses as Amicus Curiae in Support of Respondents at 2, *Grutter*, 539 U.S. 306 (No. 02-241); Brief of General Motors Corp. as Amicus Curiae in Support of Respondents at 12, *Grutter*, 539 U.S. 306 (No. 02-241); Brief of Massachusetts Institute of Technology, Leland Stanford Junior University, E.I. Du Pont De Nemours and Company, International Business Machines Corp., National Academy of Sciences, National Academy of Engineering, National Action Council for Minorities in Engineering, Inc., as Amicus Curiae Supporting Respondents at 9, *Grutter*, 539 U.S. 306 (No. 02-241).



points.”<sup>43</sup> Additional amici in other occupational fields expressed strong support for this reasoning as well.<sup>44</sup> Although these amici agreed that gaining diversity-related skills is indispensable to modern-day leadership, the amici did not provide much guidance on the process of developing such skills or on the role of leadership itself.<sup>45</sup>

By examining their amici briefs, we can nonetheless glean that the business sector views empathy and the ability to listen to the viewpoints of others as important skills in our diverse economy and society.<sup>46</sup> One amicus curiae noted that leaders should have experience dealing with a range of views on various matters,<sup>47</sup> including being aware of divergent outlooks, knowing how to handle disagreements that may arise, and finding areas of agreement.<sup>48</sup> As the General Motors Corporation argued in its amicus brief, students in a racially and ethnically diverse campus environment will have more opportunity to hear differing viewpoints on issues that may prompt them to rethink their own views and assumptions.<sup>49</sup> Sixty-five leading businesses—including major companies such as Boeing, Coca-Cola, Deloitte & Touche, General Electric, Microsoft, Procter & Gamble, and Xerox—in their joint amicus brief agreed that leadership skills must incorporate “the ability to understand, learn from, and work and build consensus with individuals from different backgrounds and cultures,”<sup>50</sup> and that lead-

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43. *Grutter*, 539 U.S. at 330–31. See, e.g., Brief of Exxon Mobil Corp., *supra* note 42, at 4; Brief for 65 Leading American Businesses, *supra* note 42, at 2 (stating: “For [the students of today] to realize their potential as leaders, it is essential that they be educated in an environment where they are exposed to diverse people, ideas, perspectives, and interactions”); Brief of General Motors Corp., *supra* note 42, at 12 (stating: “The business world has learned that, just as Justice Powell observed, ‘the nation’s future does indeed depend [ ] upon leaders trained’ in diverse academic environments. The capacities to work easily with persons of other races and to view problems from multiple perspectives are essential skills in the business world of the twenty-first century”) (quoting *Bakke*, 438 U.S. at 313) (internal quotation marks omitted); Brief of Massachusetts Institute of Technology, et al., *supra* note 42, at 9 (stating: “DuPont and IBM, as major international corporations, concur with other such businesses concerning the general need for diversity in education in order to prepare future business and technical leaders to deal in a shrinking and diverse world”).

44. *Grutter*, 539 U.S. at 331. Although the vast number of amici briefs submitted supported the Law School, some amici briefs were submitted in support of the petitioners, arguing that racial diversity is not a compelling government interest and runs against equal protection. For instance, the brief submitted by The Center for New Black Leadership argued that racial diversity in the form of racial preferences serves to mask the underlying and systemic problem of an ongoing racial gap in academic achievement. Brief of the Center for New Black Leadership as Amicus Curiae in Support of Petitioners, *Grutter*, 539 U.S. 306. (No. 02-241).

45. See Brief of Exxon Mobil Corp., *supra* note 42, at 4; Brief for 65 Leading American Businesses, *supra* note 42, at 2; Brief of General Motors Corp., *supra* note 42, at 12; Brief of Massachusetts Institute of Technology, et al., *supra* note 42, at 9. See also Consolidated Brief of Lt. Gen. Julius W. Becton, Jr., et al. as Amici Curiae Supporting Respondents, *Grutter*, 539 U.S. 306 (Nos. 02-241, 02-516).

46. See Patricia Gurin, *Expert Report: Reports submitted on behalf of the University of Michigan: The Compelling Need for Diversity in Higher Education*, 5 MICH. J. RACE & L. 363, 367 (1999).

47. Brief of the Leadership Conference on Civil Rights and the LCCR Education Fund as Amici Curiae Supporting Respondents at 12–13, *Grutter*, 539 U.S. 306 (No. 02-241) (noting that the American population will become increasingly diverse in coming decades and that “. . . managing our diversity, breaking down barriers, and creating leaders who understand both our similarities and differences has never been more important”).

48. See *id.* at 18.

49. Brief of General Motors Corp., *supra* note 42, at 6.

50. Brief for 65 Leading American Businesses, *supra* note 42, at 4.

ership skills—skills that could be applied in various contexts—could be learned from having a wide array of students on campus.<sup>51</sup> The amicus brief of former high-ranking military officers and civilian leaders stressed that leadership skills are strengthened from being in diverse environments and are necessary for effective military leadership.<sup>52</sup> These leaders highlighted that new leaders' preparation must be carried out in diverse educational settings that resemble the diversity of the people they will lead.<sup>53</sup> The business amici also noted that workers at all levels of an institution must have the skills to work well with diverse individuals.<sup>54</sup>

The amici curiae recognized that broad exposure to people from different backgrounds furthers the diversity interest not just at school but also in the workforce.<sup>55</sup> The ability to elicit different ideas and creatively combine them to reach solutions at work is an important proficiency that must be fostered through teaching future workers in a diverse educational environment.<sup>56</sup> As the amici pointed out, employers who are adept at processing a variety of ideas will be less likely to overlook ideas worth pursuing.<sup>57</sup> Furthermore, learning early on how to credit individuals' differences will later aid in retention efforts in various occupations, as workers will be more inclined to stay in industries and fields that treat their differences as assets.<sup>58</sup>

Workplace diversity is important because it contributes to a work environment that is less discriminatory and more effective<sup>59</sup> as well as "inclusive, comfortable, and reflective of the multicultural communities in which [businesses do] business."<sup>60</sup> Employers also can make better decisions and creatively problem-solve by drawing upon the diverse input from a diverse workforce, enabling businesses to more successfully compete in the marketplace.<sup>61</sup> As the business amici emphasized, these abilities must be taught in order to properly prepare in-

51. See Brief of the Leadership Conference on Civil Rights and the LCCR Education Fund, *supra* note 47, at 14, 16.

52. Consolidated Brief of Lt. Gen. Julius W. Becton, Jr., et al., *supra* note 45, at 1, 5.

53. *Id.* at 28.

54. Brief for 65 Leading American Businesses, *supra* note 42, at 5–6.

55. See, e.g., Brief of Exxon Mobil Corp., *supra* note 42, at 4 (stating: "Not only does an institution with a culturally diverse student body produce graduates possessing the variety of perspectives that ExxonMobil views as paramount to its success as a global business, but all individuals educated at such an institution benefit from exposure to students of widely diverse backgrounds—and this exposure, in turn, benefits their employers."); Brief of General Motors Corp., *supra* note 42, at 6 (stating: "Immersion in a multiracial academic environment enhances students' knowledge of different cultures and their understanding of perspectives that are influenced by race. That augmented understanding in turn prepares students, upon graduation, to work cooperatively in multiracial environments and to serve multiracial clientele").

56. Brief for 65 Leading American Businesses, *supra* note 42, at 7.

57. Brief of General Motors Corp., *supra* note 42, at 16.

58. See Brief of Media Companies as Amici Curiae in Support of Respondents at 8, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241).

59. Brief of Exxon Mobil Corp., *supra* note 42, at 8–9 (stating: "A diverse workforce not only generates varied perspectives, which improve decision-making, increase productivity, and help companies understand the different environments in which business is conducted today, but also contributes to a positive work environment and decreasing incidents of discrimination").

60. See *id.* at 1 (referring to Exxon's practice that can be applied to other businesses as well).

61. *Id.* at 3–4.

dividuals for future leadership posts.<sup>62</sup> As one amicus asserted, this training must be provided in institutions of higher education, before students fully join the workforce, because business employers cannot reproduce the protected environment of the school setting where differing perspectives can be shared freely.<sup>63</sup> Nor can employers provide a non-hierarchical setting where learning can best take place among equally situated individuals.<sup>64</sup> Accordingly, diversity-infused learning may be more successful if it occurs at school, considering that students might be more receptive to various viewpoints during a time when they are still relatively young and are still developing their own views.<sup>65</sup> To widen opportunities for minorities in particular to ascend to leadership positions, the amici also argued that race must be taken into account in the student admissions process at selective schools because minority students who attend elite institutions typically receive more support and are given more occasions to lead in a civic capacity than their minority counterparts at less prestigious schools.<sup>66</sup>

But how are we to ensure that students and workers, and particularly our leaders, are widely exposed to diverse ideas and viewpoints? How do we ensure that this diversity of knowledge and perspectives will be shared in heterogeneous group settings? Recruiting diverse members into the institution, and bringing them into the room and around the table, is absolutely necessary to promote discussions involving varied viewpoints, but diversity efforts cannot stop there.

#### B. The Diversity Justification and Core Diversity

Due to dominant norms embedded in organizational cultures, members of historically subordinated groups may feel they have to align their views with the majority or worry their differing views will be neither welcome nor understood.<sup>67</sup> They may then refrain from fully contributing to the conversation, either in the classroom or in a work meeting, and attempt to blend in by not bringing attention to their differences.<sup>68</sup> This is the model of surface diversity pursued by many employers.<sup>69</sup> Under the surface diversity approach, organizations aim for demographic diversity but expect all of their members to conform to the organization's long-standing norms regarding how to act and interact and how the organization carries out its work.<sup>70</sup> Adhering to a model of surface diversity in the law school setting, for instance, would have law faculty using traditional teaching methods and materials and relying on dominant assumptions in discussing issues instead of eliciting varying student viewpoints.

Other organizations follow the marginal diversity approach.<sup>71</sup> This ap-

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62. Brief for 65 Leading American Businesses, *supra* note 42, at 10.

63. Brief of General Motors Corp., *supra* note 42, at 21.

64. *Id.*

65. *Id.*

66. See Brief of the Leadership Conference on Civil Rights and the LCCR Education Fund, *supra* note 47, at 20.

67. Lee, *supra* note 8, at 489–91.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* at 491–93.

proach values diverse perspectives only as supplemental niche areas rather than as something that could influence an organization's core functions.<sup>72</sup> Looking again at the law classroom as an example, law professors follow a marginal diversity model if they bring up non-mainstream perspectives only when discussing a non-mainstream subject—such as raising feminist issues while studying feminist legal theory, or raising racial issues while learning critical race studies—and omit covering a broad set of views when teaching central legal doctrines.

Both the surface diversity and marginal diversity models are limiting in that they view diversity and its value in narrow terms. Organizations, hence, should adopt the core diversity model, which aims to promote the sharing of information by drawing upon the experiences and ideas of diverse members; this approach values diversity in the ways recognized by the *Grutter* majority.<sup>73</sup> The core diversity model understands that organizations need to actively promote inclusive cultures in places where diversity is present.<sup>74</sup> Individuals whose voices are typically not heard—meaning members of socially subordinated groups—must know that it is safe to convey views that do not conform to the majority perspective. Individuals belonging to groups historically excluded from membership when the organization was first formed should be seen as new sources of ideas about how the organization should function in order to achieve maximum inclusivity and performance. But organizations cannot function at the highest levels if members are not given the opportunity to contribute at or near their full capacity, and organizations commonly utilize only a small portion of their members' abilities.<sup>75</sup> Institutional leaders are starting to recognize that rather than simply pressure members to fit into a certain institutional construct, organizations should better incorporate and demonstrate the varied knowledge and skills their members have to offer.<sup>76</sup>

Under the core diversity approach, institutions would learn to question the traditions and institutional dynamics that tend to have exclusionary and discriminatory effects and learn to elicit and incorporate different members' various ideas concerning the organization's central work.<sup>77</sup> Educational and work institutions must tap into the full reservoir of student or employee knowledge, experiences, and skills that relate to their studies or work and to the organization's primary goals.<sup>78</sup> The core diversity model does more than simply advance demographic diversity as seen with surface diversity or view people's differences only for specialized purposes as seen with marginal diversity. The core diversity approach values diverse members in a more substantive way, under-

72. *Id.*

73. See generally Lee, *supra* note 8.

74. Michele Coleman Mayes, *Did I Forget to Tell You I'm in Control?*, in *THE DIFFERENCE "DIFFERENCE" MAKES: WOMEN AND LEADERSHIP* 172, 172 (Deborah L. Rhode ed., 2003).

75. See Christopher A. Bartlett & Sumantra Ghoshal, *Changing the Role of Top Management: Beyond Systems to People*, 73 *HARV. BUS. REV.* 132, 135 (1995).

76. *Id.*

77. See Robin J. Ely & David A. Thomas, *Cultural Diversity at Work: The Effects of Diversity Perspectives on Work Group Processes and Outcomes*, 46 *ADMIN. SCI. Q.* 229, 240 (2001) (discussing the "integration-and-learning" perspective).

78. Robin J. Ely & David A. Thomas, *Making Differences Matter: A New Paradigm for Managing Diversity*, 74 *HARV. BUS. REV.* 78, 80 (1996).

standing that their full range of knowledge and viewpoints can better inform the organization's main practices.<sup>79</sup> Research has shown that groups comprised of people with varied backgrounds and perspectives are more likely to come up with novel ways of thinking and doing, avoiding the common trap of group-think.<sup>80</sup>

To seize diversity's full value, organizational leaders must reconsider their own assumptions and perspectives by actively listening to the views of others within their organizations who can offer new ways of moving the organization forward. An inclusive process of actively seeking broad input does not mean, however, that everyone's proposals will be implemented, and this may lead some to feel a sense of deprivation if their suggestions are not adopted.<sup>81</sup> As a practical matter, people's ideas on how to address a given issue will diverge to varying extents, and leaders will need to examine their own beliefs, as well as others' assumptions, in sorting through the competing views. Nonetheless, inclusion requires that diverse voices be heard and considered. Leaders who make wise decisions know the importance of listening to others beyond those in their inner circles, and they constantly seek broad input, particularly from individuals who may view the problem or situation differently.<sup>82</sup> Wise leaders understand that information from diverse sources provides a larger base of knowledge from which to make better-considered decisions.

### III. WHY LEADERSHIP MATTERS IN DIVERSE SETTINGS

Toni Riccardi, former partner and chief diversity officer of PricewaterhouseCoopers, once stated: "We need to recognize that diversity—managing and leading across differences—is not an initiative or a program; it should be a competency that anyone who manages people must learn if he or she is to be an effective leader."<sup>83</sup> In any institutional setting where people work together, if people's different views and feelings are not acknowledged and taken into account,

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79. Lee, *supra* note 8, at 494–95.

80. See, e.g., Steven A. Ramirez, *Diversity and the Boardroom*, 6 STAN. J.L. BUS. & FIN. 85, 99 (2000) (explaining that heterogeneous groups are more creative because they are less likely to be stifled by groupthink). See generally SCOTT E. PAGE, *THE DIFFERENCE: HOW THE POWER OF DIVERSITY CREATES BETTER GROUPS, FIRMS, SCHOOLS, AND SOCIETIES* (2007) (discussing the benefits of cognitive diversity).

81. See RONALD A. HEIFETZ, *LEADERSHIP WITHOUT EASY ANSWERS* 239–40 (1994) (explaining that "inclusion does not mean that each party will get its way. Even the most well-crafted efforts at inclusion can rarely prevent the experience of loss by some").

82. See David Gergen, *Foreword: Women Leading in the Twenty-First Century*, in ENLIGHTENED POWER: HOW WOMEN ARE TRANSFORMING THE PRACTICE OF LEADERSHIP xv, xxi (Linda Coughlin, Ellen Wingard & Keith Hollihan eds., 2005) (referring to the leadership styles of Presidents Clinton and Kennedy, stating: "Whatever his personal flaws, I found that Bill Clinton often made excellent decisions in the Oval Office because he was insatiably curious about the views of everyone around him. As president, he not only wanted to talk to his fellow Democratic chieftains but also wanted to hear from those [who] have usually been in the shadows of national power—African Americans, Hispanics, and women seeking a place at the table . . . John F. Kennedy showed a similar approach during the Cuban missile crisis when he assembled a team around him that represented not just his cabinet secretaries but men who had diverse views and personal knowledge of Nikita Khrushchev").

83. Toni Riccardi, *Completing the Circle: The Business Imperative for Diversity*, in ENLIGHTENED POWER: HOW WOMEN ARE TRANSFORMING THE PRACTICE OF LEADERSHIP 317, 328 (Linda Coughlin, Ellen Wingard & Keith Hollihan eds., 2005). Riccardi previously served as a partner and the chief diversity officer for PricewaterhouseCoopers. *Id.* at 317.

employees (or other categories of organizational members) will often feel invisible, ignored, and undervalued.<sup>84</sup> Consequently, their morale and productivity can fall, and their interactions with others in the organization may become uncomfortable.<sup>85</sup> Further, in organizations where workers' roles and actions are strictly regulated by upper-level management to maintain employee control and conformity, workers will not only suffer from a lack of learning and motivation in their work but in extreme cases may even channel their silent frustrations toward impairing the organization's success.<sup>86</sup> This trajectory of events, predictable but far from inevitable, harms the functioning and output of both individual employees and the organization as a whole.<sup>87</sup>

Leaders must seek to hear and learn from the diverse population in their organizations in a way that is comfortable and sincere so as to elicit the most feedback, especially from those with less power. Individuals belonging to traditionally subordinated groups often do not have their perspectives heard as fully or as often as those of the majority group, allowing the organization to continue enforcing biased norms and continue relying on incomplete input that leads to poor decisions.<sup>88</sup> Knowing how to effectively draw out and learn from individuals' different experiences and ideas then becomes critically important. While anyone can initiate the discussions needed to encourage equal information-sharing, institutional leaders have a special responsibility, by virtue of their recognized leadership roles, to ensure that a range of voices is included when discussing and deciding organizational matters.

Leaders must be carefully attuned to issues of communication and inclusion to address embedded inequality and foster a culture of core diversity, but the topic of leadership has garnered little discussion in the legal scholarship concerning antidiscrimination efforts and reform. In fact, leadership in general has not been extensively examined in legal literature. Moreover, unlike in other professional schools, the study of leadership is not typically offered as part of the law school curriculum and thus is rarely explored in law school classrooms.<sup>89</sup> And yet law schools—as asserted in *Grutter*—clearly seek to admit students with leadership capability and produce graduates who reach for, and step into, leadership roles.<sup>90</sup> Law school graduates indeed heavily occupy leadership positions in a range of fields, whether in the government, private, or public sectors.<sup>91</sup>

84. See DOUGLAS STONE, BRUCE PATTON & SHEILA HEEN, *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* 278–79 (2010) (explaining the consequences of dealing with or not dealing with feelings in the workplace).

85. See *id.*

86. See Bartlett & Ghoshal, *supra* note 75, at 134.

87. See *id.*

88. See Lee, *supra* note 8, at 482–84.

89. See Neil W. Hamilton, *Ethical Leadership in Professional Life*, 6 U. ST. THOMAS L.J. 358, 359 (2009). A small number of law schools and some law firms and bar associations, however, have begun offering leadership-related classes. *Id.* at 370. The reason so few law schools treat the subject of leadership may be because law faculty view leadership as largely connected to law office management, and in this sense the topic is overlooked as a serious area of study. *Id.* at 370–71.

90. See *Grutter v. Bollinger*, 539 U.S. 306 (2003). See also Hamilton, *supra* note 89.

91. See, e.g., Hamilton, *supra* note 89, at 359–63 (demonstrating that lawyers hold many leadership posts in government, in private for-profit and nonprofit organizations, and in law firms); JENNIFER E. MANNING, CONG. RESEARCH SERV., MEMBERSHIP OF THE 112TH CONGRESS: A PROFILE

Thus, both law schools and other institutions need to explore what leadership entails and how it can serve to either advance or undermine socio-legal objectives.

Promoting diversity in institutions requires institutional leadership. To cultivate the next generation of leaders who will be “wide[ly] exposed to ideas as diverse as this Nation of many peoples,”<sup>92</sup> current institutional leaders must help ensure that future leaders will not only be exposed to different ideas but also know how to elicit and incorporate the different visions that those ideas convey. Communication is necessary for ideas to be shared, but effective communication between individuals from diverse backgrounds or with different outlooks may not flow easily.<sup>93</sup> Effective communication also involves both speaking up and listening; for broad perspectives to be shared, members of subordinated groups must be encouraged to share what they know with an understanding that others will listen. Because speaking up can be difficult, particularly if one’s viewpoint differs from mainstream accounts, institutional leaders must help create safe spaces and opportunities for such exchanges of ideas to occur.

For the diversity effort to be prioritized, the organization’s top leadership must make it a clear goal and be involved in its implementation.<sup>94</sup> As a starting point, leaders can use organizational re-signaling to publicly and firmly indicate the organization’s diversity-related goals and direction.<sup>95</sup> This re-signaling can be especially helpful if the organization is seeking to change course with respect to its traditions or past events and reestablish itself as being committed to diversity and inclusion in a meaningful way.<sup>96</sup> A re-signaling campaign would need to be supported by improved internal practices and processes to encourage information-sharing that could influence the institution’s core work.<sup>97</sup>

In pursuing core diversity, leaders must increase diversity at the leadership levels and establish a culture of learning in their organizations.<sup>98</sup> In order for people’s differences to actually inform the organization’s work and practices, leaders must diligently draw out these differences and use them to advance the

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(2011), available at <http://www.senate.gov/reference/resources/pdf/R41647.pdf> (finding that in the 112th (current) Congress, “law is the dominantly declared profession of Senators, followed by public service/politics, then business; for Representatives, business is first, followed by public service/politics, then law”).

92. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 313 (1978) (quoting *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967)).

93. See Devon Carbado & Mitu Gulati, *The Law and Economics of Critical Race Theory*, 112 *YALE L.J.* 1757, 1790–93 (2003).

94. See Lizzie Barnes and Sue Ashtiany, *The Diversity Approach to Achieving Equality: Potentials and Pitfalls*, 32 *INDUS. L.J.* 274, 278–79 (2003) (discussing case studies where diversity programs seemed to succeed because the top management’s decision to focus on diversity was prioritized throughout the organization).

95. See Lee, *supra* note 8, at 509. See also Rebecca K. Lee, *The Organization as a Gendered Entity: A Response to Professor Schultz’s “The Sanitized Workplace,”* 15 *COLUM. J. GENDER & L.* 609, 657–58 (2006) (discussing the importance of “institutional re-signaling” by leaders when trying to change institutional norms).

96. See Lee, *supra* note 8, at 509.

97. *Id.*

98. See Goodman, *supra* note 41, at 685 (noting the need, in the university setting, for faculty diversity and leadership to influence the campus environment).

organization's central goals.<sup>99</sup> It is additionally vital that minorities and women step into positions of formal leadership for their perspectives to have sway at the highest levels.<sup>100</sup>

This Article argues that core diversity calls for a particular vision of leadership—an approach that seeks to actively engage with people's differences on both conceptual and perceptual levels. The important relevance of leadership in promoting meaningful equality and diversity in our institutions requires that we reconsider the leadership role itself and how it ought to be exercised. Understanding how to support diversity at work and in other settings includes analyzing the extent to which there is diversity in leadership and the limitations that remain.

#### IV. CHALLENGES TO DIVERSITY IN LEADERSHIP

Women and racial and ethnic minorities who aspire to hold formal positions of leadership continue to face difficulties in obtaining such positions, particularly given that our perception of leaders has been largely shaped by those in the majority who have long occupied the leadership role.<sup>101</sup> Leaders typically have been white and male, rendering it more difficult for women and people of color to be perceived as potential leaders.<sup>102</sup> Yet leaders from diverse backgrounds offer different experiences and points of view that can help avoid organizational blind spots and contribute to organizational change and advancement.<sup>103</sup> Having more members of historically subordinated groups in recognized positions of leadership will also lessen the force of stereotypes.<sup>104</sup> Interaction with minority and female leaders, or even simple exposure to them, can decrease the magnitude of implicit or unconscious biases by familiarizing others with diverse individuals in leadership roles.<sup>105</sup> Diversity in leadership alone, however, may not necessarily kindle reform in the way an organization operates unless diverse leaders are in fact interested in changing the organization's norms and use their influence to do

99. See ACHIEVEGLOBAL, *Developing the 21st-Century Leader* 7 (2010), available at [www.inclusionontoinnovation.com/2011/04/us-leaders-rank-diversity-least.html](http://www.inclusionontoinnovation.com/2011/04/us-leaders-rank-diversity-least.html).

100. See MARIE C. WILSON, *CLOSING THE LEADERSHIP GAP: WHY WOMEN CAN AND MUST HELP RUN THE WORLD* 26 (2007).

101. See Pamela Laufer-Ukeles, *Leadership in Her Own Image: Valuing Women's Different Lives*, 30 *HAMLIN J. PUB. L. & POL'Y* 493, 499 (2009).

102. See Thomas Sy et al., *Leadership Perceptions as a Function of Race-Occupation Fit: The Case of Asian Americans*, 95 *J. OF APPLIED PSYCHOL.* 5, 902–19 (2010).

103. See Steven M. Davidoff, *Corporate Boards Should Add Diversity to the Mix*, *N.Y. TIMES DEALBOOK*, Mar. 8, 2011, <http://dealbook.nytimes.com/2011/03/08/corporate-boards-should-add-diversity-to-the-mix/> (arguing that corporate boards should appoint directors from a range of backgrounds to improve corporate board decision-making).

104. Katharine T. Bartlett, *Making Good on Good Intentions: The Critical Role of Motivation in Reducing Implicit Workplace Discrimination*, 95 *VA. L. REV.* 1893, 1948 (2009).

105. See *id.* at 1948–49. Implicit bias refers to bias that is not conscious. See Christine Jolls & Cass R. Sunstein, *The Law of Implicit Bias*, 94 *CAL. L. REV.* 969 (2006). Seeing or interacting with successful, diverse leaders can help counter the strength of implicit bias. For example, exposure to President Obama and his even-keeled leadership style has a debiasing effect on the stereotype of the angry black male. Frank Rudy Cooper, *Our First Unisex President?: Black Masculinity and Obama's Feminine Side*, 86 *DENV. U. L. REV.* 633, 659–60 (2009).



so.<sup>106</sup>

This Article asserts that organizations need to diversify their leadership levels to introduce a broader range of voices at the top. Moreover, to further encourage the voices of others to be heard throughout the organization's ranks, the way leadership is performed also must change.<sup>107</sup> Women and people of color still too infrequently make their way to the leadership perch, disadvantaged by their longtime outsider status which does not readily portray them as leaders in the making. Past and current perspectives on leadership shed some light on who tends to become a leader and under what circumstances. Analyzing the process of becoming, and succeeding as, a leader can help underrepresented groups better prepare for leadership opportunities as well as reveal how leadership theory and practice should further evolve to support larger objectives geared toward inclusion and diversity.

## A. Existing Views on Leadership

### i. The Trait Approach

Leaders have long been described as having certain personal attributes that mark them as leaders.<sup>108</sup> Many studies have been conducted to determine what sets leaders apart from followers and whether leaders have particular personality traits as well as certain physical attributes.<sup>109</sup> It is telling that these early explanations were dubbed the " 'great man' theories" because leaders were thought to be men who were born with a special disposition for leadership.<sup>110</sup> While researchers have not been able to determine a consistent set of characteristics that make a leader, demonstrating the limited usefulness of the trait theory,<sup>111</sup> there is nonetheless broad agreement on a small set of leadership traits.<sup>112</sup> These traits can be grouped into the following main categories: 1) intelligence, which includes the ability to communicate well verbally and emotionally and an aptitude for reason; 2) self-confidence, which involves being sure about one's abilities and one's power to influence others; 3) determination, which includes a high degree of initiative, ambition, and perseverance; 4) integrity, which refers to truthfulness and credibility; and 5) sociability, which includes relating well to others and creating positive social and working relationships.<sup>113</sup>

One of the most commonly touted characteristics is charisma,<sup>114</sup> which liter-

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106. See LeRoy Pernell, *Deans of Color Speak Out: Unique Voices in a Unique Role*, 20 B.C. THIRD WORLD L.J. 43, 49–50 (2000) [hereinafter Pernell, *Deans of Color*] (discussing the role of law school deans of color).

107. See Goodman, *supra* note 41, at 685 (focusing on the university setting and pointing out the need for diverse faculty and leadership in order to infuse the school's mission and teaching with diversity-related goals).

108. JOHN W. GARDNER, *ON LEADERSHIP* 5 (1990).

109. Martin M. Chemers, *The Social, Organizational, and Cultural Context of Effective Leadership*, in *LEADERSHIP: MULTIDISCIPLINARY PERSPECTIVES* 91, 93–94 (Barbara Kellerman ed., 1984).

110. PETER G. NORTHOUSE, *LEADERSHIP: THEORY AND PRACTICE* 15 (5th ed. 2010).

111. *Id.* at 18–19.

112. *Id.* at 19–21.

113. *Id.*

114. *Id.* at 16.

ally means the “gift of grace.”<sup>115</sup> A concept advanced by sociologist Max Weber, charisma refers to an interpersonal characteristic by which a person attracts followers who believe the person is special in some way.<sup>116</sup> Charisma, however, can create a cloak of self-grandeur among those anointed to be leaders, giving them an inflated sense of the “rightness” of their actions and often a sense of entitlement and immunity to engage in high-risk behavior.<sup>117</sup> The notion of a charismatic leader suggests that people who become leaders possess an innate characteristic. Rather, it may be that individuals in leadership positions actually *develop* charismatic skills, along with other leadership capabilities, while pursuing and occupying the leadership role. Moreover, charisma simply may be something we ascribe to individuals who persuasively articulate our afflictions and hopes, someone who can face and resolve our difficult realities for us.<sup>118</sup>

The trait approach is still used to analyze leaders, however, and has evolved to include the study of emotional intelligence<sup>119</sup> as a relevant competency for successful leadership.<sup>120</sup>

As the two words suggest, emotional intelligence has to do with our emotions (affective domain) and thinking (cognitive domain), and the interplay between the two. Whereas intelligence is concerned with our ability to learn information and apply it to life tasks, emotional intelligence is concerned with our ability to understand emotions and apply this understanding to life’s tasks. Specifically, emotional intelligence can be defined as the ability to perceive and express emotions, to use emotions to facilitate thinking, to understand and reason with emotions, and to effectively manage emotions within oneself and in relationships with others.<sup>121</sup>

Emotional intelligence thus refers to one’s ability to direct one’s emotions and behavior and to interact effectively with others.<sup>122</sup> Leadership theorists have argued that a leader’s level of emotional intelligence importantly figures into the ability to lead well.<sup>123</sup> In fact, one’s level of emotional intelligence may be just as, or even more, important than one’s cognitive intelligence and technical expertise

115. FROM MAX WEBER: *ESSAYS IN SOCIOLOGY* 52 (H.H. Gerth & C. Wright Mills eds. and trans., 1946).

116. *Id.*

117. See HEIFETZ, *supra* note 81, at 20 (arguing that the “born leaders”-type-of-thinking is harmful because it encourages both self-delusion and irresponsibility). The recent dissolution of the News Corporation’s News of the World tabloid newspaper is an example of what can result when an organization’s leaders lead irresponsibly, creating an organizational culture that allowed reprehensible and illegal behavior to take place under their tenures and led to a failure to investigate such conduct when it was first brought to light. See Ben W. Heineman, Jr., *News Corp Leaders from James Murdoch to Les Hinton Face Killer Question: Why No Earlier Internal Investigation?*, WASH. POST. (July 15, 2011), [http://www.washingtonpost.com/national/on-leadership/news-corp-leaders-from-james-murdoch-to-les-hinton-face-killer-question-why-no-earlier-internal-investigation/2011/07/15/gIQAC669FI\\_story.html](http://www.washingtonpost.com/national/on-leadership/news-corp-leaders-from-james-murdoch-to-les-hinton-face-killer-question-why-no-earlier-internal-investigation/2011/07/15/gIQAC669FI_story.html).

118. HEIFETZ, *supra* note 81, at 66.

119. NORTHHOUSE, *supra* note 110, at 23.

120. *See id.* at 24.

121. *Id.* at 23 (emphasis in original not included).

122. *See* Daniel Goleman, *What Makes a Leader?*, 76 HARV. BUS. REV. 92, 94 (1998).

123. *See, e.g., id.*; GARDNER, *supra* note 108, at 50.

in demonstrating leadership ability.<sup>124</sup>

The trait model can be differentiated from other similar approaches in that it concerns leaders' born abilities (who they are) rather than acquired skills (what they can do),<sup>125</sup> while the skills approach recognizes that some abilities can be learned and refined.<sup>126</sup> Moreover, the trait approach focuses exclusively on the leader and the leader's attributes without considering the leader's dynamic with followers and the context of their relationship. By trying to predetermine who has the "natural" qualities to become a leader, the trait theory restricts the range of people who may be perceived as leaders and who ultimately participate in leadership activity.

## ii. The Situational and Contextual Approaches

Situational theory is a widely used leadership approach that considers the different settings in which leaders operate and the ways in which a leader must adjust to a particular situation.<sup>127</sup> According to this theory, leadership involves both "directive" and "supportive" aspects depending on the needs of employees at any given time.<sup>128</sup> Directive leadership is task-oriented and delineates for employees the work to be accomplished and how it should be performed, whereas supportive leadership is relationship-oriented and tries to meet the social and emotional needs of employees.<sup>129</sup> Whether a leader ought to use more of a directive or supportive style is based upon the capabilities and motivation levels of employees: the more capable and motivated the employees, the less directive and more supportive the leader can be, and vice versa.<sup>130</sup>

Research has challenged the notion that leaders alone should be prepared to adapt depending on the situation, contending that leaders should instead focus on strengthening their followers' abilities to adapt during difficult times.<sup>131</sup> According to this view, the rest of the organization cannot be entirely shielded from changing realities and must learn to adapt as well, with leaders guiding this adaptation process.<sup>132</sup> Given that complex problems often elude quick or clear answers, leaders must work with members to find ways to both effectively deal with the uncertainties of a tough situation and work toward a practicable solu-

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124. Goleman, *supra* note 122 at 94.

125. NORTHOUSE, *supra* note 110, at 39.

126. *Id.* According to one major study, for example, effective leadership requires "technical skill," or expertise in a specialized field; "human skill," or dexterity in working with people; and "conceptual skill," or a facility in dealing with ideas. Robert L. Katz, *Skills of an Effective Administrator*, 33 HARV. BUS. REV. 33, 33-42 (1955). A higher level of conceptual skill is needed at the top leadership ranks and a greater degree of technical skill is needed at the lower leadership ranks. *Id.* Other research has identified problem-solving skills, especially a talent for solving novel and ambiguous problems, as another key leadership competency. NORTHOUSE, *supra* note 110, at 43-4.

127. See NORTHOUSE, *supra* note 110, at 89, 94 (reporting that the situational approach is commonly used to train organizational leaders and has been used in training programs of more than 400 of the Fortune 500 companies).

128. *Id.* at 89.

129. *Id.* at 91.

130. *Id.* at 92-3.

131. See HEIFETZ, *supra* note 81, at 2.

132. See *id.* at 247 (discussing leadership's challenge to develop people's adaptive capacity for dealing with complicated problems).

tion.<sup>133</sup>

Similar to the situational model, the contingency approach focuses on the fit between the leader and the situation.<sup>134</sup> Contingency theory categorizes leaders as being more concerned either with reaching goals or with developing close working relationships.<sup>135</sup> Under this approach, contextual factors involving the positivity or negativity of leader-member relations, the clarity or ambiguity of the tasks to be performed, and the degree of authority a leader has all determine the type of leader who will work best in a given environment.<sup>136</sup> Despite the multiple views on what it takes to be a leader, people who succeed in rising to leadership positions tend to fit a common profile and exercise leadership in limiting ways.<sup>137</sup>

### iii. The Status Quo in Leadership Performance

Traditionally, leaders have been male and white, and thus leadership has been defined by traits typically associated with white men, such as being forceful, analytical, authoritative, and competitive—traits that conflict with how women and minorities are commonly perceived.<sup>138</sup> White men are accorded more deference when in leadership roles than are women and people of color because they are seen as more naturally suited to the position.<sup>139</sup> Women, on the other hand, are stereotypically viewed as less rational, less assertive or dominant, and less career-committed than men, and minority women are further stereotyped depending on their particular race or ethnicity.<sup>140</sup> Biased perceptions of racial minorities include black men being viewed as belligerent or intimidating and Asian Americans being viewed as passive, compliant, and reserved.<sup>141</sup> As a racial and ethnic minority group, Asian Americans face a unique set of stereotypes: they are favorably perceived as “technically competent” and in this respect are suited for lower-ranking or middle-level leadership roles, but compared with their white counterparts, Asian Americans are seen as less verbally competent and as lacking influential or “agentic leadership” traits desirable for higher-level leadership.<sup>142</sup>

Women and minorities in leadership positions, therefore, tend to emphasize conventional leadership traits to compensate for the fact that they are regarded

133. See HEIFETZ, *supra* note 81, at 2, 106. See also *infra* Part VI.

134. NORTHOUSE, *supra* note 110, at 111.

135. See *id.* at 111–13.

136. See *id.*

137. See *id.* at 2–13; Chemers, *supra* note 109, at 105–06.

138. See NORTHOUSE, *supra* note 110, at 311.

139. See Linda Coughlin, *Introduction in Enlightened Leadership*, in ENLIGHTENED POWER: HOW WOMEN ARE TRANSFORMING THE PRACTICE OF LEADERSHIP 1, 9–10 (Linda Coughlin, Ellen Wingard & Keith Hollihan eds., 2005).

140. See NORTHOUSE, *supra* note 110, at 312.

141. See Cooper, *supra* note 105, at 659–60; Sy et al., *supra* note 102, at 905.

142. See Sy, *supra* note 102, at 913–15; James G. Hunt, *Organizational Leadership: The Contingency Paradigm and Its Challenges*, in LEADERSHIP: MULTIDISCIPLINARY PERSPECTIVES 113, 122 (Barbara Kellerman ed. 1984) (discussing research showing that technical competence is emphasized in lower-level leadership).

differently from the person usually in the leadership post.<sup>143</sup> This means, however, that having members of underrepresented groups serve as leaders may not change the way leadership is performed unless these leaders mindfully seek to infuse the leadership role with a better understanding of what it takes to lead in a diverse environment.

## B. Opportunities for Formal Leadership

In recent decades, women and people of color have made strides in breaking into the leadership ranks, but there remain gaps in leadership advancement, particularly at the highest levels.<sup>144</sup> Looking at gender, we are far from female parity across various sectors in terms of leadership. In the U.S., women comprise 50.8 percent of the population<sup>145</sup> and constitute nearly 50 percent of the country's work force.<sup>146</sup> Women obtain close to 60 percent of all bachelor's and master's degrees and almost 50 percent of professional degrees.<sup>147</sup> Women occupy just over half of all management and professional positions.<sup>148</sup> Yet in the business arena, women make up only 3.2 percent of Fortune 500 CEOs, 15.7 percent of Fortune 500 board members, and 14.4 percent of Fortune 500 executive officers.<sup>149</sup> Women are better represented in the nonprofit sector where they constitute 64 percent of nonprofit chief executives and 48 percent of nonprofit board members, but larger nonprofits and larger nonprofit boards have fewer women in these positions.<sup>150</sup> In the legal industry, women obtain close to 50 percent of all law degrees and hold 45 percent of law firm associate positions, but only 19.4 percent of law firm partners and 18.8 percent of Fortune 500 general counsel are women.<sup>151</sup> In the two hundred highest-grossing law firms, about 15 percent of equity part-

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143. See Laufer-Ukeles, *supra* note 101, at 499–500.

144. See NORTHOUSE, *supra* note 110, at 304, 306. See, e.g., ROBERT MENENDEZ, CORPORATE DIVERSITY REPORT 10, 19 (2010), available at <http://menendez.senate.gov/imo/media/doc/CorporateDiversityReport2.pdf>.

145. U.S. CENSUS BUREAU, 2010 CENSUS BRIEFS: AGE AND SEX COMPOSITION: 2010, 2 (2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-03.pdf> (counting white and minority women).

146. WOMEN'S BUREAU, U.S. DEP'T. OF LABOR, WOMEN IN THE LABOR FORCE IN 2010 (2011), available at <http://www.dol.gov/wb/factsheets/Qf-laborforce-10.htm>.

147. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, DIGEST OF EDUCATION STATISTICS: DEGREES EARNED BY LEVEL AND SEX: 1960-2008, 187 (2011), available at [www.census.gov/compendia/statab/2011/tables/11s0295.pdf](http://www.census.gov/compendia/statab/2011/tables/11s0295.pdf).

148. U.S. BUREAU OF LABOR STATISTICS, 2010 CURRENT POPULATION SURVEY, EMPLOYED PERSONS BY DETAILED OCCUPATION, SEX, RACE, AND HISPANIC OR LATINO ETHNICITY, available at <http://www.bls.gov/cps/cpsaat11.pdf>.

149. CATALYST, INC., U.S. WOMEN IN BUSINESS (Dec. 14, 2011), <http://catalyst.org/publication/132/us-women-in-business>.

150. BOARDSOURCE NONPROFIT GOVERNANCE INDEX 2010 27 (2010), available at [http://www.boardsource.org/dl.asp?document\\_id=884](http://www.boardsource.org/dl.asp?document_id=884) (describing a study examining nonprofit governance based on survey responses from 978 chief executives and 780 board members who serve on a broad spectrum of nonprofit organizations that vary in type of organization, budget size, and mission area).

151. A.B.A. COMM'N ON WOMEN IN THE PROFESSION, A CURRENT GLANCE AT WOMEN IN THE LAW 2011 (2011), available at [http://www.americanbar.org/content/dam/aba/uncategorized/2011/cwp\\_current\\_glance\\_statistics\\_2011.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/uncategorized/2011/cwp_current_glance_statistics_2011.authcheckdam.pdf).

ners are women,<sup>152</sup> and just 6 percent of managing partners are female.<sup>153</sup> The figure for minority women at the partner level is even lower—minority women make up less than 2 percent of all law firm partners.<sup>154</sup> In legal education, women occupy 20.6 percent of law school deanships.<sup>155</sup> In the military, women make up about 19 percent of all active component enlisted members<sup>156</sup> and 16.2 percent of the active component officer corps.<sup>157</sup> In the U.S. Congress, women currently fill 17 percent of the seats in the Senate and 16.8 percent of the seats in the House of Representatives.<sup>158</sup> Women of color hold less than 1 percent of all Congressional seats.<sup>159</sup> At the state government level, Colorado presently has the highest percentage of female state legislators at 41 percent, while South Carolina presently has the lowest percentage of female state legislators at 9.4 percent.<sup>160</sup> Despite the large range between these two states at the extreme ends, in most states women occupy between 20 percent to 30 percent of state legislative seats.<sup>161</sup> Female representation drops, however, at the higher elected state level—only six states currently have female governors.<sup>162</sup>

A number of factors contribute to this leadership disparity in terms of gender.<sup>163</sup> Although women reach educational levels at the same or higher rate than

152. STEPHANIE A. SCHARF & BARBARA M. FLOM, THE NAT'L ASS'N OF WOMEN LAWYERS AND THE NAWL FOUND., REPORT OF THE 2010 NAWL SURVEY ON THE RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 19 (2010), available at <http://nawl.timberlakepublishing.com/files/NAWL%202010%20Final%281%29.pdf> (looking at the Am Law 200, the 200 highest-grossing law firms as ranked by The American Lawyer).

153. A.B.A. COMM'N ON WOMEN IN THE PROFESSION, *supra* note 151.

154. NAT'L ASS'N FOR LAW PLACEMENT, NALP BULLETIN: A CLOSER LOOK AT NALP FINDINGS ON WOMEN AND MINORITIES IN LAW FIRMS BY RACE AND ETHNICITY (2011), available at [http://www.nalp.org/jan2011wom\\_min](http://www.nalp.org/jan2011wom_min).

155. A.B.A. COMM'N ON WOMEN IN THE PROFESSION, *supra* note 151.

156. OFFICE OF THE UNDER SECRETARY OF DEFENSE, PERSONNEL AND READINESS, POPULATION REPRESENTATION IN THE MILITARY SERVICES 2009: FY 2009 APPLICANTS FOR ACTIVE COMPONENT ENLISTMENT BY AGE, SERVICE, AND GENDER WITH CIVILIAN COMPARISON GROUP (2011), available at [http://prhome.defense.gov/MPP/ACCESSION%20POLICY/PopRep2009/appendixa/a\\_01.html](http://prhome.defense.gov/MPP/ACCESSION%20POLICY/PopRep2009/appendixa/a_01.html).

157. OFFICE OF THE UNDER SECRETARY OF DEFENSE, PERSONNEL AND READINESS, POPULATION REPRESENTATION IN THE MILITARY SERVICES 2009: FY 2009 ACTIVE COMPONENT OFFICER ACCESSIONS AND OFFICER CORPS BY GENDER AND SERVICE WITH CIVILIAN COMPARISON GROUPS (2011), available at [http://prhome.defense.gov/MPP/ACCESSION%20POLICY/PopRep2009/appendixb/b\\_23.html](http://prhome.defense.gov/MPP/ACCESSION%20POLICY/PopRep2009/appendixb/b_23.html).

158. WOMEN IN CONGRESS, WOMEN REPRESENTATIVES AND SENATORS BY CONGRESS, 1917-PRESENT: 112TH CONGRESS, 2011-2013 (2011), available at <http://womenincongress.house.gov/historical-data/representatives-senators-by-congress.html?congress=112>.

159. WOMEN IN CONGRESS: WOMEN OF COLOR IN CONGRESS (2011), available at <http://womenincongress.house.gov/historical-data/women-of-color.html> (showing that presently 26 women of color serve in Congress); MANNING, *supra* note 82, at 1 (showing that there are 541 total members in Congress).

160. WOMEN IN ELECTIVE OFFICE: STATE LEGISLATURE, CENTER FOR AMERICAN WOMEN AND POLITICS, EAGLETON INSTITUTE OF POLITICS, RUTGERS UNIVERSITY – NEW BRUNSWICK (2011), available at <http://www.cawp.rutgers.edu/>.

161. *Id.*

162. WOMEN IN ELECTIVE OFFICE: GOVERNORS, CENTER FOR AMERICAN WOMEN AND POLITICS, EAGLETON INSTITUTE OF POLITICS, RUTGERS UNIVERSITY – NEW BRUNSWICK (2011), available at <http://www.cawp.rutgers.edu/>. Arizona, New Mexico, North Carolina, Oklahoma, South Carolina, and Washington State currently have female governors. *Id.*

163. This Article focuses on gender and leadership in the U.S. (and generally Western) context. Although a discussion of international differences in leadership is beyond the scope of this paper, a

men and share the same level of commitment to work, women spend more time away from the workforce—mostly due to family and domestic obligations that unequally fall on women’s shoulders—and therefore have fewer opportunities to make significant accomplishments in the work arena and obtain the typically needed seniority to be considered “eligible” for many leadership roles.<sup>164</sup> Women with children, if they engage in paid employment, often work fewer hours compared with women without children, and mothers who leave their jobs find it challenging to rejoin the full-time workforce at the same level and pay they previously enjoyed.<sup>165</sup> On the whole, women contribute more time to child-rearing and home duties than men do—even women with careers as equally demanding as their husbands’ careers assume more of these responsibilities, and they still tend to be hard on themselves when it comes to their household performance.<sup>166</sup> Men tend to spend less time on such duties, even when they do share some of the chores.<sup>167</sup> Also, men with children often are employed and work more hours than men without children, indicating that fathers do not suffer the same career setbacks as mothers in terms of work experience gained when also raising a family.<sup>168</sup> Moreover, mothers are seen by employers as less competent and less committed to paid work as compared to fathers, even when there is no difference in education levels or qualifications between job applicants, contributing to indirect discrimination against women with children at the hiring and, also likely, at the promotion stages.<sup>169</sup>

To bring about balance in the distribution of work and domestic obligations and better allow women to fill leadership roles, there needs to be a reordering of duties both at home and at work.<sup>170</sup> Women can push for this “structural role redefinition” by negotiating expectations with family and employers—such as negotiating the division of childcare and household work with one’s spouse and negotiating with one’s employer for work policies that facilitate meeting one’s responsibilities both inside and outside the workplace.<sup>171</sup> There is an added benefit to doing this: by practicing their negotiation skills, women will improve their chances of advancing to higher leadership posts; men more frequently rise to the highest leadership levels in part because they are more comfortable with the negotiating process.<sup>172</sup>

It is also less common for women to self-nominate and purposefully position themselves for formal leadership openings.<sup>173</sup> One reason for this is that

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comparative analysis of leadership is another important subject that has not been extensively studied and should be explored in future research.

164. See NORTHHOUSE, *supra* note 110, at 307–08.

165. See *id.* at 308.

166. *Id.*

167. *Id.*

168. *Id.*

169. See generally Shelley Correll, Stephen Benard, and In Paik, *Getting a Job: Is There a Motherhood Penalty?*, 112 AM. J. SOC. 1297 (2007).

170. NORTHHOUSE, *supra* note 110, at 314.

171. *Id.*

172. *Id.* at 310.

173. See *id.* at 309 (stating that, according to empirical data, “women are less likely than men are to promote themselves for leadership positions”).

women generally are less well-received than men when they advocate on behalf of themselves due to social norms that discourage women from displaying ambition.<sup>174</sup> When women do accept leadership responsibility, they tend to assume such duties informally, without the full recognition that comes with official leadership, referring to their role as “*facilitator* or *organizer* instead of *leader*.”<sup>175</sup> Even prominent female leaders may downplay their pioneering status in heading major organizations, preferring to shift the attention away from themselves and instead direct it toward their organizations and the goals achieved or yet to be accomplished.<sup>176</sup> But this does not mean that women do not want to lead in a formal capacity; in fact, when presented with the chance to take on leadership roles, women agree to undertake such positions as often as men do.<sup>177</sup> To provide women with more opportunities to serve in formally appointed positions, current leaders ought to support greater diversity in their leadership ranks, including at the highest levels, and provide better work-life schedules and positive leadership-oriented mentoring.<sup>178</sup>

While it is clear that increased diversity in leadership is needed, it is less clear how often women and minorities have the opportunity to ascend to positions of recognized leadership. Some argue that women are more likely to be selected for leadership positions when the institution is facing a crisis or has recently undergone an upheaval,<sup>179</sup> but this can be both a liability and an asset for women who step into leadership roles. The instability and uncertainty inherent in this type of leadership situation mean there is a greater likelihood for disapproval and failure.<sup>180</sup> At the same time, women usually are seen as agents of change, giving them leeway to try a new or different leadership approach, particularly if they are the first women to occupy their roles.<sup>181</sup> In any event, the leadership challenges are not small.

There is no one path to the leadership role for women, but one example of how women can rise to such positions is Anne Mulcahy’s reign as the CEO of

174. *Id.* at 310.

175. *See id.* at 309 (discussing women in informal leadership roles).

176. *See* Adam Bryant, *Xerox’s New Chief Tries to Redefine Its Culture*, N.Y. TIMES, Feb. 21, 2010, at BU1, available at <http://www.nytimes.com/2010/02/21/business/21xerox.html> [hereinafter Bryant, *Xerox’s New Chief*]. Xerox’s new CEO, Ursula Burns, who despite becoming the first African-American woman to serve as the CEO of a major American corporation, commented at the beginning of her tenure:

The accolades that I get for doing absolutely nothing are amazing—I’ve been named to every list, since I became the CEO . . . What have I done? In the first 30 days, I was named to a list of the most impressive XYZ. The accolades are good for five minutes, but then it takes kind of a shine off the real story. The real story is not Ursula Burns. I just happen to be the person standing up at this point representing Xerox.

*Id.*

177. Coughlin, *supra* note 139, at 10.

178. *See* NORTHOUSE, *supra* note 110, at 314.

179. *See id.* at 309 (finding that women are more likely to be selected for perilous leadership situations that entail greater risk and criticism—in other words, women are more likely to be placed on a “glass cliff”).

180. *See id.*

181. *See* Nancy J. Adler, *Leading Beyond Boundaries: The Courage to Enrich the World*, in ENLIGHTENED POWER: HOW WOMEN ARE TRANSFORMING THE PRACTICE OF LEADERSHIP 351, 360–61 (Linda Coughlin, Ellen Wingard & Keith Hollihan eds., 2005).



Xerox, a Fortune 500 company. When Mulcahy stepped into the head position at Xerox in 2001, the company was trying to forestall bankruptcy with billions of dollars in debt, had suffered financial losses over many consecutive quarters, and was dealing with an SEC investigation.<sup>182</sup> It did not help matters that on the day her appointment as CEO was announced, the company's stock fell by 15 percent, indicating a lack of outside confidence in her ability to lead Xerox during the company's time of crisis.<sup>183</sup> Nonetheless, she was able to pull Xerox out of its deep financial hole and has been applauded for the company's resurrection and growth.<sup>184</sup> As a white female CEO, Mulcahy mentored Ursula Burns, an African-American woman, to be her successor, setting into motion the rare chain of events that led to the appointment of a female Fortune 500 CEO right after the tenure of another female CEO.<sup>185</sup> Although Mulcahy and Burns each rose to the top post after having built a long career at the same company, many other women enter leadership positions laterally after gaining recognition at a different organization or after having another career.<sup>186</sup> Carly Fiorina, for instance, who was Hewlett-Packard's first female CEO, had worked at Lucent Technologies before being recruited to lead HP.<sup>187</sup>

With respect to race and ethnicity, people of color are further behind women as a group in leadership representation. Minorities make up 27.6 percent of the U.S. population<sup>188</sup> and earn close to 28 percent of all bachelor's degrees, 35 percent of all master's degrees, and 28 percent of all professional degrees.<sup>189</sup> They are approximately 34 percent of the U.S. labor force<sup>190</sup> and fill 21.8 percent of all management and professional positions,<sup>191</sup> but few minorities rise to elite leadership posts. In the corporate domain, just about 10 percent of Fortune 500 executive team members (comprised of CEOs and their direct reports)<sup>192</sup> as well

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182. Dody Tsiantar, *Anne Mulcahy*, TIME MAGAZINE, May 8, 2006, available at <http://www.time.com/time/magazine/article/0,9171,1186972,00.html>.

183. *See id.*

184. Lance Whitney, *Xerox CEO Anne Mulcahy to Retire*, CNET (May 21, 2009, 9:43 AM), [http://news.cnet.com/8301-1001\\_3-10246443-92.html](http://news.cnet.com/8301-1001_3-10246443-92.html).

185. Bryant, *Xerox's New Chief*, *supra* note 176.

186. *See* Adler, *supra* note 181, at 359.

187. *Id.* at 351, 359–61.

188. U.S. CENSUS BUREAU, 2010 CENSUS BRIEFS: OVERVIEW OF RACE AND HISPANIC ORIGIN: 2010 4 (2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

189. These percentage figures include Blacks, nonwhite Hispanics, Asians/Pacific Islanders, and American Indians/Alaska Natives. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, DIGEST OF EDUCATION STATISTICS: DEGREES EARNED BY LEVEL AND RACE/ETHNICITY: 1990-2008 187 (2011), available at <http://www.census.gov/prod/2011pubs/11statab/educ.pdf>.

190. This is the percentage for 2009. U.S. BUREAU OF LABOR STATISTICS, LABOR FORCE CHARACTERISTICS BY RACE AND ETHNICITY, 2009 6 (2010), available at <http://www.bls.gov/cps/cpsrace2009.pdf>.

191. This number includes Blacks, Asians, and Hispanics/Latinos. U.S. BUREAU OF LABOR STATISTICS, 2010 CURRENT POPULATION SURVEY, EMPLOYED PERSONS BY DETAILED OCCUPATION, SEX, RACE, AND HISPANIC OR LATINO ETHNICITY 14 (2011), available at <http://www.bls.gov/cps/cpsaat11.pdf>.

192. MENENDEZ, *supra* note 144, at 10, 19 (analyzing the results of a voluntary diversity survey sent to 537 corporations ranked in the Fortune 500 in either 2009 or 2010, with a response rate of 41 percent).

as approximately 10 percent of Fortune 500 board members are minorities.<sup>193</sup> In the nonprofit field, 12 percent of nonprofit chief executives and 16 percent of nonprofit board members are members of minority groups.<sup>194</sup> In the legal sector, people of color earn 22 percent of all U.S. law degrees,<sup>195</sup> and currently about 18 percent of law school deans at ABA-approved law schools are minorities.<sup>196</sup> In the nation's highest-grossing law firms, nonwhites constitute 19 percent of firm attorneys below the partner level and 7 percent of firm partners,<sup>197</sup> and about 6 percent of partners in all law firms are minorities.<sup>198</sup> Only 8.6 percent of the Fortune 500 companies have minority general counsel.<sup>199</sup> In the military, people of color make up a third of all enlisted members<sup>200</sup> and about 21 percent of the active component officer corps.<sup>201</sup> Nonwhites in the U.S. Congress presently occupy just over 18 percent of House seats and 4 percent of Senate seats.<sup>202</sup>

The low numbers of minority leaders indicate a less than smooth path to leadership. Like women, people of color may be viewed as change agents and become more appealing as leaders when the organization is in transition. President Barack Obama, for instance, successfully framed his presidential candidacy

193. ALLIANCE FOR BOARD DIVERSITY, *MISSING PIECES: WOMEN AND MINORITIES ON FORTUNE 500 BOARDS* 5 (2010), available at [http://theabd.org/Missing\\_Pieces\\_Women\\_and\\_Minorities\\_on\\_Fortune\\_500\\_Boards.pdf](http://theabd.org/Missing_Pieces_Women_and_Minorities_on_Fortune_500_Boards.pdf).

194. BOARDSOURCE NONPROFIT GOVERNANCE INDEX 2010, *supra* note 150, at 27, 39.

195. A.B.A., *TOTAL MINORITY J.D. DEGREES AWARDED 1983-2009*, available at [http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats\\_9.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats_9.authcheckdam.pdf).

196. Athornia Steele, *Minority Law School Deans*, IMMIGRATIONPROF BLOG (July 1, 2011), <http://lawprofessors.typepad.com/immigration/2011/07/minority-law-school-deans.html> (listing current minority law school deans; 35 of the 37 minority deans listed currently lead ABA-approved law schools (both of Arkansas' minority deans are listed, with one succeeding the other in July 2011, and the University of Massachusetts School of Law at Dartmouth is not yet ABA-accredited)); A.B.A., *ABA-APPROVED LAW SCHOOLS* (2011), [http://www.americanbar.org/groups/legal\\_education/resources/aba\\_approved\\_law\\_schools.html](http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html) (noting that a total of 200 law schools are ABA-approved).

197. See THE AM. LAWYER, *DIVERSITY SCORECARD* (2011), available at [http://www.wsgr.com/news/PDFs/diversity\\_11.pdf](http://www.wsgr.com/news/PDFs/diversity_11.pdf) (looking at results from the Diversity Scorecard survey sent to firms ranked in The American Lawyer's Am Law 200 and the National Law Journal 250, with 194 firms responding).

198. NAT'L ASS'N FOR LAW PLACEMENT, *NALP BULLETIN: A CLOSER LOOK AT NALP FINDINGS ON WOMEN AND MINORITIES IN LAW FIRMS BY RACE AND ETHNICITY* (2011), [http://www.nalp.org/jan2011wom\\_min](http://www.nalp.org/jan2011wom_min) (last visited Dec. 31, 2011).

199. MCCA 2010 FORTUNE 1000 MINORITY GENERAL COUNSEL SURVEY, *MINORITY CORPORATE COUNSEL ASS'N* (2010), <http://www.mcca.com/index.cfm?fuseaction=page.viewPage&pageID=2129> (last visited Dec. 31, 2011).

200. OFFICE OF THE UNDER SECRETARY OF DEFENSE, *PERSONNEL AND READINESS, POPULATION REPRESENTATION IN THE MILITARY SERVICES 2009, FY 2009 APPLICANTS FOR ACTIVE COMPONENT ENLISTMENT BY RACE/ETHNICITY, SERVICE, AND GENDER WITH CIVILIAN COMPARISON GROUP*, [http://prhome.defense.gov/MPP/ACCESSION%20POLICY/PopRep2009/appendixa/a\\_03.html](http://prhome.defense.gov/MPP/ACCESSION%20POLICY/PopRep2009/appendixa/a_03.html) (last visited Dec. 31, 2011).

201. OFFICE OF THE UNDER SECRETARY OF DEFENSE, *PERSONNEL AND READINESS, POPULATION REPRESENTATION IN THE MILITARY SERVICES 2009, FY 2009 ACTIVE COMPONENT OFFICER ACCESSIONS AND OFFICER CORPS BY RACE/ETHNICITY AND SERVICE WITH CIVILIAN COMPARISON GROUPS*, [http://prhome.defense.gov/MPP/ACCESSION%20POLICY/PopRep2009/appendixb/b\\_25.html](http://prhome.defense.gov/MPP/ACCESSION%20POLICY/PopRep2009/appendixb/b_25.html) (last visited Dec. 31, 2011).

202. MANNING, *supra* note 91, at 6-7.

as one that would bring needed change to the White House.<sup>203</sup> Further, members of underrepresented groups, once in leadership posts, may actively help diversify additional leadership ranks in their organizations by vetting and selecting diverse candidates and by coaching other underrepresented individuals for leadership positions.<sup>204</sup> After Obama ascended to the presidency, he filled more than a third of his cabinet appointments with racial minorities and women.<sup>205</sup>

In addition to such efforts from the inside, outside organizations and advocacy groups can help promote diversity in leadership by holding workshops and events geared toward preparing non-traditional candidates for leadership positions.<sup>206</sup> Having access to information about the route to leadership roles and finding external sources of guidance could encourage a more diverse pool of individuals to consider positions of leadership, especially when such forms of support and entrée are lacking in their home institutions.

Once racial minorities and women rise to leadership posts, however, they may stay in these positions for less time than their white male counterparts.<sup>207</sup> Unsurprisingly, shorter-than-average leadership tenures for diverse individuals set a discouraging precedent for those who aspire to follow in their footsteps, dampening the chances that diverse individuals may even take on such roles.<sup>208</sup> In general, however, there is very little scholarship on minority leaders and on the relationship between race, ethnicity, and leadership.<sup>209</sup> This topic calls for closer examination in future research.

### C. Leadership Styles

More minorities and women should engage in formal leadership to advance core diversity, but will diversifying the face of leadership introduce fresh thinking regarding the leadership role itself? While many female and minority leaders follow traditional leadership behavior due to the pressure to conform to the

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203. Julia Hoppock, *Obama's 'Change' Slogan Gets a Change*, ABC NEWS POLITICAL RADAR (Sept. 13, 2008, 1:06 PM) <http://blogs.abcnews.com/politicalradar/2008/09/obamas-change-s.html> (noting Obama's focus on "change" in his 2008 presidential campaign and his campaign slogan and signage "Change We Can Believe In," which was then modified to "Change We Need").

204. See LeRoy Pernell, *Reflecting on the Dream of the Marathon Man: Black Dean Longevity and Its Impact on Opportunity and Diversity*, 38 U. TOL. L. REV. 571, 576 (2007) [hereinafter Pernell, *Reflecting on the Dream of the Marathon Man*] (remarking that in the legal academy, "the impact on diversity of a dean of color is probably most profound in the recruiting and hiring of faculty of color").

205. Duchess Harris, BARNARD CTR. FOR RESEARCH ON WOMEN, *The State of Black Women in Politics Under the First Black President*, SCHOLAR & FEMINIST ONLINE (2010), [http://www.barnard.edu/sfonline/polyphonic/print\\_harris.htm](http://www.barnard.edu/sfonline/polyphonic/print_harris.htm) (arguing that despite the diversity in President Obama's administration, there are few African-American women in the administration who wield actual power).

206. For instance, the Society of American Law Teachers (SALT) sponsors biennial workshops to encourage and help members of underrepresented groups seek law school deanships. See Society of American Law Teachers, *Do You Want to Be a Dean?: Third Biennial Promoting Diversity in Law School Leadership Workshop*, Sept. 23–24, 2011, <http://www.saltlaw.org/contents/view/deanswork>.

207. See Pernell, *Reflecting on the Dream of the Marathon Man*, *supra* note 204, at 576–77 (noting the rate of turnover for law deans of color).

208. See *id.* at 576–77.

209. NORTHHOUSE, *supra* note 110, at 317.

leader prototype,<sup>210</sup> some have nonetheless exhibited a different kind of leadership style. Women who lead often adopt a mix of masculine and feminine styles and try to involve others in the decision-making process.<sup>211</sup> Female and feminist leaders have reconsidered the way power is exercised in light of their different experiences from men in their own paths to leadership and access to power.<sup>212</sup> Women tend to be more keenly aware that domineering power-wielding by a few can be disempowering for the remaining many.<sup>213</sup> Thus, female leaders may opt to interact with their employees and consult them more frequently when making decisions, while male leaders may prefer to rely on a limited circle of people in management when deciding important matters.<sup>214</sup>

Leaders who emphasize the personal element in leading by being approachable and welcoming are more likely to be effective, as female leaders have demonstrated.<sup>215</sup> Being an open leader includes being receptive to input by soliciting feedback on an informal basis, for example, and chatting with employees about what is on their minds.<sup>216</sup> Linda Hudson, president of the Land and Armaments Group for the large defense contractor BAE Systems, described her method for obtaining broad input in the following way:

I look for every opportunity, when I'm out visiting locations, just to sit down informally with a cross section of employees, from hourly workers to others, and say: "Anything's on the table. What do you want to talk about?" I do that as frequently as I can find an opportunity to do it. I find that it's extremely well received.<sup>217</sup>

Female leaders may be more likely to adopt inclusive styles, with a focus on hearing what others have to say, not because of any inborn differences in leadership style but due to differences in the way women's lives are shaped and experienced.<sup>218</sup> To the extent that female leaders use a more collaborative and open approach, their preferred styles are supported by the recent general trend in leadership that places less emphasis on hierarchy and more attention to relationship-building in leading.<sup>219</sup> Company leaders, male or female, who rely less on control from the top have found that supporting the creativity and entrepreneur-

210. See Cheryl Simrell King, *Sex-Role Identity and Decision Styles: How Gender Helps Explain the Paucity of Women at the Top*, in GENDER POWER, LEADERSHIP, AND GOVERNANCE 67 (Georgia Duerst-Lahti & Rita Mae Kelly eds., 1995).

211. Deborah L. Rhode, *The Difference "Difference" Makes*, in THE DIFFERENCE "DIFFERENCE" MAKES: WOMEN AND LEADERSHIP 3, 8, 19–20 (Deborah L. Rhode ed., 2003).

212. See Susan J. Carroll, *Feminist Scholarship on Political Leadership*, in LEADERSHIP: MULTIDISCIPLINARY PERSPECTIVES 139, 140–43 (Barbara Kellerman ed., 1984).

213. *Id.* at 140–41.

214. See, e.g., John Holusha, *Grace Pastiak's 'Web of Inclusion'*, N.Y. TIMES (May 5, 1991), <http://www.nytimes.com/1991/05/05/business/grace-pastiak-s-web-of-inclusion.html>.

215. See Adam Bryant, ed., *Fitting In, and Rising to the Top*, N.Y. TIMES (Sept. 20, 2009), <http://www.nytimes.com/2009/09/20/business/20corner.html> (describing an interview with Linda Hudson, president of the land and armaments group for BAE Systems, a defense contractor) [hereinafter Bryant, *Fitting In*].

216. See *id.*

217. *Id.*

218. See Laufer-Ukeles, *supra* note 101, at 495–97.

219. See, e.g., Holusha, *supra* note 214.

ial leadership of their employees can lead to innovative products and services that reap big gains in a constantly evolving market and world.<sup>220</sup>

Whether in the business or political realm, newer directions in the leadership literature recognize that successful leadership needs to incorporate both masculine and feminine aspects, something that observers say President Obama has succeeded in doing with respect to his self-presentation.<sup>221</sup> His 2008 presidential campaign notably reflected traditionally feminine qualities with its focus on people and emotion.<sup>222</sup> It is possible that Obama displayed his feminine side to a greater degree than other male candidates to offset the stereotype of the threatening black male, as one commentator has argued.<sup>223</sup> At the same time, appearing fit for the presidency meant that Obama could not appear overly feminine, although as a male leader he could embrace more femininity in his style than could female candidates and still be a viable presidential candidate.<sup>224</sup> Ultimately, however, Obama exemplified a gender-balanced or “unisex” approach, modifying his style according to the particular setting or circumstance and thereby providing an example for other male leaders to do the same.<sup>225</sup>

Male leaders who demonstrate an emotional side tend to be received well; femininity in female leaders, on the other hand, may be viewed less positively.<sup>226</sup> Yet there exists a catch-22: if female leaders use a masculine style while occupying or seeking a traditionally masculine role (such as the role of President), they are judged more poorly than their male counterparts.<sup>227</sup> Obama’s rival in the presidential primaries, Hillary Clinton, faced this double-bind.<sup>228</sup> Her campaign made a significant effort to showcase Clinton as an assertive candidate competent for the role of commander-in-chief, but she was criticized for appearing too tough and likely was more severely judged as a woman.<sup>229</sup> As seen in her case, evaluating women unfavorably for being either too feminine or too masculine can hinder their ascendance to elite leadership roles and render it challenging for women to be considered successful leaders.<sup>230</sup>

Notably, diverse leaders may feel accountable to more than just their organizational members; they may also view as their constituents individuals in society outside of the specific organization they lead—such as external supporters who helped them along their path to leadership and who remind them about their larger responsibility to the community.<sup>231</sup> As a result, diverse leaders may

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220. See Bartlett & Ghoshal, *supra* note 75, at 132–33 (discussing the organizational successes of 3M due to its leadership).

221. See Gergen, *supra* note 82, at xxi; Cooper, *supra* note 105, at 633.

222. See Cooper, *supra* note 105, at 634.

223. *Id.* at 635–36.

224. *Id.* at 635–36, 658.

225. *Id.* at 637, 660 (calling Obama’s leadership style “unisex”).

226. See WILSON, *supra* note 100, at 21. See also Elizabeth Adell Cook, *Voter Reaction to Women Candidates*, in *WOMEN AND ELECTIVE OFFICE: PAST, PRESENT, & FUTURE* 56, 71 (Sue Thomas & Clyde Wilcox eds., 1998).

227. See NORTHOUSE, *supra* note 110, at 303.

228. *Id.* at 312.

229. *Id.*

230. *Id.*

231. See Goodman, *supra* note 41, at 685 (discussing the role of law school deans of color).

feel additional pressures if they are expected to push for socio-political change early on as public figures representing not just their particular organization but also the larger community.<sup>232</sup> Indeed, leaders who are elected have a clear responsibility to represent the interests of constituents whose views may differ from those of their elected officials. To represent their constituents' interests, executive and legislative leaders must try to understand the range of perspectives that exist. In this respect, lawmaking in a truly representative democracy requires empathic skills.

It should be kept in mind that organizations vary in structure and purpose, as well as in the way authority to make decisions is distributed, and these differences should be taken into account when determining how to tailor one's leadership approach for the particular circumstances at hand and how to adapt as the situation evolves.<sup>233</sup> At the same time, leadership in general can benefit from a more conscious consideration of the perspectives of diverse organizational members. To do this, leaders should strive for a deeper understanding of others and their positions by exercising greater empathy.

#### V. THE IMPORTANCE OF LEADING WITH EMPATHY

In rethinking the work of leadership to support substantive equality and core diversity, it is imperative that leaders try to elicit and better understand the different perspectives of others by leading with empathy. This is not to say that demonstrating empathy is the sole criterion for good leadership, but a focus on strong empathetic ability in leadership is needed to promote a vision of substantive equality in our progressively diverse workplaces, schools, organizations, and society.

What exactly is empathy? Empathy has been defined in a number of ways, most systematically in psychology literature.<sup>234</sup> An examination of law and the emotions, including the study of empathy, has emerged in recent decades, contributing to our understanding of emotions as they relate to the law.<sup>235</sup> Challenging the long-held conception of law and legal reasoning as purely rational processes, scholars have argued that emotions inevitably influence legal players and the decisions they produce, even if legal players choose not to acknowledge the relationship between emotions and the thought process, and moreover, that emotions should be incorporated to improve legal decision-making.<sup>236</sup> In this sense,

232. See Pernel, *Deans of Color*, *supra* note 106, at 45. See also Chris Hedges, *The Obama Deception: Why Cornel West Went Ballistic*, TRUTHDIG (May 16, 2011), [http://www.truthdig.com/report/item/the\\_obama\\_deception\\_why\\_cornel\\_west\\_went\\_ballistic\\_20110516/](http://www.truthdig.com/report/item/the_obama_deception_why_cornel_west_went_ballistic_20110516/) (sharing the views of Princeton Professor Cornel West in an interview criticizing President Obama for not being progressive enough as a black leader).

233. Nannerl O. Keohane, *On Leadership*, 3 PERSP. IN POL. 705, 706–07 (2005).

234. Nancy Eisenberg & Janet Strayer, *Critical Issues in the Study of Empathy*, in EMPATHY AND ITS DEVELOPMENT 3, 3–11 (Nancy Eisenberg & Janet Strayer eds., 1987).

235. See, e.g., Lynne N. Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574 (1987); SUSAN BANDES, *THE PASSIONS OF LAW* (1999); Kathryn Abrams & Hila Keren, *Who's Afraid of Law and the Emotions?*, 94 MINN. L. REV. 1997 (2010).

236. Abrams & Keren, *supra* note 235, at 2004. Emotional intelligence has also been recognized as important for successful lawyering. Jan Salisbury, *Emotional intelligence in Law Practice*, 53 THE ADVOCATE 38 (2010).

emotional and rational responses are not separate forces but in fact represent largely overlapping spheres of ways to process information.<sup>237</sup>

Situated within the broader realm of emotions, empathy consists of both affective and cognitive components<sup>238</sup> and contributes to emotional intelligence, which as noted earlier may be to some extent more important than mental intelligence in determining whether individuals become leaders and succeed as leaders.<sup>239</sup> To be clear, in this work the term “empathy” is used to refer to our capacity to better comprehend—through both knowledge and feeling—another’s perspective by trying to view the world from that person’s position rather than simply observing another’s position from where we stand.<sup>240</sup> Displaying empathy requires that individuals be more cognizant of their own predisposed positions, taking into account their race, gender, class, and all other relevant considerations that have contributed to their particular life and career opportunities.<sup>241</sup> Because people in general tend to view others and the world, consciously and unconsciously, from a certain vantage point depending on what they are accustomed to and how they are situated in society, it is crucial that leaders try to step outside of their own worlds in order to be open to different forms of thinking and experience.<sup>242</sup> Especially since individuals tend to empathize more easily, even reflexively, with others like themselves, leaders routinely make decisions that disproportionately benefit similarly-situated individuals within their organizations.<sup>243</sup> Therefore, it is incumbent upon leaders to put effort and thought into broadening their abilities to empathize with different organizational members in order to avoid further embedding dominant norms that produce inequality.

To give an example of empathy at work, a chief operating officer at a major global company displayed empathetic leadership when, during a time of restrictions on firm-wide costs, he nonetheless agreed to still fund an internally organized women’s conference for the firm’s female employees.<sup>244</sup> Despite the

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237. Abrams & Keren, *supra* note 235, at 2004. See also David Brooks, *The New Humanism*, N.Y. TIMES, Mar. 7, 2011, at A27, available at <http://www.nytimes.com/2011/03/08/opinion/08brooks.html>.

238. Henderson, *supra* note 235, at 1576.

239. Goleman, *supra* note 122, at 94.

240. See Henderson, *supra* note 235, at 1578–79 (arguing that “empathy is a phenomenon that exists to expand understanding of others” and includes “understanding the experience or situation of another, both affectively and cognitively, often achieved by imagining oneself to be in the position of the other”).

241. See Goodman, *supra* note 41, at 669 (discussing the benefits that flow from diversity on campuses and stating that “the importance of developing empathy and understanding involves making students aware of the privileges they enjoy”).

242. See Whitney, *supra* note 184 (noting the force of ethnocentrism); NORTHOUSE, *supra* note 110, at 337 (stating the universal tendency to engage in ethnocentrism).

243. See Henderson, *supra* note 235, at 1585. See also Cheryl L. Wade, *Corporate Governance As Corporate Social Responsibility: Empathy and Race Discrimination*, 76 TUL. L. REV. 1461, 1464 (2002) (looking at the role of empathy in corporate governance and concluding that corporate officers and directors, most of whom are white and male, have too much empathy for privileged groups and too little empathy for employees of color, preventing them from adequately investigating and monitoring allegations of racial discrimination in the workplace).

244. See Barbara Waugh, *Snapshots of a Corporate Radical*, in ENLIGHTENED POWER: HOW WOMEN ARE TRANSFORMING THE PRACTICE OF LEADERSHIP 381, 386–88 (Linda Coughlin, Ellen Wingard & Keith Hollihan eds., 2005) (describing the efforts made in putting on the Technical Women’s Confer-

need to reduce expenses throughout the company, the COO made an exception because he understood the significance of the annual conference to the women who had worked hard to organize it and the conference's special function in bringing together the company's female workers who worked in a mostly male work environment.<sup>245</sup> The COO further agreed to address the female crowd at the start of the conference, and he began by remarking, "This must be how you feel"—noting the experience of being the only man in the room and acknowledging the everyday feeling of the female employees at the company.<sup>246</sup>

Consistent with this understanding of empathy, our nation's top leader has remarked on the need for each of us to "stand in someone else's shoes" when addressing issues of discrimination and inequity. In commenting on Shirley Sherrod's termination from her job at the U.S. Department of Agriculture after a speech she gave was taken out of context, President Obama stated:

When it comes to race, let's acknowledge that of course there is still tension out there. There is still discrimination. There is still inequality. But we've made progress and if each of us takes it upon ourselves to treat people with fairness and *stand in someone else's shoes* . . . then we can make more progress.<sup>247</sup>

Obama's own diverse background and status as a racial and ethnic minority may have helped him see that it takes standing in another person's place to reduce instances of inequality. Individuals who have experienced discrimination, or who have felt excluded or overlooked, are likely to be more mindful of adopting an empathetic leadership approach that seeks to include others.<sup>248</sup> In this regard, diversifying our leadership ranks would help install leaders who, by virtue of their different backgrounds and experiences, would prioritize the exercise of empathy in working with others and may be better attuned to noticing and correcting various forms of subordination.

Ironically, however, Obama has been criticized for neglecting to display empathy himself when making public appearances as President—a seeming departure from the way he was portrayed during his hope-inspiring presidential campaign.<sup>249</sup> The view from observers in Washington is that Obama, with his calm and even-keeled demeanor, lacks the kind of empathetic touch for which

ence at Hewlett-Packard to bring together women from across the majority-male company).

245. *See id.*

246. *Id.* at 388–89.

247. Marc Lacey, *Sherrod Says She Will Sue Blogger*, N.Y. TIMES (July 29, 2010, 12:59 PM), <http://thecaucus.blogs.nytimes.com/2010/07/29/sherrod-offers-history-lesson-to-obama-says-she-will-sue-blogger/> (emphasis added).

248. *See Bryant, Fitting In*, *supra* note 215 (quoting Linda Hudson, president of the military contractor BAE Systems, stating in an interview that "in [the] early years, I was often told and treated like I didn't count, I didn't matter . . . I know what it's like to be mistreated. I know what it's like to be discriminated against. I know what it's like to feel like you're invisible in a room . . . I think, in large part, that's defined who I am and how I do things. And in many ways it has given me an ability to deal with people that's more inclusive and more empathetic").

249. *See John Harwood, Obama, Empathy, and the Midterms*, N.Y. TIMES, Sept. 25, 2010, at WK1, available at <http://www.nytimes.com/2010/09/26/weekinreview/26harwood.html>. It has been suggested that Obama lost political support during the 2010 midterm elections because he failed to connect with his constituents on an emotional level. *See id.*



former President Bill Clinton was known.<sup>250</sup> Clinton had a talent for relating to his audience and used this skill to his advantage during his 1992 presidential campaign against then-President George Bush.<sup>251</sup> As this shows, there is an expectation that our modern leaders must be capable of showing some feeling, while also demonstrating toughness, if they want to be seen as both likable and competent.<sup>252</sup>

In fact, evidence shows that people evaluate others largely based on whether a person seems warm (versus cold), relying at least in part on stereotypes associated with race and gender.<sup>253</sup> When assessing a person, how warm the person appears to be is actually more important than the person's competence.<sup>254</sup> At the same time, people also consider competence when categorizing and evaluating others, and a person's competence is usually based on whether a person demonstrates dominance and power.<sup>255</sup> Leaders who possess power while in formal positions of authority may likely exhibit dominance and thus be viewed as highly competent, but their effectiveness may be determined to a larger extent by their demonstrations of warmth.<sup>256</sup>

The perception of a leader's warmth may further be affected by whether the person is genuinely caring and shows interest in and concern for others.<sup>257</sup> While being seen as competent is important for leadership, leaders will be less effective if they are focused on being the most dominant or competent person in the group because such self-aggrandizing activity inhibits receptivity to others and their suggestions.<sup>258</sup> Over-dominant leaders may be seen as insecure and will be less efficacious than leaders who strive to learn from their members.<sup>259</sup> Steady self-confidence allows one to respond more empathetically toward others,<sup>260</sup> and self-security is also correlated with leadership potential.<sup>261</sup> Moreover, leaders who pay careful attention to how they present themselves and engage interpersonally will tend to engender positive feelings in organizational members who, as a result, are likely to work better together, come up with better ideas, better absorb information, and feel more capable of individual and group accomplishments.<sup>262</sup> Building and demonstrating one's self-confidence (but not becoming or appearing over-confident), then, is important for empathetic leadership.

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250. *Id.*

251. Kathleen Woodward, *Calculating Compassion*, 77 IND. L.J. 223, 223 (2002).

252. *See id.* at 225; John Dickerson, *Hillary's Achilles' Heel: Is Sen. Clinton Warm Enough To Win?*, SLATE (June 27, 2007, 9:33 AM), <http://www.slate.com/id/2169159/>.

253. *See* Craig Lambert, *The Psyche on Automatic: Amy Cuddy Probes Snap Judgments, Warm Feelings, and How to Become an "Alpha Dog,"* HARV. MAG., Nov.-Dec. 2010, at 48, 48-52.

254. *Id.*

255. *Id.*

256. *Id.*

257. *See* STONE, PATTON & HEEN, *supra* note 84, at 167-68 (discussing the importance of a person's authenticity in communication).

258. *See* Lambert, *supra* note 253.

259. *See id.*

260. *See* Jane E. Brody, *Empathy's Natural, but Nurturing It Helps*, N.Y. TIMES, Feb. 15, 2010, at D7, available at <http://www.nytimes.com/2010/02/16/health/16brod.html>.

261. *See* NORTHOUSE, *supra* note 110, at 19-21.

262. *See* Salisbury, *supra* note 236, at 38-39.

Individuals are innately endowed with some level of empathetic ability (save for people suffering from certain psychological conditions), and although this capability may differ in extent from person to person, it nonetheless can be cultivated from an early or later age and encouraged through one's environment and interactions.<sup>263</sup> Furthermore, although empathy, due to its association with care and attentiveness toward others, tends to be viewed as a female trait, research fails to demonstrate clear differences in empathic behavior between females and males, either in childhood or adulthood.<sup>264</sup> While girls may be socialized to think more about others or to engage in more caretaking than boys, studies indicate that sex or gender is largely irrelevant in determining one's ability to empathize.<sup>265</sup>

#### A. Learning Through the Use of Empathy

To address problems facing a given institution and to advance solutions concerning these problems, leaders must demonstrate empathy in order to facilitate a process of broad learning necessary to move the organization forward. Leaders, both at school and at work, must orchestrate this learning process and guide members in this educational exercise—much like the way diverse viewpoints are expected to be shared in a classroom.<sup>266</sup> To make the most of the diversity present in an institutional or group setting, leaders should guide discussions among members to elicit various perspectives and to probe people's assumptions.<sup>267</sup> The presence of diverse individuals as part of the group may not be sufficient to lead to an exchange of views and information without guided dialogue.<sup>268</sup> Group members must be encouraged to share their thoughts on matters that affect the organization while also being assured that it will be safe for them to do so. In this sense, the value of diversity in a university context, as described in *Grutter*, is directly analogous to the value of diversity in the workplace context, and it should be supported through the use of empathy.

Empathy, as used here, is more than simply demonstrating care or concern for others.<sup>269</sup> While there commonly is a caring component to empathy, since individuals tend to show concern for others by empathizing with them, empathy as a skill entails seeking to learn another's perspective through an inquisitive and open-minded posture, such as by asking open-ended questions so that one may

263. See Brody, *supra* note 260; Henderson, *supra* note 235, at 1583.

264. Randy Lennon and Nancy Eisenberg, *Gender and Age Differences in Empathy and Sympathy, in EMPATHY AND ITS DEVELOPMENT* 195, 195–203 (Nancy Eisenberg & Janet Strayer eds., 1987).

265. Henderson, *supra* note 235, at 1582–83.

266. See HEIFETZ, *supra* note 81, at 187 (explaining that “the task of leadership consists of choreographing and directing learning processes in an organization or community” and that “[l]eadership, with or without authority, requires an educative strategy”); GARDNER, *supra* note 108, at 18 (stating: “Leaders teach. Lincoln, in his second inaugural address, provided an extraordinary example of the leader as teacher. Teaching and leading are distinguishable occupations, but every great leader is clearly teaching—and every great teacher is leading”).

267. See Gurin, *supra* note 46, at 377.

268. *Id.*

269. *But see* Robert Goffee and Gareth Jones, *Why Should Anyone Be Led By You?*, 78 HARV. BUS. REV. 62, 63, 68 (2000) (describing empathy by leaders as showing concern for employees, and advocating that leaders use “tough empathy” by “giving people what they need, not what they want”).

imagine oneself in the other's situation based on the information asked for and provided.<sup>270</sup> At the same time, demonstrating care still matters when exercising empathy, as leaders need to show that they are genuine in their desire to listen and learn.<sup>271</sup> The authenticity of a person's attention when listening is an important part of empathetic and effective communication. To listen well, leaders ought to remain open to receiving new information and give others the space and time to speak without interruption or attack.<sup>272</sup> In order to speak on behalf of members in the organization, leaders must first listen to their members to understand how their distinct perspectives can contribute to the institution's larger mission. Moreover, by helping others feel heard, leaders in turn will be more motivated to become better listeners and become more empathetic in their own leadership.<sup>273</sup>

In addition, to be mindful of how another person experiences or sees a situation about which there is strong disagreement, leaders ought to shift away from their own immediate assumptions in order to uncover the assumptions others may be making.<sup>274</sup> Stepping into another's world as she or he experiences it means that a leader must elicit the information needed to picture oneself in that person's situation.<sup>275</sup> Using our imagination can help supplement our understanding of another's outlook, and tapping into our own similarly-lived experiences and feelings can help render the imaginative aspect more concrete.<sup>276</sup>

Granted, attempting to empathize with others may lead us to inaccurately or incompletely comprehend another's situation and that person's needs.<sup>277</sup> To minimize this risk, it is important to ask questions and check our understanding as we go.<sup>278</sup> There is value in striving to have a deeper understanding of others and their realities even if perfect or full understanding may be unattainable.<sup>279</sup> People respond well when they know we are making a genuine effort to empathize with them, apart from whether we are able to empathize with them completely, for the "struggle to understand" is a powerful form of communicating

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270. See Hamilton, *supra* note 89, at 385 (describing empathy as a key aspect of servant leadership, and describing it as the "imaginative projection of one's own consciousness to stand in the shoes of another human being"); STONE, PATTON & HEEN, *supra* note 84, at 37 (explaining that by being curious and asking for information, we can come to understand another person's story and how that person sees things).

271. See STONE, PATTON & HEEN, *supra* note 84, at 167–68 (emphasizing the importance of authentic listening).

272. See *id.* at 168.

273. See *id.* at 166–67 (explaining how listening to others helps them listen to you).

274. See *id.* at 16–19 (describing how we ought to revise our assumptions by turning a difficult conversation into a "learning conversation").

275. See Keohane, *supra* note 233, at 710 (discussing the importance of judgment in leadership and citing Hannah Arendt's point that judgment "involves the use of 'imagination' and 'enlarged thought,' being able to put oneself into the situation of someone else").

276. See Henderson, *supra* note 235, at 1581.

277. See Goodman, *supra* note 41, at 669–70 (quoting Stephanie Wildman, who was trying to find a way to help her white students understand what it is like to endure racial harassment: "Racial oppression is unique. Comparing oppressions may lead to a false sense of understanding").

278. See Henderson, *supra* note 235, at 1651 (noting that "empathic understanding takes practice and work" and that "[p]art of that practice can be accomplished in the form of questioning whether the received message is the correct one or asking for clarification").

279. See *id.* at 1585.

and connecting.<sup>280</sup>

Since empathy includes an affective aspect, the ability to act empathically requires that we acknowledge our own emotions, as well as how our feelings affect our perceptions of others and how our emotions affect the way in which we come across to others.<sup>281</sup> In other words, engaging in empathetic leading involves reflection and action.<sup>282</sup> "Reflection" means looking inward to understand our mental and emotional tendencies in exercising leadership.<sup>283</sup> As leadership scholar and psychiatrist Ronald Heifetz insightfully explains:

To interpret events, a person who leads needs to understand his own ways of processing and distorting what he hears. To sustain the stresses of leadership, he needs to know enough about his own biases to compensate for them. If he reacts automatically to reject advice when it is given in a way that appears condescending, for example, he needs to become sufficiently acquainted with that reflex [so] that he can listen and respond flexibly, according to the needs of the situation. Compensation requires the inner discipline to step back and test the accuracy of one's own perceptions and the appropriateness of one's reaction. Listening is a trial-and-error process of making an interpretation, seeing where it falls short, and revising it. To listen, one has to live with doubt.<sup>284</sup>

To lead well in empathic fashion, leaders have to step out of their leadership role from time to time to see the larger situation from the vantage point of others.<sup>285</sup> This is the practice of taking in one's surroundings, using a wide visual field, to re-route the institution's direction if necessary and to see whether the pathway is leading to the desired end place.<sup>286</sup> Being able to step back from the situation with some level of objectivity is necessary to have a broad view of the problem and maintain self-preservation in what can become an all-consuming leadership role.<sup>287</sup>

In exercising empathy, leaders should also reflect upon the actions of others and seek to understand what motivates them to act in certain ways. When necessary to make quick decisions, leaders, of course, will not have the luxury of spending much time on input-gathering and deliberation.<sup>288</sup> But decision-making nearly always requires some amount of information and some degree of consideration, and the needed information can be gained by routinely checking in with people and hearing what they have to offer.<sup>289</sup> For high-stake decisions,

280. STONE, PATTON & HEEN, *supra* note 84, at 183–84 (discussing empathy as a "journey" rather than a "destination").

281. See Salisbury, *supra* note 236, at 38.

282. See HEIFETZ, *supra* note 81, at 252.

283. See Salisbury, *supra* note 236, at 38.

284. HEIFETZ, *supra* note 81, at 271.

285. *Id.* at 252–53.

286. See Keohane, *supra* note 233, at 711, 718.

287. See *id.* at 716. To keep alive one's appetite and energy for the issues, maintaining some distance may at times be necessary. See *id.*

288. See Bruce Patton, Michele Gravelle & Scott Peppet, *Enlightened Power Through Difficult Conversations*, in ENLIGHTENED POWER: HOW WOMEN ARE TRANSFORMING THE PRACTICE OF LEADERSHIP 267, 268 (Linda Coughlin, Ellen Wingard & Keith Hollihan eds., 2005).

289. See Tracey Warson, *An Unwavering Stand for Results: A Leader's Perspective*, in ENLIGHTENED POWER: HOW WOMEN ARE TRANSFORMING THE PRACTICE OF LEADERSHIP 339, 343 (Linda Coughlin,

it becomes even more crucial for leaders to understand the issue from various angles as well as how the decision affects different segments of the organizational membership.

Organizations can concretely work toward creating a culture of empathy by making emotional intelligence a part of the selection process, along with performance assessments, for organizational leaders and members.<sup>290</sup> Some medical schools, for instance, have begun to screen for interpersonal and listening skills when selecting applicants for admission, recognizing the critical need for such skills in the increasingly team-oriented medical field.<sup>291</sup>

Leading with empathy, furthermore, must be seen as a process—a process of understanding the needs and visions of the people leaders are trying to serve, organize, and direct.<sup>292</sup> Developing one's capacity for empathy is urgently important to effectively lead institutions made up of members with different worldviews. While demonstrating empathy to understand others will not necessarily eliminate disagreements or invalidate strongly held views, exercising empathy nonetheless will provide additional and different information on which leaders can reassess their perspectives.<sup>293</sup> By using an empathic approach and acknowledging people's divergent outlooks as "and" rather than "either/or" perspectives, leaders can guide the conversation in a way that promotes a sense of fairness and honesty in understanding and resolving difficult issues.<sup>294</sup>

## B. Leadership Scenarios

To illustrate how leaders can exercise greater empathy in various situations, the scenarios below provide contrasting leadership responses to problems of inequality and exclusion.

### i. Leading With Insufficient Empathy: Racial Inequality in the Work Setting

Consider the following delicate work situation, made worse by the leadership's response. At a newspaper company, black and Hispanic reporters upset about the lack of input by people of color at the editor level announced they would arrange a boycott if the paper continued to ignore this problem.<sup>295</sup> To figure out how to respond, the paper's executive editors gathered at a private session without asking any minority staff members to join.<sup>296</sup> Upon learning of this meeting, the reporters felt further insulted, taking it as another message from the

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Ellen Wingard & Keith Hollihan eds., 2005).

290. See Salisbury, *supra* note 236, at 41.

291. Screening processes for student admission at certain medical schools now involve mini-interviews with multiple interviewers to assess applicants' social skills. Gardiner Harris, *New for Aspiring Doctors, the People Skills Test*, N.Y. Times, July 10, 2011, at A1, available at <http://www.nytimes.com/2011/07/11/health/policy/11docs.html>.

292. See generally HEIFETZ, *supra* note 81.

293. See STONE, PATTON & HEEN, *supra* note 84, at 43.

294. See *id.* at 146.

295. See *id.* at 52–53 (discussing intergroup dynamics that ignore the impact of our behavior on others).

296. *Id.*

editors that they had no interest in hearing the reporters' viewpoints.<sup>297</sup> Bothered by this accusation, a white editor who attended the meeting attempted to explain, saying that the editors' intention in holding the meeting was not to exclude but rather to discuss how they could include minority voices.<sup>298</sup> But by not attempting to see the situation as the reporters viewed it, the editorial leaders inadvertently further entrenched dominant norms that undermined equal and diverse participation.

It may also be true that the white editors cared strongly about improving race relations at the paper and felt badly that they were being perceived as racially insensitive. To the extent that the reporters' claim of racial exclusion conflicted with the editors' sense of identity as proponents of racial equality, the editors' identity shake-up likely left them feeling unsettled and unstable in dealing with the problem.<sup>299</sup> If the editors become preoccupied with preserving their identity as racially-sensitive leaders given their altruistic intentions, then they will react defensively to complaints that challenge this identity.<sup>300</sup> If, on the other hand, the editors recognize that it is possible to be both racially sensitive and still make mistakes when it comes to race, then they will be more open to hearing the other side's story with a greater deal of empathy.<sup>301</sup>

## ii. Empathetic Leadership in Various Contexts

To see how individuals can demonstrate empathy-infused leadership in various settings involving diverse groups of people, consider the following examples.

### a. Leading in the Classroom to Promote Understanding

A high-school teacher, sensing a disconnect in the classroom, decided to ask her students about their backgrounds and experiences so that they could give voice to the things that were preventing them from focusing on their studies.<sup>302</sup> As a white teacher from a socio-economically privileged background, she discovered she knew very little about the daily lives of her racially diverse students whose worlds largely consisted of gang-related violence, loss, and fear.<sup>303</sup> She began to listen to her students more often, and through this learning process, she

297. *Id.*

298. *Id.* This editor believed that, by making clear the editors' intent in having the meeting, she would allay the reporters' concerns about the decision to hold the closed meeting, but instead she aggravated the situation. Only viewing the problem from the editors' standpoint, she neglected to see that feelings are important in addition to intentions, and that the minority reporters felt left out of the meeting in light of the circumstances leading to the larger dispute. *Id.*

299. *See id.* at 114–21 (explaining how vulnerable identities present an obstacle when raising and discussing difficult issues).

300. *See id.*

301. *See id.*

302. *See* Erin Gruwell, *Aren't We the Dream?*, in *ENLIGHTENED POWER: HOW WOMEN ARE TRANSFORMING THE PRACTICE OF LEADERSHIP* 473, 474–75 (Linda Coughlin, Ellen Wingard & Keith Hollihan eds., 2005) (recounting her experience as a teacher working with high school students in Long Beach, CA).

303. *See id.*

reconsidered her teaching assignments and technique.<sup>304</sup> As a result, she was able to successfully engage her students academically by teaching particular lessons from history that resonated with them and ultimately inspired them to achieve.<sup>305</sup>

b. Leading in the Workplace to Promote Gender Equality

Marta, an associate at a small firm, asks her supervising partner for work time to attend a litigation-related seminar series and to have her seminar expenses covered.<sup>306</sup> The supervising partner is trying to decide whether the small firm can pay for her to attend and also is unsure about Marta's level of dedication to the firm. He is leaning toward declining Marta's request and knows this decision would upset Marta, particularly because he has approved similar requests from some of her male colleagues in the past. Before making a final decision, he decides to talk with Marta to obtain more information about her interest in staying at the firm for the long term and to explain his hesitation. In initiating the conversation, he shares his point of view and why he holds that perspective while also asking Marta open-ended questions so that he may understand her situation and how she views things.<sup>307</sup>

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304. *Id.* at 475–78.

305. *See id.* at 474–76.

306. This example is adapted and revised from a conversation in STONE, PATTON & HEEN, *supra* note 84, at 175–76.

307. Their conversation consists of the following:

Partner: Marta, can you tell me more about your interest in attending this seminar series?

Marta: I heard the seminar is very useful from other attorneys who attended, and I think taking the course will help me in my litigation work.

Partner: As you know, this is a small firm and I am trying to decide whether we can pay for you to attend. Can you tell me, are you interested in staying at this firm for the long term?

Marta: Why yes, I'm totally dedicated to this place. That's why I want to take this seminar series—so that I can obtain additional training and do my job better.

Partner: Can you say more about your interest in staying here? I get the sense that you see this job as a stepping stone to a larger firm, and I'd like to hear more about how you envision your career here.

Marta: To be honest, I'm very surprised to hear you say that. I thought I was demonstrating my strong level of dedication by working late to meet deadlines and performing a lot of assignments well.

Partner: Those things are very important. But sometimes people work hard to build a good record so that they can move on to another job. In my experience, people who want to get to know their colleagues outside of work, and who attend many of the firm's social events, are usually the people who are most interested in staying for a long time. How do you view the socializing aspect of being here?

Marta: That's interesting. I didn't know you measured dedication to the firm that way. I love working with the people here and wish I could attend more of the social events, but with a small child and a spouse who travels a lot for work, I constantly need to juggle my childcare and work schedules. My husband would like to travel less and is trying to arrange that, but for now, it is a challenge to allocate our home responsibilities in a way that would make my schedule outside of work hours more flexible. Even though I can't take part in the social activities as often as others, I see my efforts in assisting other attorneys here on their big cases, and mentoring new associates, as evidence of my dedication to this firm.

Partner: I'm glad you shared this information with me. I have a better understanding now about your situation and how you view things.

By taking a learning approach, the partner is able to test his assumptions about Marta's dedication to the firm in order to decide whether to grant her request. He also learns additional information about her obligations outside of work and how those obligations affect her time after work—a situation that affects many working mothers, as well as employees with other demands on their time. In turn, Marta learns how her supervising partner viewed the question of dedication to the firm and that his decision regarding whether the firm would pay for her attendance apparently turned on that question. If the partner and Marta had not clarified each of their assumptions, Marta likely would have felt that the firm did not value her enough to support her attending the seminar, or perhaps that the firm valued its male associates more than its female associates. Believing this, Marta then may have eventually continued her career elsewhere, ultimately giving the partner reason to think that his belief about her lack of dedication to the firm was correct.

### c. Leading in the Workplace to Promote Inclusion and Participation

Empathetic leadership involves noticing everyday behaviors that have exclusionary effects and redirecting the behavior to create a culture of inclusion in a diverse environment. Another illustration here may help. A seasoned female probation officer attends a meeting focused on preparing an orientation course for new probation officers on how to conduct investigations and produce reports for the court.<sup>308</sup> At the meeting are two fellow probation officers, both male, and as the female officer arrives, both of her coworkers are talking and laughing about a recent football championship game. They do not acknowledge the female officer and continue with their conversation. Their male supervisor, the assistant chief of probation, soon enters the room and the two men begin talking with him about the game. The assistant chief engages briefly in the conversation but notices the female officer's lack of participation as she sits in a different part of the room reviewing notes. He walks over to sit by her and says he is really glad she could attend the meeting and offer her expertise.

The assistant chief begins the meeting by expressing his appreciation for the probation officers' help with the orientation program and lays out the agenda for the meeting. Before proceeding, he checks to see whether the officers have any other agenda items or concerns to discuss. He then asks for their ideas about planning the orientation session. The female officer volunteers first, saying, "I examined the orientation course prepared by Clark County, which was mentioned as a possible model at our last meeting, and I think we should use that. It was well-received by their new officers and seems to also fit our needs and goals." She begins to list the specific highlights of the course used by Clark County, but one of her male coworkers interrupts her and, without addressing her suggestion, pitches a different idea. The other male officer immediately turns to his male colleague to ask follow-up questions. The assistant chief, who has been quietly listening, then speaks up, saying he would like to first discuss the female officer's idea, which sounds promising, and give her a chance to fully explain her proposal. He asks her some questions to see whether the Clark County

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308. This example was adapted and revised from a case study on gender and leadership. See NORTHHOUSE, *supra* note 110, at 320–21.



course is a good one for their department to use, and after she offers some answers, the assistant chief asks the other officers for their views on her proposal. They raise some issues, but after further discussion, they agree that Clark County's approach, with some minor modifications, would work well for their purposes. The group next explores the male officer's suggestion and decides that the first proposal will work best. The assistant chief applauds the female officer for her proposal and asks her to co-lead that segment of the orientation program with him. He thanks everyone for their collaborative effort at the meeting.

As these scenarios show, various forms of inequality will persist unless leaders demonstrate empathy by carefully considering the situations of others, particularly those of diverse members, from where others stand. Leaders must elicit and share information to correct or supplement dominant assumptions as well as take notice of circumstantial factors that may contribute to members' feelings of exclusion.

### C. Communicating With Empathy

To lead with empathy, leaders ought to communicate empathetically. Bringing up or addressing issues of inequality, whether raised by leaders or by members, however, can be very difficult due to traditional power and communication dynamics, the presence of strong feelings, and the potential for misunderstanding. Nonetheless, these issues can neither be ignored nor left unsaid, and it is exactly this potential for miscommunication that makes empathy and openness essential when addressing these concerns.

If we want our leaders to elicit, learn from, and incorporate information from those whose perspectives and experiences differ from their own, then individuals in the organization must be willing to share and listen as well. In beginning the conversation on a challenging or sensitive issue, particularly if previous attempts have been unfruitful, it would help as a practical matter to first explore how to have a productive discussion.<sup>309</sup> This means acknowledging the mutual difficulty in talking about such issues and laying out this concern from a neutral perspective with the goal of finding a better way to communicate that would encourage a learning posture rather than a defensive or closed-off one.<sup>310</sup> For example, let us say a mostly-male academic department is having problems hiring female faculty, but the subject tends to elicit accusatory disagreements at departmental meetings. Rather than sidestep discussion on an issue that will continue to divide the department, the departmental chair or a faculty member could reintroduce the topic by squarely raising the question of how to discuss it.<sup>311</sup>

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309. See STONE, PATTON & HEEN, *supra* note 84, at 159–60 (discussing how to raise and reintroduce sensitive topics).

310. See *id.* at 149–50 (explaining that in every difficult conversation, there is the “Third Story,” which is the view of a keen observer with no stake in the particular problem).

311. The question of how to discuss the issue could be addressed in the following way: “I know that at previous meetings when we have discussed faculty hiring matters and how gender may play a role in who gets an offer, people at times have felt provoked or dismissed. I am not here to blame anyone or to make things awkward. At the same time, I feel this is an important matter to talk about. I’m wondering whether we could have a conversation about how we each tend to respond when discussing this issue, and whether there’s a more constructive approach we can take when laying out

To use another example, let us imagine a white coworker in a company who often comes across as overbearing to many of his minority colleagues, making working with him on team projects difficult. When the head of his division tries to talk with the white coworker on multiple occasions about the grievances, it is clear the coworker does not view his behavior as problematic, and he responds antagonistically each time. At this point, the division head can try re-initiating the topic by discussing how to effectively talk about it.<sup>312</sup>

This is an approach that anyone can use when raising hard-to-discuss matters, regardless of whether the person is in a position of leadership—although leaders should make special effort to model this behavior and draw out needed conversations. Exploring how to discuss difficult issues from a neutral and non-threatening perspective can make it easier for others to engage because this method allows others to help shape how the dialogue ought to best proceed. In addition, for maximum information sharing and learning to take place, an atmosphere of trust and openness must be cultivated such that honest and empathetic communication can travel in both directions between leaders and members.

#### VI. LEADING WITH OTHERS BY EXPANDING THE PRACTICE OF LEADERSHIP

For any leader, important tasks include ensuring the organization runs effectively, conveying the organization's mission and goals, and achieving the organization's goals. But because the work and vision of leaders affect how the organization fares as a whole, leaders must collaborate with others in setting the goals of the organization and share the responsibility of reaching them. In identifying what the institution's objectives should be, deciding how to frame these objectives becomes very important.<sup>313</sup> Issue-framing must take into account whether the organization's expressed goals are at odds with the values held by the stakeholders and, if so, how to lessen the conflicts between these values and the reality of what the institution does.<sup>314</sup> This includes understanding the context of the organization's challenges and objectives, as well as the organization's history and current culture.<sup>315</sup> Deciding how to frame the issues will also depend on what information is known about the issues and the questions that get asked about the issues.<sup>316</sup>

In framing the goals and deciding how to pursue them, leaders ideally will not simply seek to meet members' immediate needs but also aim to motivate

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our concerns?" *See id.* at 159-60 (describing how to talk when revisiting conversations that have not gone well).

312. For example, the division head could say, "I can see that you do not like talking about your approach to team projects and how you come across to some of your colleagues, at least not the way I raise the subject. The difficulty for me is that I feel concerned, and would like to explain why in a helpful way. I don't seem to be having much success communicating with you in the way that I'd like, and I was wondering whether you have any suggestions." *See id.*

313. *See* HEIFETZ, *supra* note 81, at 116-19.

314. *Id.*

315. *See* Keohane, *supra* note 233, at 714.

316. JEFFREY PFEFFER, *MANAGING WITH POWER: POLITICS AND INFLUENCE IN ORGANIZATIONS* 206 (1992).

members to act for the long-term good.<sup>317</sup> In other words, leaders should work with followers to pursue higher goals in addition to necessary goals, such as contributing to the larger societal welfare, and create a sense of unity in this goal-setting process.<sup>318</sup> This vision of leadership differentiates between individuals who want to possess power for their own ends and those who want the opportunity and resources to improve the human condition.<sup>319</sup> The needs of the organization and the wider community, however, can come into conflict: leaders may need to decide between the well-being of the institution and the well-being of certain institutional members (for example, an employer contemplating employee layoffs), and in these cases leaders could seek input from those within the organization for other possible solutions not yet considered.<sup>320</sup> Allowing for broader input from all those whom the decision affects would better prepare organizational members to accept the resolution ultimately reached by the decision-makers. Once the organization's goals have been determined using a participatory process, a leader must be able to clearly express the institution's hopes to members, as well as to the outside world, so that she generates support, positive engagement, and further constructive feedback.<sup>321</sup> Using an empathetic approach, listening to others about their needs and wishes will help a leader speak in a way that reaches members and invigorates them.<sup>322</sup>

Leaders, particularly when in positions of formal authority, inevitably face difficult problems that call for difficult decisions on their part. In seeking solutions to complicated problems that implicate diverse groups of people, leaders must devote increased attention to the process of making decisions rather than singularly focus on the results of those decisions. Core diversity involves a process-oriented approach, calling for integrated problem-solving using organizational members' different cultural competencies. To fully draw upon people's diverse backgrounds and knowledge, leaders must take notice of people's diverse voices and communication styles as they listen.<sup>323</sup> In addition, it is essential for leaders to show that they can sift through the data they receive and ultimately use their informed judgment to make decisions in order to maintain people's confidence in their ability to lead.<sup>324</sup> In fact, members often will want to know how their leaders perceive the problem and the solutions they are considering.<sup>325</sup> To foster open communication from their ends, leaders may want to share their

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317. See HEIFETZ, *supra* note 81, at 21 (referring to "transformational leadership," which seeks to elevate followers to a higher moral level).

318. See GARDNER, *supra* note 108, at 191.

319. See HEIFETZ, *supra* note 81, at 24 (noting that, "If we assume that leadership must not only meet the needs of followers but also must elevate them, we render a different judgment [about different leaders]. Hitler wielded power, but he did not lead. He played to people's basest needs and fears. If he inspired people toward the common good of Germany, it was the good of a truncated and exclusive society feeding off others").

320. See Keohane, *supra* note 233, at 709.

321. See *id.* at 712.

322. See *id.*

323. See *id.*

324. See *id.*

325. Patton, Gravelle & Peppet, *supra* note 288.

initial thoughts while soliciting the perspectives of others.<sup>326</sup>

We typically believe some degree of authority or formal power is needed to lead, and we accordingly look to authority figures for lessons in leadership, consequently overlooking leadership behavior demonstrated by other people.<sup>327</sup> Yet non-traditional leaders can carry the work of leading in smaller but vital ways, such as by speaking up on behalf of a disenfranchised group, by pointing out the need for more information during a time of decision-making, or by mobilizing others in the immediate wake of a disaster.<sup>328</sup> In this sense, leadership can come from unexpected places. Accordingly, we should aim to broaden the range of individuals who lead by viewing leadership as an activity or a practice rather than as something performed only by a select few or only when one has the authority to lead.<sup>329</sup> Top-level leaders cannot lead in isolated fashion, requiring them to involve others in the interactive and interdependent task of leading.<sup>330</sup>

Expanding the practice of leadership means expanding people's views of their leadership capabilities and their power to influence such that they see their daily activities as opportunities for exercising leadership. Involving more people in the activity of leading will encourage them to assume greater responsibility in managing difficult problems and in carrying out organizational goals.<sup>331</sup> Because complex organizational dilemmas affect and involve the institutional membership at large, members need to help shoulder the responsibility of dealing with these issues and collectively work toward a solution regardless of whether they are expected to act in an official leadership capacity.<sup>332</sup> It makes sense that organizations can only accomplish what each of their individual members strives to accomplish. Changing the culture or directing the work of an entire organization necessitates effort and motivation by more than just its top leaders. If leadership is seen as an activity separate from the need to have authority or other requirements, then anyone can, and everyone should, engage in the practice of leadership. Furthermore, leaders with authority should ensure that those who engage in informal leadership are protected in their leadership activity.<sup>333</sup> Diverse leaders in positions of authority, who themselves may have experienced a sense of vulnerability while leading, may more readily recognize situations in which informal leaders must be protected.

Widening the circle of those who lead would help diversify the range of people engaged in leadership activity and open doors for them to higher-level leadership. Although not everyone may aspire to positions of formal leadership, informal leadership can occur across the organization at every level.<sup>334</sup> Individu-

326. *Id.*

327. See HEIFETZ, *supra* note 81, at 184–85.

328. *See id.*

329. *See id.* at 20.

330. See Susan Sturm, *Conclusion to Responses: The Architecture of Inclusion: Interdisciplinary Insights on Pursuing Institutional Citizenship*, 30 HARV. J. L. & GENDER 409, 419 (2007) (asserting the importance of using networks for change by distributing leadership among formal and informal leaders).

331. See HEIFETZ, *supra* note 81, at 20 (noting that people who do not view themselves as leaders will avoid responsibility for taking action when the need to do so arises).

332. See GARDNER, *supra* note 108, at 152.

333. HEIFETZ, *supra* note 81, at 147–48.

334. See Goffee & Jones, *supra* note 269, at 67.

als observe and take behavioral cues from others with whom they work and interact—whether these signs come from their supervisors, coworkers, or peers—and each person's conduct influences the way others act. Supporting individual leadership in all corners of the institution will aid in bringing about a collective sense of ownership in achieving the institution's goals and will establish a shared sense of responsibility for the organization's well-being.

This is not to say that official leadership is not needed or that informal leadership satisfies the purpose of formal leadership. Quite the contrary, formal leaders have an understanding of the big-picture issues facing the organization and the relative urgency and complexity of each, whereas informal leaders usually have more detailed information and a better on-the-ground feel for the issues.<sup>335</sup> Moreover, given the larger set of obligations and time demands of high leadership posts, these top positions should be filled by individuals who affirmatively want to lead at those levels.<sup>336</sup> While leaders charged with the greatest responsibility must be willing to lead, they also need to cultivate an environment that expects and encourages others to lead as well.

To prepare more people for leadership, including formal leadership, individuals ought to receive guidance and encouragement to contribute in ways that extend their abilities and extend the organization.<sup>337</sup> Ways to do this include having more people take part in decision-making and enlarging individuals' domains of responsibility.<sup>338</sup> When developing and mentoring others, higher-level or senior members should keep in mind not to over-direct junior members and instead provide them with the space and confidence to develop their own leadership skills and pursue their own visions.<sup>339</sup> Consciously cultivating new and diverse leaders is necessary to recharge an organization consisting of an increasingly diverse membership, and those who put effort toward developing others should be concretely rewarded as meeting an organizational priority.<sup>340</sup>

An imperative part of mentoring and training emerging leaders for empathetic leadership is modeling the desired behavior for others to see and emulate.<sup>341</sup> It is expected that people in recognized leadership roles whose conduct

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335. See HEIFETZ, *supra* note 81, at 207.

336. In seeking these positions, however, individuals should be motivated by something more than merely acquiring power so that they do not become narrowly focused on serving their own ambitions. See Keohane, *supra* note 233, at 716.

337. See GARDNER, *supra* note 108, at 127.

338. See *id.*

339. See Keohane, *supra* note 233, at 708.

340. See GARDNER, *supra* note 108, at 127 (explaining the significance of developing new leaders to recharge an organization and rewarding those who train and mentor emerging talent: "Nothing is more vital to the renewal of an organization than the arrangements by which able people are nurtured and moved into positions where they can make their greatest contribution. In an organization this requires a concern for the growth of the individual that extends from early training through executive development. Given the importance of the process, one might expect organizations to provide special rewards for those executives who are 'people developers,' but it rarely happens. An organization rewards managers for producing, for marketing, for staying within budget, for running a tight ship, but rarely rewards them for developing people").

341. See Salisbury, *supra* note 236, at 41 (recommending that mentors in the workplace should be skilled in coaching others and modeling behavior that promote emotional intelligence); Hamilton, *supra* note 89, at 364 (noting that lawyers in the counseling role can guide their clients by modeling

and interactions are publicly scrutinized will set an example for the rest of the organization.<sup>342</sup> But the need for modeling further applies to all organizational members whose behavior is also observed and felt by others. Indeed, in many ways the behavior of individuals in one's particular part of the organization, with whom one regularly interacts, will most influence one's sense of the organizational culture. Members in every section of the organization who act as examples of how to effectively engage with others therefore can have an impact on their individual working relationships and help shape the broader institutional culture.<sup>343</sup> Having power in a formal sense is not required to make change happen, for change can result from influencing one person at a time.

Recognizing the value of diversity in government and noting that the federal government "has a special obligation to lead by example" as "the Nation's largest employer," President Obama issued an executive order in August 2011 creating a government-wide effort to support diversity and inclusion in the federal workplace.<sup>344</sup> Pursuant to this executive order, a government-wide strategic plan "focusing on workforce diversity, workplace inclusion, and agency accountability and leadership" must be developed and issued within ninety days of the order by the Director of the Office of Personnel Management and the Deputy Director for Management of the Office of Management and Budget, in partnership with the President's Management Council and the Equal Employment Opportunity Commission Chair.<sup>345</sup> The order also calls for all executive departments and agencies to implement the government-wide plan and, within 120 days of the plan's issuance, develop and submit agency-specific strategic plans for "recruiting, hiring, training, developing, advancing, promoting, and retaining a diverse workforce."<sup>346</sup> Using this executive order as a model to further encourage the use of empathy-oriented leadership in meeting diversity goals, organizational heads and boards can require similar types of strategic plans at the organizational and sub-organizational levels to ensure that diverse perspectives are elicited and taken into account when making institutional decisions.

Empathetic leadership encourages empathetic behavior by others and promotes openness to hearing others' points of view as organizational members work together to resolve problems. Leaders who empathize with their organiza-

certain behavior).

342. See Bryant, *Fitting In*, *supra* note 215; Keohane, *supra* note 233, at 717.

343. See STONE, PATTON & HEEN, *supra* note 84, at 280–81.

344. Exec. Order No. 13,583, 76 Fed. Reg. 52847 (Aug. 18, 2011). The order states:

[I]n order to promote the Federal workplace as a model of equal opportunity, diversity, and inclusion, it is hereby ordered as follows:

**Section 1. Policy.** Our Nation derives strength from the diversity of its population and from its commitment to equal opportunity for all. We are at our best when we draw on the talents of all parts of our society, and our greatest accomplishments are achieved when diverse perspectives are brought to bear to overcome our greatest challenges.

A commitment to equal opportunity, diversity, and inclusion is critical for the Federal Government as an employer . . . As the Nation's largest employer, the Federal Government has a special obligation to lead by example. Attaining a diverse, qualified workforce is one of the cornerstones of the merit-based civil service.

*Id.*

345. *Id.*

346. *Id.*

tion's members will encourage members to continue the empathetic cycle of learning.<sup>347</sup> Because organizational members are able to detect anything less than a genuine commitment, behavioral modeling by leaders must spring from a real interest in promoting core diversity and empathy as part of the organizational culture and mission.<sup>348</sup>

## VII. CONCLUSION

The diversity justification affirmed by the Supreme Court in *Grutter* and echoed by many major businesses and employers as amici in the case makes clear that access to diverse perspectives is needed for leadership in our heterogeneous society and institutions. While recognizing the importance of diversity for leadership, the Court and amici nonetheless left unfinished the task of explaining how to ensure that this access to diversity translates into an exchange of views that actually inform what leaders do. Diverse settings create opportunities for information sharing and learning, but such opportunities may not be maximized without effective facilitation and careful understanding. To benefit from the views of diverse organizational members, especially the views of those belonging to historically non-dominant groups, such views have to be actively elicited. Leaders, thus, have a crucial role to play in facilitating the exchange of perspectives in diverse environments, and they must do so to concretely implement *Grutter's* diversity rationale in everyday behavior and in everyday conversation. Encouraging diverse leadership would also help ensure that a range of perspectives are shared at the upper-most levels.

As this Article argues, greater diversity and greater empathy in leadership are needed to diversify the perspectives of those who lead and to better draw out and understand the different views of others. Leaders ought to understand that the value of diversity in an organization lies in learning from and incorporating people's diverse viewpoints on various organizational concerns. To foster this learning process, leaders must know how to effectively elicit the views of others and strive to understand these views from where others stand. By taking an empathetic stance when leading and communicating, institutional leaders will encourage meaningful participation by diverse members and reduce instances of inequality and exclusion. Organizational members also should be encouraged to lead in informal ways and share in the responsibility of leading. As a mutually reinforcing effort, both formal and informal leaders must model an empathetic vision of leadership that reaches all corners of the institution.

It is vital that our leaders learn to develop competency on issues of diversity because, as understood in *Grutter*, the nation's future depends on it.

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347. See Brody, *supra* note 260.

348. See Bartlett, *supra* note 104, at 1970.