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## PUT EVEN MORE WOMEN AND MINORITIES IN CHARGE

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# PUT EVEN MORE WOMEN AND MINORITIES IN CHARGE

*Peter H. Huang\**

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## I. INTRODUCTION

This essay analyzes and offers an interdisciplinary, multidisciplinary, and transdisciplinary analysis of the international successes of many women leaders in responding to COVID-19.<sup>1</sup> Many reasons have been proposed for,<sup>2</sup> and many lessons in crisis leadership<sup>3</sup> have been drawn from,<sup>4</sup> the international success of women leaders.

This essay is based on the keynote speech delivered at the South Carolina Journal of International Law & Business's Fall 2020 Symposium: *International Law in Times of Crisis*. This essay further develops the author's related essay,<sup>5</sup> which analyzes how and why governments should put more women in charge. In doing so, that essay applied such novel disciplinary areas of research to

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<sup>1</sup> Peter H. Huang, *Put More Women in Charge and Other Leadership Lessons from COVID-19*, 15 FIU L. REV. 353 (2021).

<sup>2</sup> See e.g., Louise Champoux-Paillé & Anne-Marie Croteau, *The Reason Why Female Leaders are Excelling at Managing the Coronavirus*, WORLD ECON. FORUM, May 18, 2020, <https://www.weforum.org/agenda/2020/05/why-women-leaders-are-excelling-during-the-coronavirus-pandemic>; Supriya Garikipati & Uma Kambhampati, *Women Leaders Are Better at Fighting the Pandemic*, WORLD ECON. FORUM, July 28, 2020, <https://www.weforum.org/agenda/2020/07/women-leaders-policy-makers-covid19-coronavirus/>.

<sup>3</sup> ERIKA HAYES JAMES & LYNN PERRY WOOTEN, *LEADING UNDER PRESSURE: FROM SURVIVING TO THRIVING BEFORE, DURING, AND AFTER A CRISIS* (2010).

<sup>4</sup> See e.g., Kara Cutruzzula, *6 Things We Can Learn from How Many Women Leaders Have Handled the Pandemic*, IDEAS.TED.COM, Sept. 24, 2020, <https://ideas.ted.com/6-things-we-can-learn-from-how-women-leaders-have-handled-the-pandemic/>.

<sup>5</sup> Huang, *supra* note 1.

leadership scholarship, such as applied mathematician Eugenia Cheng's manifesto to rethink gender based on category theory.<sup>6</sup>

This essay draws on three additional research disciplines. First, this essay draws on sociologist Leitan Zhang's institutional approach to gender diversity and firm performance.<sup>7</sup> Second, this essay draws on cognitive scientist Tali Sharot and legal scholar Cass Sunstein's new theory about preferences regarding information,<sup>8</sup> which this author has already applied to people acquiring or avoiding information about COVID-19,<sup>9</sup> and information about individuals of different ethnicities and races.<sup>10</sup> Third, this essay also

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<sup>6</sup> See generally EUGENIA CHENG, *X + Y: A MATHEMATICIAN'S MANIFESTO FOR RETHINKING GENDER* (2020). See also Eugenia Cheng, *How to Undo Gender Stereotypes in Math—With Math!*, WIRED (Aug. 25, 2020), <https://www.wired.com/story/how-to-undo-gender-stereotypes-in-math-with-math/>; Katy Guest, *x + y by Eugenia Cheng Review – An End to the Gender Wars?*, GUARDIAN (July 22, 2020), <https://www.theguardian.com/books/2020/jul/22/x-y-by-eugenia-cheng-review-an-end-to-the-gender-wars>; Cathey O'Neil, *Want a Better Way to Think About Gender? Use Math*, N.Y. TIMES (Sept. 4, 2020), <https://www.nytimes.com/2020/09/04/books/review/x-y-mathematicians-manifesto-gender-eugenia-cheng.html>; Jillian Tamaki, *To the Mathematician Eugenia Cheng, There's No Gap Between Art and Science*, N.Y. TIMES (Aug. 13, 2020), <https://www.nytimes.com/2020/08/13/books/review/eugenia-cheng-by-the-book-interview.html>.

<sup>7</sup> Leitan Zhang, *An Institutional Approach to Gender Diversity and Firm Performance*, 31 ORG. SCI. 439 (2020). See also Stephen Turban, Dan Wu, & Leitan Zhang, *When Gender Diversity Makes Firms More Productive*, HARV. BUS. REV., Feb. 11, 2019.

<sup>8</sup> Tali Sharot, *Would You Want to Know?*, NATURE HUM. BEHAV. BLOG (Jan. 19, 2020), <https://socialsciences.nature.com/posts/58487-would-you-want-to-know>; Tali Sharot & Cass R. Sunstein, *How People Decide What They Want to Know*, 4 NATURE HUM. BEHAV. 14 (2020).

<sup>9</sup> Peter H. Huang, *Pandemic Emotions: The Good, the Bad, and the Unconscious -- Implications for Public Health, Financial Economics, Law, and Leadership*, 16 NW. J.L. & SOC. POL'Y (forthcoming 2021).

<sup>10</sup> Peter H. Huang, *Anti-Asian Racism, Anti-Asian American Racism, COVID-19, Humor, and DEI*, U. Colo. L. Legal Stud. Res. Paper No. 20-41 (2021),

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3664356](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3664356).

draws on psychologists Jose Chin Yong, Norman P. Li, and Satoshi Kanazawa's recent theory of people being not-so-much rational as rationalizing, and evolved to be coherence-seeking and fiction-making.<sup>11</sup>

This introduction section concludes by observing the debate about whether men or women leaders have been more successful in responding to COVID-19 is itself far from being resolved. Two economists reported<sup>12</sup> finding that countries led by women fared better than countries led by men in terms of "COVID-cases and deaths in the first quarter of the pandemic."<sup>13</sup> In support of their findings, these researchers cited existing research finding that women are more risk averse than men to loss of human lives, while men are more risk averse than women to economic losses;<sup>14</sup> clear, decisive, and empathetic communication style;<sup>15</sup> and "the proactive and coordinated policy responses" women leaders adopted in response to COVID-19.<sup>16</sup>

Three other social science researchers wrote a single page response to the above study,<sup>17</sup> making seven critical observations.

<sup>11</sup> Jose C. Yong, Norman P. Li, & Satoshi Kanazawa, *Not So Much Rational but Rationalizing: Humans Evolved as Coherence-Seeking, Fiction-Making Animals*, AM. PSYCHOL. (2020), <http://dx.doi.org/10.1037/amp0000674>.

<sup>12</sup> Supriya Garikipati & Uma Kambhampati, *Are Women Leaders Really Doing Better on Coronavirus? The Data Backs it Up*, CONVERSATION (Aug. 28, 2020, 6:37 AM), <https://theconversation.com/are-women-leaders-really-doing-better-on-coronavirus-the-data-backs-it-up-144809>.

<sup>13</sup> Supriya Garikipati & Uma Kambhampati, *Leading the Fight Against the Pandemic: Does Gender 'Really' Matter?* (June 3, 2020) (unpublished manuscript),

(<https://ssrn.com/abstract=3617953>).

<sup>14</sup> *Id.* at 1.

<sup>15</sup> *Id.* at 12-13.

<sup>16</sup> *Id.* at 1, 14-15.

<sup>17</sup> Torsten J. Selck, Ramona Amintavakoli, & Julia Bök, *Power to the Women? A Reply to Garikipati and Kambhampa* (Sept. 12, 2020) (unpublished manuscript),

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3694495](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3694495).

First, because COVID-19 is ongoing, “the authors should have followed common practice and compared numbers after the 50th death per country.”<sup>18</sup> Second, to make comparisons among countries meaningful, relative per capita numbers of COVID-19 cases and deaths should be utilized instead of absolute numbers.<sup>19</sup> Third, the research in question reports the 19 countries led by women are less populated than the remainder of the sample of 194 countries, which implies that comparing absolute rather than relative deaths severely biases against more populated, male-led countries.<sup>20</sup> Fourth, without explanation of the selection process, the analysis focusing on COVID-19 deaths only compares 167 countries instead of the dataset of 194 countries mentioned in the researchers’ abstract.<sup>21</sup> Fifth, the researchers exclude the United States, Germany, and New Zealand from their analysis “for the unconvincing reason that these countries have been in the ‘COVID-spotlight.’”<sup>22</sup> Sixth, the research only tests for these control variables: “income per capita, population size, degree of urbanization and percentage of population over 65 years of age,”<sup>23</sup> and not “for the quality of public services, particularly the quality of the health care system, including the number of medical personnel per capita or the number intensive care beds per capita. Diagnostic tests are non-existent.”<sup>24</sup> Seventh, the researchers argue that the Poisson regression should have been applied instead of an ordinary least squares regression because COVID-19 deaths are considered count data.<sup>25</sup>

Another study found that countries with women leaders did not apply as extensive shutdown measures or health responses over time

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

in response to COVID-19 when compared to men leaders.<sup>26</sup> That study did find that female-led OECD (defined below) countries enacted maximum shutdown measures significantly earlier than male-led OECD countries.<sup>27</sup> The Organization for Economic Cooperation and Development (OECD) was founded in 1961 as an intergovernmental economic organization of 37 member countries to promote economic progress and world trade.<sup>28</sup>

A recent literature review of evidence from developed and developing countries speculated on why men have greater incidence, severity, and mortality rate of COVID-19 than women.<sup>29</sup> The differential response to COVID-19 between genders could be due to women having enhanced T-cell mediated immune responses and low androgen levels.<sup>30</sup> Another possible rationale is the increased risk of thromboembolic complications of COVID-19 infection in men, which is a major cause of morbidity and mortality.<sup>31</sup> A final potential explanation is the behavioral differences between sexes, such as men smoking more than women<sup>32</sup> and women being more likely than men to practice physical distancing due to concerns over the safety of their families and friends.<sup>33</sup>

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<sup>26</sup>Mette Marie Staehr Harder & Christoffer Bugge Harder, *COVID-19 Response Strategies: Differences Between Strategies of Male and Female Heads of Governments?* (July 15, 2020) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3679608](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3679608).

<sup>27</sup>*Id.*

<sup>28</sup>About OECD, <http://www.oecd.org/about/members-and-partners/>.

<sup>29</sup>Naveera Khan et al., *Gender Differences in COVID-19: A Narrative Review* (Aug. 31, 2020) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3687984](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3687984).

<sup>30</sup>*Id.*

<sup>31</sup>*Id.*

<sup>32</sup>*Id.*

<sup>33</sup>*Id.*; Jewel Gausman & Ana Langer, *Sex and Gender Disparities in the COVID-19 Pandemic*, 29 J. WOMEN'S HEALTH 465 (2020).

### A. GENDER UNBALANCED LEADERSHIP

Gender discrimination is pervasive in academia, as leadership remains gender unbalanced. The CEO of 20-first, a gender-balance consulting firm, Avivah Wittenberg-Cox, suggested in a TEDx talk that companies should learn to be gender bilingual, instead of being gender blind.<sup>34</sup> It is, sadly, unsurprising that people of all genders do not condemn the gender imbalance of leadership as problematic. It is a sad and unfortunate commentary about our current world that many women internationally, and even in the United States, still continue to face all these well-documented structural barriers and pervasive systemic obstacles to achieving and sustaining gender balanced leadership: (1) “admin”; (2) “emotional taxes”; (3) “gender jaws”; (4) “glass ceilings” (and relatedly, bamboo ceilings, canvas ceilings, and defensive glass ceilings); (5) “glass cliffs”; (6) “golden skirts”; and (7) “self-sidelining”. These phrases are defined and explained next.

Elizabeth F. Emens,<sup>35</sup> an Isidor and Seville Sulzbacher Professor of Law at Columbia Law School,<sup>36</sup> cleverly introduced the word “admin” to describe “the office type work—both managerial and secretarial—that it takes to run a life or a household.”<sup>37</sup> Examples of admin include: attending to benefits, medical, and insurance details; comparison shopping online; filling out forms; scheduling appointments; paying bills; planning births, funerals, and weddings; sending mail and packages; and writing to do lists. Emens notes that admin is often invisible,

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<sup>34</sup> Avivah Wittenberg-Cox, *Gender Balance: A Strategic Imperative for Business?*, Apr. 30, 2019, TEDxHultLondon, YOUTUBE, <https://youtu.be/YVUAPzcGmxA>; see also AVIVAH WITTENBERG-COX & ALISON MAITLAND, WHY WOMEN MEAN BUSINESS: UNDERSTANDING THE EMERGENCE OF OUR NEXT ECONOMIC REVOLUTION (2009); AVIVAH WITTENBERG-COX, HOW WOMEN MEAN BUSINESS: A STEP BY STEP GUIDE TO PROFITING FROM GENDER BALANCED BUSINESS (2010).

<sup>35</sup> Elizabeth F. Emens, <https://www.elizabthemens.com/about>.

<sup>36</sup> Elizabeth F. Emens, Isidor and Seville Sulzbacher Professor of Law, Faculty page, <https://www.law.columbia.edu/faculty/elizabeth-f-emens>.

<sup>37</sup> Elizabeth F. Emens, *Admin*, 103 GEO. 1409, 1409 (2015); see also generally Elizabeth Emens, LIFE ADMIN: HOW I LEARNED TO DO LESS, DO BETTER, AND LIVE MORE (2019).

disproportionately burdensome for women, tends to be sticky—meaning it stays upon who it lands—and is undervalued.<sup>38</sup> Because admin requires attention, cognitive resources, and time, admin is costly and steals focus.<sup>39</sup> Admin also creates what Emens terms a “parallel shift” of work, done in tandem alongside play, sleep, and “9 to 5” work.<sup>40</sup> Admin is a cost many women leaders face that men leaders do not because women have traditionally taken care of their children and their parents.

The phrase “emotional tax” refers to “the state of being on guard—consciously preparing to deal with potential bias or discrimination.”<sup>41</sup> Almost 60% of the women and men of color in a survey by the global non-profit organization, Catalyst,<sup>42</sup> reported facing an emotional tax from feeling having to be ready to face and respond to gender and racial bias. Emotional taxes are inefficient because they distort actual or potential leader’s attention, energy, and time away from leadership decision-making or seeking leadership roles. Emotional taxes are also inequitable because they are borne by women and men of color.

The phrase “gender jaws” describes the shape of a typical graph with percentages of men and women (on the vertical axis from 0 to 100 percent) in a company and corporate seniority (on the horizontal axis from entry level to junior, management, senior management, and C-suite).<sup>43</sup> That graph often starts out balanced at 50/50 or already unbalanced at 70/30 at recruitment and then diverges to

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<sup>38</sup> Emens, *supra* note 37, at 1409.

<sup>39</sup> *Id.* at 1448.

<sup>40</sup> *Id.* at 1414.

<sup>41</sup> Dnika J. Travis & Jennifer Thorpe-Moscon, *Day-to-Day Experiences of Emotional Tax Among Women and Men of Color in the Workplace*, Catalyst Research Report 2, 4 (Feb. 15, 2018) <https://www.catalyst.org/research/day-to-day-experiences-of-emotional-tax-among-women-and-men-of-color-in-the-workplace/>.

<sup>42</sup> *What We Do*, Catalyst, <https://www.catalyst.org/what-we-do/>.

<sup>43</sup> Avivah Wittenberg-Cox, *Managing Your Company’s Gender Jaws*, FORBES (June 5, 2018), <https://www.forbes.com/sites/avivahwittenbergcox/2018/06/05/managing-your-companys-gender-jaws/?sh=5fbc700795b9>.

80/20, 90/10, or 95/5 due to unbalanced gender promotion, retention, or ‘stickiness’ in middle management.<sup>44</sup>

The phrase “glass ceiling” is a familiar metaphor that refers to:

an artificial barrier that prevents women and minorities from being promoted to managerial- and executive-level positions within an organization. The phrase glass ceiling is used to describe the difficulties faced by women when trying to move to higher roles in a male-dominated hierarchy. The barriers are most often unwritten, meaning that women are more likely to be restricted from advancing through accepted norms and implicit biases rather than defined corporate policies.<sup>45</sup>

Five recent psychological studies “challenge[] the assumption that the presence of women in leadership positions will automatically “break the glass ceiling” for other women” and suggest that “overcoming gender imbalances in leadership may not be as simple as targeted placement, and that having women in high places should not induce complacency about the elimination of gender bias.”<sup>46</sup> Jane Hyun coined the similar phrase “bamboo ceiling” to describe the barriers many Asian Americans face in terms of racism and stereotypes in professional and leadership roles.<sup>47</sup>

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<sup>44</sup> *Id.*

<sup>45</sup> Julia Kagan, *Glass Ceiling*, INVESTOPEDIA (updated Oct. 24, 2019), <https://www.investopedia.com/terms/g/glass-ceiling.asp>.

<sup>46</sup> Francesca Manzi & Madeline E. Heilman, *Breaking the Glass Ceiling: For One and All?*, J. PERS. & SOC. PSYCHOL. 1 (2020).

<sup>47</sup> JANE HYUN, *BREAKING THE BAMBOO CEILING: CAREER STRATEGIES FOR ASIANS* (2006); *see also* Jennifer L. Berdahl & Ji-A Min, *Prescriptive Stereotypes and Workplace Consequences for East Asians in North America*, 18 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL. 141 (2012) (finding in experimental studies that East Asians who do not conform to racial stereotypes of being meek followers are more likely to be disliked by their co-workers); Anne Fisher, *Piercing the ‘Bamboo Ceiling,’* CNN MONEY, Aug. 8, 2005,

The related phrase “canvas ceiling” is a metaphor for “a systemic, multilevel barrier to refugee workforce integration and professional advancement.”<sup>48</sup> Recently, Georgia State University College of Law professor Anthony Michael Kreis<sup>49</sup> introduced the intriguing phrase “defensive glass ceiling”<sup>50</sup> to describe practices enacted in response to the #MeToo movement. Kreis also describes fears of “unsubstantiated sexual harassment claims, spousal jealousy, the inability to exercise self-control, or pressure from outside forces like insurers”<sup>51</sup> that “isolate women and stunt their career trajectories while perpetuating sex stereotypes.”<sup>52</sup>

The phrase “glass cliff” describes “a phenomenon wherein women tend to be promoted to positions of power during times of crises, when failure is more likely.”<sup>53</sup> Professors Michelle K. Ryan and Alexander Haslam of the University of Exeter, United Kingdom

[https://money.cnn.com/2005/08/08/news/economy/annie/fortune\\_annie080805/index.htm](https://money.cnn.com/2005/08/08/news/economy/annie/fortune_annie080805/index.htm); Anne Fisher, *Is There a ‘Bamboo Ceiling’ at U.S. Companies?* CNN MONEY, Oct. 7, 2011, <http://management.fortune.cnn.com/2011/10/07/asian-americans-promotion-us-companies/>; Michele Norris, *Looking at the ‘Bamboo Ceiling,’* NPR, July 5, 2011, <https://www.npr.org/2011/07/05/137631005/looking-at-the-bamboo-ceiling>; Hans Villarica, *Study of the Day: There’s a ‘Bamboo Ceiling’ for Would-Be Asian Leaders*, ATLANTIC, May 15, 2012, <https://www.theatlantic.com/health/archive/2012/05/study-of-the-day-theres-a-bamboo-ceiling-for-would-be-asian-leaders/257135/>.

<sup>48</sup> Eun Su Lee et al., *Unveiling the Canvas Ceiling: A Multidisciplinary Literature Review President of the United States of Refugee Employment and Workforce Integration*, 22 INT’L J. MGMT. REVS. 193 (2020).

<sup>49</sup> Anthony Michael Kreis, Georgia State University College of Law, faculty page, <https://law.gsu.edu/profile/anthony-kreis/>.

<sup>50</sup> Anthony Michael Kreis, *Defensive Glass Ceilings*, 88 GEO. WASH. L. REV. 147, 147 (2020).

<sup>51</sup> *Id.* at 151.

<sup>52</sup> *Id.* at 152.

<sup>53</sup> Julia Kagan, *Glass Cliff*, INVESTOPEDIA, updated Sept. 20, 2019, <https://www.investopedia.com/terms/g/glass-cliff.asp>; Susanna Whawell, *Women are Shattering the Glass Ceiling Only to Fall Off the Glass Cliff*, CONVERSATION, Apr. 12, 2018, <https://theconversation.com/women-are-shattering-the-glass-ceiling-only-to-fall-off-the-glass-cliff-94071>.

coined the phrase in their study of Financial Times Stock Exchange (FTSE) 100 companies.<sup>54</sup> Ryan and Haslam's archival and experimental research documented that once women break through the glass ceiling, their experiences differ from their men counterparts because women are more likely to become leaders in precarious times with a higher risk of failure—either because they are appointed to lead organizations in crisis or because they are not provided with the necessary resources and support for success.<sup>55</sup> An experimental study provides evidence of a glass cliff in the legal profession because law students were found to be more likely to assign a high-risk case to a female lead counsel rather than a male one.<sup>56</sup>

The phrase “golden skirts” refers to an elite group of highly sought-after women who serve as independent directors on multiple corporate boards.<sup>57</sup> The nickname and phenomenon of golden skirts arose from Norway's mandate in 2003 that corporate boards have to be comprised of 40% women.<sup>58</sup> In the United States, the state of

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<sup>54</sup> Michelle K. Ryan & S. Alexander Haslam, *The Glass Cliff: Evidence that Women are Over-Represented in Precarious Leadership Positions*, 16 BRIT. J. MGMT. 81 (2005).

<sup>55</sup> *Id.*

<sup>56</sup> Julie S. Ashby, Michelle K. Ryan & S. Alexander Haslam, *Legal Work and the Glass Cliff: Evidence that Women are Preferentially Selected to Lead Problematic Cases*, 13 WM. & MARY J. WOMEN & L. 775 (2007).

<sup>57</sup> Katica Roy, *Setting Up Women to Fail: The Glass Ceiling, Glass Cliff, and Golden Skirt*, MEDIUM (Apr. 26, 2018), <https://katicaroy.medium.com/setting-up-women-to-fail-the-glass-ceiling-glass-cliff-and-golden-skirt-50681f3e237>; Cathrine Seierstad & Tore Opsahl, *For the few not the many? The effects of affirmative action on presence, prominence, and social capital of women directors in Norway*, 27 SCAN. J. MGMT. 44 (2011).

<sup>58</sup> Morten Huse & Cathrine Seierstad, *Getting Women on to Corporate Boards: Consequences of the Norwegian Gender Balance Law*, EUR. FIN. REV. (Dec. 28, 2013), <https://www.europeanfinancialreview.com/getting-women-on-to-corporate-boards-consequences-of-the-norwegian-gender-balance-law/>; Catherine Seierstad et al., *Broadening of the Field of Corporate Boards and Legitimate Capitals: An Investigation into the Use*

California has enacted similar laws mandating gender<sup>59</sup> and minority<sup>60</sup> diversity of representation on boards of companies whose headquarters are located in California. The Nasdaq Stock

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*of Gender Quotas in Corporate Boards in Norway*, WORK EMP. & SOC'Y (2020); Mariateresa Torchia et al., *Women Directors on Corporate Boards: From Tokenism to Critical Mass*, 102 J. BUS. ETHICS 299 (2012); Simona Comi et al., *Where Women Make A Difference: Gender Quotas and Firm Performance in Three European Countries*, 73 INDUST. AND LAB. REL. REV. 768 (2020); see also Nicola Clark, *Getting Women Into the Boardrooms*, by Law, N.Y. TIMES (Jan. 27, 2010), <https://www.nytimes.com/2010/01/28/world/europe/28iht-quota.html>; see generally GETTING WOMEN ON TO CORPORATE BOARDS: A SNOWBALL STARTING IN NORWAY (Silke Machold et al. eds., 2015).

<sup>59</sup> Cal. SB-826 Corporations: Board of Directors (2018), [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=20172\\_0180SB826](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=20172_0180SB826); Cal. Corp. Code § 301.3 (West 1975); Rachel Feintzeig, *California Law Spurs Companies to Add Female Directors*, WALL ST. J., Dec. 18, 2019; Iris Hentze, *Gender Diversity on Corporate Boards: What Will 2019 Bring?*, NAT'L CONF. ST. LEGIS. (Jan. 4, 2019),

<https://www.ncsl.org/blog/2019/01/04/gender-diversity-on-corporate-boards-what-will-2019-bring.aspx>; Richard Vernon Smith, *California Mandates Female Representation On Public Company Boards*, FORBES (Oct. 1, 2018),

<https://www.forbes.com/sites/allbusiness/2018/10/01/california-mandates-female-representation-public-company-boards/?sh=548e21e71775>.

<sup>60</sup> Cal. AB-979 Corporations: Boards of Directors: Underrepresented Communities, (2020), [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=20192\\_0200AB979](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=20192_0200AB979); David A. Bell et al., *New Law Requires Diversity on Boards of California-Based Companies*, HARV. L. SCH. F. CORP. GOVERNANCE (Oct. 10, 2020),

<https://corpgov.law.harvard.edu/2020/10/10/new-law-requires-diversity-on-boards-of-california-based-companies/>; Michael Peregrine, *California Ushers In A Bold New Era Of Board Diversity*, FORBES (Oct. 2, 2020),

<https://www.forbes.com/sites/michaelperegrine/2020/10/02/california-ushers-in-a-bold-new-era-of-board-diversity/?sh=1b32ea3f3955>; Anne Steele, *California Rolls Out Diversity Quotas for Corporate Boards*, WALL ST. J., Updated Oct. 1, 2020.

Market, also known as Nasdaq or NASDAQ<sup>61</sup>, recently asked the Securities Exchange Commission for approval to adopt a rule that requires the 3,249 companies listed on its main U.S. stock exchange to have at least one woman and one “diverse” director and report data on board diversity.<sup>62</sup> Goldman Sachs CEO David Solomon announced that, effective July 1, 2020, it will only underwrite Initial Public Offerings (IPOs) in America and Europe for private companies that have at least one diverse board member.<sup>63</sup>

Finally, law professor Leslie P. Culver,<sup>64</sup> while attending the Fulbright U.S. Scholars Program at the University of the Free State (UFS) in South Africa during the 2020-21 academic year,<sup>65</sup> coined the phrase “self-sidelining”<sup>66</sup> to describe when women “consciously or subconsciously discipline themselves to forgo their professional advancement.”<sup>67</sup>

The paucity of women leaders is due partially to so many incompetent men becoming and remaining leaders. Why do so many companies, organizations, and societies choose incompetent men to be their leaders? Business psychology professor Tomas Chamorro-Premuzic offers these five reasons for why humble

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<sup>61</sup> NASDAQ is an American stock exchange ranked second on the list of stock exchanges by market capitalization of shares traded, behind only the New York Stock Exchange.

<sup>62</sup> Andrew Ross et al., *Nasdaq Pushes for Diversity in the Boardroom*, N.Y. TIMES (Dec. 1, 2020), <https://www.nytimes.com/2020/12/01/business/dealbook/nasdaq-diversity-boards.html>.

<sup>63</sup> David Salomon, *Diverse Leadership Is Needed More Than Ever – Here’s What We’re Doing*, Feb. 4, 2020, <https://www.goldmansachs.com/what-we-do/investing-and-lending/launch-with-gs/pages/commitment-to-diversity.html>.

<sup>64</sup> Leslie P. Culver, <https://lesliepatrice.com/>.

<sup>65</sup> Leslie P. Culver, <https://www.law.uci.edu/news/in-the-news/2020/culver-fulbright.html>.

<sup>66</sup> Leslie P. Culver, *The Rise of Self-Sidelining*, 39 WOMEN’S L. RPTR. 173 (2018).

<sup>67</sup> *Id.* at 173.

leaders are rare:<sup>68</sup> (1) we mistake confidence for competence, (2) we are seduced by charisma,<sup>69</sup> (3) we are too lazy to evaluate talent, (4) we conflate arrogance with strength, and (5) we perceive humility to be a feminine attribute. Chamorro-Premuzic relatedly provides three reasons for why there are so many incompetent male leaders: (1) we confuse confidence for competence, (2) we find charisma seductive, and (3) we are drawn to narcissists.<sup>70</sup> A number of male leaders have been particularly bad and spectacularly incompetent at responding to COVID-19 due to their abuse of civil rights (more specifically, women's rights), arrogance, authoritarianism, contentious relationships with scientific experts and the media, corruption, incivility, lack of empathy, lawlessness, military mindset, overconfidence, poverty of imagination, and privileging of selfishness over the public interest.<sup>71</sup>

A sequence of experiments with over 4,000 people found “that women evaluate their performance less favorably than equally

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<sup>68</sup> Tomas Chamorro-Premuzic, *Why Humble Leaders Are Rare*, FORBES (June 29, 2020), <https://www.forbes.com/sites/tomaspremuzic/2020/06/29/why-humble-leaders-are-rare/?sh=5eaf6860649b>.

<sup>69</sup> Mike Albo, *The Dark Side of Charisma*, IDEAS.TED.COM (Oct. 10, 2017), <https://ideas.ted.com/the-dark-side-of-charisma/>.

<sup>70</sup> TOMAS CHAMORRO-PREMUZIC, WHY DO SO MANY INCOMPETENT MEN BECOME LEADERS (AND HOW TO FIX IT) (2019); Tomas Chamorro-Premuzic, *Why Do So Many Incompetent Men Become Leaders? And What Can We Do About It?*, IDEAS.TED.COM, Jan. 9, 2020, <https://ideas.ted.com/why-do-so-many-incompetent-men-become-leaders-and-what-can-we-do-about-it/>; Tomas Chamorro-Premuzic, *Why Do So Many Incompetent Men Become Leaders?*, TEDxUniversityofNevada, YOUTUBE, Mar. 26, 2019,

<https://youtu.be/zeAEFEXvcBg>; Tomas Chamorro-Premuzic, *How to Spot an Incompetent Leader*, HARV. BUS. REV., Mar. 11, 2020, <https://hbr.org/2020/03/how-to-spot-an-incompetent-leader>.

<sup>71</sup> Simon Tisdall, *From Trump to Erdoğan, Men Who Behave Badly Make the Worst Leaders in a Pandemic*, GUARDIAN, Apr. 26, 2020,

<https://www.theguardian.com/commentisfree/2020/apr/26/trump-to-erdogan-men-who-behave-badly-make-worst-leaders-pandemic-covid-19>.

performing men.”<sup>72</sup> This documented gender gap in self-evaluations persists even after eliminating any gender gap in performance beliefs,<sup>73</sup> and eliminating any financial incentives to distort self-evaluations.<sup>74</sup> The gender gap in self-evaluations is robust with respect to participants knowing the average self-evaluations of others,<sup>75</sup> and to introducing a chance true performance is revealed.<sup>76</sup> The gender gap disappears if men and women evaluate other people rather than themselves,<sup>77</sup> which suggests that self-evaluations are driving the gender gap.<sup>78</sup> Because self-evaluations about ability and performance feature prominently in annual performance reviews, employment and school applications, and job interviews, a persistent and robust gender gap in self-evaluations explains gender gaps in economic and educational outcomes.<sup>79</sup> Because leaders are often chosen or elected based partly upon prospective leaders’ own self-evaluations, the gender gap in self-evaluations also explains how gender gaps in leadership can start and be sustained.

Mathematician Eugenia Cheng recently wrote a popular trade book advocating rethinking the very concept of gender based on her area of research specialty, category theory. In two video talks, Cheng explains how category theory can be helpful in life<sup>80</sup> to understand the world.<sup>81</sup> In both talks, Cheng abstracts from the

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<sup>72</sup> Christine L. Exley & Judd B. Kessler, *The Gender Gap in Self-Promotion*, Nat’l. Bur. Econ. Res. Working Paper No. 26345, June 27, 2020, <https://www.nber.org/papers/w26345>.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Lambda World, *Eugenia Cheng, Category Theory in Life*, YOUTUBE (Nov. 3, 2017), <https://youtu.be/ho7oagHeqNc>.

<sup>81</sup> TEDx Talks, *Eugenia Cheng, How Abstract Mathematics Can Help Us Understand the World*, YOUTUBE (July 19, 2018), [https://youtu.be/pUN\\_DP1pQtE](https://youtu.be/pUN_DP1pQtE).

prime factorization of a composite number to illustrate the concepts of privilege from gender, race, and sexual orientation.

Category theory is a general mathematical theory of structures and of systems of structure. In 1945, two mathematicians, Samuel Eilenberg and Saunders MacLane, introduced the concept of categories.<sup>82</sup> Category theory has evolved to have a central position in modern mathematics, theoretical computer science, and quantum physics. Category theory offers a powerful language, or conceptual framework, to visualize universal components of a family of structures of a particular kind and how structures of different kinds are interrelated. Category theory is potentially a powerful formal tool for analyzing such concepts as truth, system, and space. Category theory also provides a different theoretical conception of sets and, as such, a possible alternative to standard set-theoretical foundations for mathematics. In doing so, category theory raises issues about ontology and epistemology.

Cheng advocates moving away from a set-theoretic way of thinking and examining intrinsic traits (for example, what do all men or all women have in common, to say nothing of nonbinary or gender-fluid people) and toward a category-theoretic approach of thinking about relationships. For example, how do certain character traits group humans together? These may have cultural association or statistically observed frequency in one gender or another but are not exclusive to a particular gender. Cheng focuses on what people who prize the individual over community have in common, and conversely, what people who prize community over the individual have in common. In this way, she moves away from observations like “not all men are competitive,” or “not all women are shy about speaking up in class,” and other arguments about innate versus socialized gender. This further becomes a more productive way of thinking about where independence and competition are useful versus where collaboration and cooperative behavior are helpful. Additionally, this will continue to reward people who adopt such

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<sup>82</sup> Samuel Eilenberg & Saunders MacLane, *General Theory of Natural Equivalences*, 58 TRANS. AM. MATH. SOC'Y 231, 237 (1945).

competitive behaviors by showing how current power structures favor competition and winner-takes-all approaches.

Harvard Business School professor Leitan Zhang<sup>83</sup> studied 1,069 leading publicly traded firms across 24 industries in 35 countries and found that gender diversity was correlated with companies that had greater market value and revenue only in situations where there is a pervasive cultural norm of gender diversity being important.<sup>84</sup> This means people's beliefs about gender diversity being crucial creates a virtuous self-fulfilling cycle.<sup>85</sup> Countries and industries in which individuals value gender diversity also benefit from gender diversity.<sup>86</sup> Countries and industries where people fail to value gender diversity also fail to benefit from gender diversity.<sup>87</sup> Positive benefits of gender diversity only happened when there was normative acceptance, as opposed to regulatory support, of working women.<sup>88</sup>

Zhang found evidence of three reasons why gender diversity beliefs matter to efficacy of gender diversity.<sup>89</sup> First, talented workers view gender diversity to be a signal of an attractive workplace.<sup>90</sup> Second, valuing gender diversity fosters psychological safety for people to contribute diverse, innovative ideas.<sup>91</sup> Third, investors view gender diversity to be a signal of competent, well-run corporate management.<sup>92</sup> Zhang's research suggests a tantalizing possibility that gender diversity can make a difference to political leadership countries where people believe that gender diversity matters and is valuable.

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<sup>83</sup> Harv. Bus. Sch., *Letian Zhang, Faculty Profile*, Harv. Bus. Sch.: Faculty Profiles (Feb. 24, 2021, 3:52 PM), <https://www.hbs.edu/faculty/Pages/profile.aspx?facId=1047757>.

<sup>84</sup> See Zhang, *supra* note 7, at 439.

<sup>85</sup> *Id.* at 439.

<sup>86</sup> *Id.* at 439.

<sup>87</sup> *Id.* at 439.

<sup>88</sup> *Id.* at 439.

<sup>89</sup> Turban, Wu, & Zhang, *supra* note 7.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

In another study<sup>93</sup> involving a nationally representative sample of 37,343 mergers and acquisitions from 1971 to 2015 in the United States, Zhang found that mergers and acquisitions “significantly reduce the proportion of white men in management, increase the proportion of racial minorities and women in management, and decrease overall racial and gender segregation”<sup>94</sup> in the acquired firm. These impacts are larger when (a) the acquiring firm values gender and racial diversity more and (b) the acquired firm had more gender and racial inequality.<sup>95</sup> Zhang develops a theory about how disruptive events can improve organizational equality and hypothesizes that gender and racial inequality persists and is reinforced by organizational structures and practices. Zhang’s theory suggests disruptive events that shake up existing hierarchies and disrupt organizational cultures and routines should offer women and racial minorities increased opportunities for advancement.

Zhang’s empirical research suggests that norms that value or disvalue gender and racial diversity can be self-fulfilling. A psychological game-theoretic model demonstrates how multiple equilibrium outcomes can correspond to certain social norms and organizational cultures or their absence.<sup>96</sup> To move from a psychological equilibrium where people believe that gender and racial diversity does not matter to a psychological equilibrium where people believe that gender and racial diversity does matter requires changing social norms or organizational cultures. COVID-19 might be an example of such a disruptive event that changes people’s beliefs about gender and racial diversity, social norms and organizational cultures.

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<sup>93</sup> Letian Zhang, *Shaking Things Up: Unintended Consequences of Firm Acquisitions on Racial and Gender Inequality* (Harv. Bus. Sch. Working Paper, No. 20-022, 2019), <https://www.hbs.edu/faculty/Pages/item.aspx?num=56659>.

<sup>94</sup> *Id.* at 32.

<sup>95</sup> *Id.*

<sup>96</sup> Peter H. Huang & Ho-Mou Wu, *More Order without More Law: A Theory of Social Norms and Organizational Cultures*, 10 J.L. ECON. & ORG. 390, 391 (1994).

B. *DO PEOPLE CARE ABOUT SUCCESSFUL WOMEN  
LEADERS?*

An intriguing, recent model of information acquisition and avoidance is based on the observation that information can positively and negatively change people's action, affect, and cognition.<sup>97</sup> This essay suggests naming this model "information revises action, affect, and cognition," abbreviated as IRAAC. This acronym is proposed in honor of, and similar to, the well-known acronym of IRAC, which stands for "issue, rule, analysis or application, and conclusion."<sup>98</sup> The IRAC method of legal analysis, or some variation of it with some permutation of the letters in the acronym, is familiar to law students from their legal writing course in the first year of law school.<sup>99</sup>

The IRAAC model of information preferences proposes that individuals evaluate information based on three dimensions of value. First, the decision-making, instrumental, or usefulness value of information. Second, the affective, emotional, or hedonic value of information. Third, the cognitive, mental model, or sense-making value of information. People then combine these component valuations of information by creating a weighted sum of the three individual valuations and depending on the sign of that weighted sum to decide whether to acquire (positive weighted sum), avoid (negative weighted sum), or be indifferent to (zero weighted sum) information.<sup>100</sup> Different individuals may attach different personal weights to each dimension of information value depending on how much each type of information value matters to them. Additionally, the same individual may place different weights over time or contexts on each dimension of information value depending on how

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<sup>97</sup> Sharot & Sunstein, *supra* note 8, at 14.

<sup>98</sup> Tracy Turner, *Flexible IRAC: A Best Practices Guide*, 20 LEGAL WRITING J. 233, 233 (2015).

<sup>99</sup> Tracy L. Turner, *Finding Consensus in Legal Writing Discourse Regarding Organizational Structure: A Review and Analysis of the Use of IRAC and Its Progenies*, 9 LEGAL COMM. & RHETORIC 351 (2012).

<sup>100</sup> Sharot & Sunstein, *supra* note 8, at 14.

much each type of information value matters to an individual at various times or in alternative contexts.

In the context of information about people of a different gender or sexual orientation, some individuals place large weights on emotionally negative or cognitively negative, identity-threatening aspects of information value and much less weight on the decision-making behavior change aspect of information value. Such an individual may choose to avoid information about, and contact with, people with a different gender or sexual orientation. A change in such an individual's information preferences about people of different gender or sexual orientation can be accomplished by humor causing the affective value of information to switch from negative to positive or humor changing the cognitive aspect of information value from negative, identity-threatening to neutral or positive. In doing so, humor could lead such an individual then to choose to switch from avoiding to acquiring or being receptive to information about, and contact with, people with a different gender or sexual orientation. The IRAAC model of information preferences thus can explain how humor offers a non-adversarial, non-confrontational, and non-threatening way to engage and reject gender or sexual orientation.

*C. PEOPLE ARE NOT-SO-MUCH RATIONAL AS  
RATIONALIZING*

Psychologists Jose Chin Yong, Norman P. Li, and Satoshi Kanazawa's recently provide evidence for humans being not so much rational as rationalizing and evolved to be coherence-seeking and fiction-making animals.<sup>101</sup> They offer evidence that rationalizing is a uniquely human trait among animals.<sup>102</sup> They also argue "that rationalization processes (e.g., cognitive dissonance reduction, post hoc justification of choices, and confabulation of reasons for moral positions) are aimed at creating the fictions we prefer to believe and maintaining the impression that we are

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<sup>101</sup> Yong, Li, & Kanazawa, *supra* note 11.

<sup>102</sup> *Id.* at 1.

psychologically coherent and rational.”<sup>103</sup> They observe that coherence “appears to be prioritized at the expense of veridicality, suggesting that distorted perceptions and appraisals can be adaptive for humans—under certain circumstances, we are better off understanding ourselves and reality not so accurately.”<sup>104</sup> Their novel perspective on humanity explains how and why humans like to tell stories and narratives that fit together more than being necessarily accurate. This view of humanity also means that shared beliefs, ideologies, and norms about gender and ethnicity or race can be fundamentally wrong yet persist if those beliefs, ideologies, and norms are coherent. Humor has the power to show that racist beliefs, ideologies, and norms are incoherent. Humor also can facilitate the dissemination and adoption of alternative coherent beliefs, ideologies, and norms that are neither sexist nor racist.

#### D. MINDFULNESS, LEADERSHIP, AND GENDER

There is a large and still expanding literature about how mindfulness practice can improve leadership.<sup>105</sup> There is also evidence that playing video games can help improve decision-making in general,<sup>106</sup> and in responding to COVID-19 in particular.<sup>107</sup> This essay advocates teaching everyone, particularly women and minorities, about leadership, mindfulness, and other related practical skills, such as: emotional intelligence, happiness,

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> See, e.g., Peter H. Huang, *Can Practicing Mindfulness Improve Lawyer Decision-Making, Ethics, and Leadership?*, 55 HOUS. L. REV. 63, 125-46 (2017).

<sup>106</sup> See, e.g., Peter H. Huang, *Achieving American Retirement Prosperity by Changing Americans' Thinking About Retirement*, 22 STAN. J.L. BUS. & FIN. 189, 247-50 (2017); Peter H. Huang, *Boost: Improving Mindfulness, Thinking, and Diversity*, 10 WM. & MARY L. REV. 139, 184-90 (2018).

<sup>107</sup> Sara Frueh, *Putting Games to Work in the Battle Against COVID-19*, NAT'L ACAD. SCI., ENG., MED., Nov. 2, 2020, <https://www.nationalacademies.org/news/2020/11/putting-games-to-work-in-the-battle-against-covid-19>; IndieCade & Rick Thomas, *Jamming the Curve*, ITCH.IO, <https://itch.io/jam/jamming-the-curve>.

judgement, decision-making, logical thinking, political numeracy, scientific literacy, and conflict resolution.

For example, a non-profit, live, and online mini-MBA program, *Girls with Impact*,<sup>108</sup> is designed to “equip[] girls with the skills, knowledge and confidence to become the leaders, entrepreneurs and innovators of tomorrow.”<sup>109</sup> Among the skills that students learn are:<sup>110</sup> budgeting, leveraging social media, making an elevator pitch, making powerful presentations, marketing, minimum viable product,<sup>111</sup> networking, and SWOT (strength, weakness, opportunity, and threat) analysis.<sup>112</sup> A YouTube video shows three graduates of the *Girls with Impact* program discuss how the skills they learned in the program empowered them and changed their lives.<sup>113</sup>

## II. CONCLUSIONS

Behavioral economics research provides pragmatic policies to design institutions to achieve gender equality.<sup>114</sup> This essay suggests complementing such behaviorally informed institutional

<sup>108</sup> GIRLS WITH IMPACT, <https://www.girlswithimpact.org/the-academy>.

<sup>109</sup> GIRLS WITH IMPACT, <https://www.girlswithimpact.org/>.

<sup>110</sup> GIRLS WITH IMPACT, <https://www.girlswithimpact.org/i-am-a-parent>.

<sup>111</sup> Richard Becker, *Minimum Viable Prod. (MVP)*, TECHOPEDIA (Aug. 14, 2020), <https://www.techopedia.com/definition/27809/minimum-viable-product-mvp>.

<sup>112</sup> See, e.g., Mitchell Grant, *Strength, Weakness, Opportunity, and Threat (SWOT) Analysis*, INVESTOPEDIA (Feb. 24, 2020), <https://www.investopedia.com/terms/s/swot.asp>.

<sup>113</sup> Girls With Impact, *Kellie, Jody and Saccncte -- Three Teens Say “No” to Old Stigmas and “Yes” to Feeling Powerful*, YOUTUBE (June 20, 2019), <https://youtu.be/IFuXyZAKuUo>.

<sup>114</sup> IRIS BOHNET, *WHAT WORKS: GENDER EQUAL. BY DESIGN* (2018); see also Christopher Litsinger, *Book Report: Iris Bohnet’s What Works: Gender Equal. by Design*, INTERIORITY (Dec. 5, 2017), <https://interiority.org/book-report-iris-bohnets-what-works-gender-equality-by-design/>.

design policies with changing social norms and organizational cultures about gender and racial diversity. This essay also advocates teaching all people, especially women and minorities, leadership skills and mindfulness practice. Since the keynote speech on which this essay is based, the United States has elected its first woman, first African-American, and first Asian-American Vice President. Thus, the Sheryl Crow's song, *Woman in the White House*<sup>115</sup> has finally come true in real life. This essay hopes that one day soon, there will also be a woman in the White House as President of the United States. This essay also further develops the author's proposed analytical perspective<sup>116</sup> to bias, discrimination, prejudice, and stereotyping as projections of high dimensional people into subspaces of lower observable dimensions by analytically modeling the notion of developing empathy through paradigm-shifting or perspective-pivoting.

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<sup>115</sup> SHERYL CROW, *WOMAN IN THE WHITE HOUSE* (Big Machine Label Group, LLC 2020), <https://sherylcrow.com/2020/08/10/woman-in-the-white-house-official-video/>.

<sup>116</sup> Huang, *supra* note 10, at Appendix.

