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## Leading Law Schools: Relationships, Influence, and Negotiation

Michael T. Colatrella Jr.

*University of the Pacific, McGeorge School of Law, mcolatrella@pacific.edu*

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## LEADING LAW SCHOOLS: RELATIONSHIPS, INFLUENCE, AND NEGOTIATION

*Michael T. Colatrella Jr.\**

### I. INTRODUCTION

Writing about leadership is in many ways akin to the parable of the blind men describing an elephant; each man exploring its different parts—the long narrow trunk, the large flat sides, and the tall sturdy legs.<sup>1</sup> Leadership is like this parable because many distinct elements contribute to making an effective leader.<sup>2</sup> If you peruse just a few of the many thousands of leadership books available, you would learn that an effective leader possesses vision, strong values, authenticity, self-awareness, and strives for excellence to name just a few common characteristics.<sup>3</sup> The aspects of leadership I will focus on in this article are the roles that building relationships, ability to influence change, and effectiveness in negotiation play in leadership, specifically in law schools. Focusing on these distinct but related concepts does not minimize the importance of many other features of good leadership, including those listed above. They are all important. This article focuses on the triumvirate of relationships, influence, and negotiation as essential leadership skills because without the ability to create a strong personal connection with one's constituents, to affect the course of law school initiatives, and to navigate interpersonal differences with others, the efficacy of one's other leadership qualities, skills, and abilities are diminished. Although a focus on relationships, influence, and negotiation may seem an eclectic, even idiosyncratic, combination of leadership skills to focus on, this article will show that they are foundational to successfully leading law schools.

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\* Professor of Law, University of the Pacific, McGeorge School of Law (“McGeorge”). I served as Interim Dean from July 2019 through June 2020 at McGeorge and as Associate Dean for Academic Affairs from July 2015 through June 2019. I presented the nascent idea for this article at the Alternative Dispute Resolution Works-in-Progress Conference hosted by the University of Nevada, Las Vegas, William S. Boyd School of Law in October 2019 and am grateful to the conference participants for their helpful comments and encouragement. I am also grateful for the comments of participants in the Experimental ADR Works-in-Progress Conference hosted by the University of Oregon School of Law, where I presented an early partial draft of this article in February 2020. I am particularly grateful to Professor Rachel A. Viscomi (Harvard) for serving as the lead commentator of my article at this conference, as well as to the other conference participants for their helpful comments. Thanks also go to Associate Dean Mary-Beth Moylan (McGeorge) and Dean Michael Hunter Schwartz (McGeorge) for their helpful comments to an early draft of this article. For their research assistance, I am particularly grateful to students Vivian Sarik and Heather Mills.

1. LILIAN QUIGLEY & JANICE HOLLAND, *THE BLIND MEN AND THE ELEPHANT* (1959).

2. JAMES M. KOUZES & BARRY Z. POSNER, *THE LEADERSHIP CHALLENGE* 15 (2017).

3. *Id.* at 43, 99 (values and vision); BILL GEORGE, *TRUE NORTH* 11 (2015) (values and self-awareness); KOUZES & POSNER, *supra* note 2, at 65 (excellence).

Anyone with experience serving in a formal law school leadership role, especially as dean, associate dean for academic affairs, associate dean for experiential learning, or director of a program, can attest to the degree to which relationships, influence, and negotiation figure prominently into their work. It would not be an exaggeration to say that most of the day-to-day job of a dean and associate dean for academic affairs, for example, is influencing the behavior of, and interpersonal problem-solving with, one's constituents in one form or another, which, as discussed more fully below, implicates all three leadership abilities described in this article.<sup>4</sup> The need to have influence and to employ interpersonal problem-solving skills emerged as particularly important over the last decade during one of the most difficult financial challenges American law schools have ever faced. The drastic decrease in law school applications and enrollment that began in 2012 and that continued through 2016, required most law schools to provide the same quality legal education with far fewer resources, personnel, and faculty than they once possessed.<sup>5</sup> Fewer resources often meant renegotiating faculty responsibilities, teaching assignments, and teaching loads, as well as addressing a greater workload for the staff. For many law schools, these financial challenges also required renegotiating the relationship with their parent universities to reassess the contributions the law school would make to the overall university budget and the nature of the resources that the parent university would provide to the law school. More recently, the onset of the COVID-19 pandemic in the spring of 2020 brought further institutional challenges for which few law schools were prepared. Pandemic-era challenges tested the resilience, relationships, and interpersonal problem-solving skills of

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4. See Howard M. Guttman, *The Leader's Role in Conflict Management*, LEADER TO LEADER at 48 (Winter 2004). Leaders spend "at least" a quarter of their time dealing with conflict. *Id.*

5. See Benjamin H. Barton, *The Law-School Crash*, CHRON. LEGAL EDUC. (Jan. 2, 2020); Bernard A. Burk, Jerome M. Organ & Emma Raisal, *Competitive Coping Strategies in the American Legal Academy: An Empirical Study*, 19 NEV. L.J. 583 (2019). *Net Tuition for U.S. Law Schools*, L. SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/costs/net-tuition> (last visited on March 22, 2022). At its height in 2010, American law school 1L enrollment was 52,404 students, with applications that year of an astounding 147,525. *Law School Enrollment Change, 1963 - 2019*, L. SCH. TRANSPARENCY, <https://www.lawschooltransparency.com/trends/enrollment/all> (last visited March 22, 2022). In 2015, just five years later, applications had dwindled to just 56,126. *Id.* The 2015 application volume was only slightly more than the total number of students enrolled in law school just five years before. *Id.* The drastic decrease in applications to law schools drove enrollment down to 37,056 in 2015, a decrease of approximately 28%. *Id.* The decrease in applications brought higher acceptance rates at most law schools, which resulted in lower mean credentials. *Id.* At all but the most selective law schools, "LSAT scores were 15 percentile points lower." CLIFFORD WINSTON, DAVID BURK & JIA YAN, *TROUBLE AT THE BAR 9* (2021). Even while accepting a greater number of lower-credentialed students, the precipitous decline in applications in the context of unprecedented, unchecked proliferation of law schools during the preceding decades meant that there were now many more law school seats available than qualified candidates to fill them, which increased competition among law schools for qualified candidates. *Net Tuition for U.S. Law Schools*, *supra* note 11. This led to further consequences that dramatically shrank law school revenue.

law school leadership.<sup>6</sup>

Never in the last half-century has law school leadership mattered more than it does now. Training future judges, legal advocates, and a significant percentage of the country's lawmakers, places law schools in a position of enormous responsibility for the country's political, social, and financial well-being.<sup>7</sup> Meeting this responsibility has become increasingly difficult, however, as many law schools struggle to remain financially viable while also trying to maintain the high academic standards demanded of this vital educational enterprise.<sup>8</sup>

Although national applications and enrollment have increased over the last few years, many law school leaders continue to face an array of financial challenges in the second and third decades of the twenty-first century that were alien to the law school leaders of the previous decades.<sup>9</sup> In an insightful essay, former Yale Law School Dean Robert Post reflected that “[i]t would of course involve a colossal failure of leadership to drive YLS [Yale Law School] into impossible debt. Given YLS’s large endowment, however, it does not require rocket science to maintain YLS’s commercial viability.”<sup>10</sup> That is still certainly true of Yale Law School and of other financially well-positioned law schools. But it was also true of nearly all law schools in 2010, at the height of law school enrollment, even those that were financed primarily by tuition revenue.<sup>11</sup>

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6. Alexandra Witze, *Universities Will Never Be the Same After the Coronavirus Crisis*, NATURE (June 1, 2020), <https://www.nature.com/articles/d41586-020-01518-y>; Megan Zahneis, *Shared Governance Was Eroding Before Covid-19. Now It's a Landslide, AAUP Report Says.*, CHRON. HIGHER EDUC. (May 26, 2021), <https://www.chronicle.com/article/shared-governance-was-eroding-before-covid-19-now-its-a-landslide-aaup-report-says> (report commissioned by the American Association of University Professors examined pandemic-related decisions at eight academic institutions, finding that “unilateral actions taken by governing boards and university administrations . . . prove the pandemic to be the most serious challenge to shared governance in the past 50 years”).

7. Garry W. Jenkins & Jon J. Lee, *Leadership Evolution: The Rise of Lawyers in the C-Suite*, 96 TULANE L. REV. 695, 699 (exploring and documenting the recent increase in lawyers holding “senior executive positions in corporate America.”); DEBORAH L. RHODE, *LAWYERS AS LEADERS 1* (2013); Neil Hamilton, *Ethical Leadership in Professional Life*, 6 UNIV. ST. THOMAS L.J. 358, 361–62 (2009) (explaining that more than half of U.S. Presidents and nearly half of U.S. Congresspeople and Governors have been lawyers); Bernard C. Gavit, *The Superiority of Lawyers*, 22 IND. U. ALUMNI Q. 405, 405–06 (1935).

8. Barton, *supra* note 5.

9. *Id.* “[L]aw schools reported that 42,718 first-year students began studies in the fall of 2021 (plus the preceding winter/spring/summer terms for schools with multiple start dates), an increase of 4,516 (11.8%) 1L students from the 2020 reporting cycle.” Christine Charnosky, *Law School Enrollment Is Way Up—But Will the Job Market Ever Be Able to Match It?*, LAW.COM (Dec. 15, 2021), <https://www.law.com/2021/12/15/law-school-enrollment-is-way-up-but-will-the-job-market-ever-be-able-to-match-it>.

10. Robert Post, *Reflections of a Law School Dean*, 69 STAN. L. REV. 1817, 1819 (2017).

11. *Net Tuition for U.S. Law Schools*, L. SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/costs/net-tuition> (last visited on March 22, 2022). At its height in 2010, American law school 1L enrollment was 52,404 students, with applications that year of an astounding 147,525. *Law School Enrollment Change, 1963 - 2019*, L. SCH. TRANSPARENCY, <https://www.lawschooltransparency.com/>

Many law school leaders, past and present, have led their institutions to better reputations, greater financial security, more robust resources, and, most importantly, improved educational enterprises. However, until this last decade, poor leadership rarely led them into “impossible debt.”<sup>12</sup> For many of today’s law schools, however, the difference between survival, closure, loss of ABA accreditation, or leading a marginalized existence is the quality of its leadership, and it will remain so for the foreseeable future. Thus, for law school leaders to be successful, they must know how to implement a vision for their law school, a vision they will create with their constituents, especially the faculty. As we will see, implementing their vision can only be done with the consent and support of law school faculty, which raises challenges and provides opportunities not found in most other educational settings.

In this article, I use a broad definition of who is a leader. A “leader,” for our purposes, is anyone who works for the law school who wishes to have an influence on how it runs, how it educates its students, or how it accomplishes its mission. While most of the examples I will use in this article come from my own experience as an interim dean and academic dean, the power to influence organizational change is not bound by a formal title.<sup>13</sup> The power to influence the policies and direction of an organization is something that the community grants a person, regardless of formal title or position. You may have noticed, at your own institution, that the people with the greatest influence over important policy decisions affecting the law school may be those without a formal leadership title or role. Their power to affect change comes through their relationships, influence, and, often, their ability to negotiate.<sup>14</sup>

Although I take a broad view of who constitutes a leader, this article adopts a narrow view of those who are led. This article primarily focuses on a law school leader’s relationship, influence, and negotiations with faculty. Although the support of other constituents is essential for the proper functioning of a law school, law school faculty present unique opportunities and challenges for a leader not found in nearly any other educational environment. Faculty is fundamental to the operation of a law school. As advocates they possess uncommon backgrounds, and many have held highly responsible leadership roles both outside and inside legal academia. Thus, a leader’s relationship with faculty is more complex than it is with other important law school constituents, such as students,

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trends/enrollment/all (last visited March 22, 2022). In 2015, just five years later, applications had dwindled to just 56,126. *Id.* The 2015 application volume was only slightly more than the total number of students enrolled in law school just five years before. *Id.*

12. See Post, *supra* note 10, at 1819.

13. See ROBERT B. CIALDINI, INFLUENCE: SCIENCE AND PRACTICE 19 (5th ed. 2008).

14. DACHER KELTNER, THE POWER PARADOX 43 (2017).

alumni, staff, and, where applicable, university leadership.

In setting the context for the important role that relationships, influence, and negotiation play in law school leadership, Section II of this article explores the power dynamics among formal law school leadership and faculty, demonstrating the uncommonly empowered role law school faculty play in law school operations, and the opportunities and challenges such empowered constituents pose to a leader. Section III sets forth four of the most important concepts to achieve organizational influence in which leaders should have knowledge and competence. These concepts are: (A) creating relationships with faculty; (B) contributing to the greater good; (C) using the norm of reciprocity; and (D) adopting a giving reciprocity preference. Section IV reviews two of the most useful negotiation concepts for law school leaders. These concepts are: (A) the use of interest-based negotiation, and (B) the use of reciprocity of concessions in distributive negotiations. Finally, Section V summarizes the key concepts and lessons explored.

## II. POWER DYNAMICS AMONG FORMAL LAW SCHOOL LEADERSHIP AND FACULTY

It is necessary to understand interpersonal power dynamics if one is to be effective at influencing organizational change. In exploring the concept of power dynamics in an organizational setting such as a law school, the conceptual model of interpersonal power developed by John R. French and Bertram Raven provides a useful framework. In their famous article, *The Bases of Social Power*, and their subsequent research, French and Raven identified six bases of social power in organizations that they characterized as “common and important.”<sup>15</sup> Of the six, “coercive power,” “legitimate power,” and “expert power”<sup>16</sup> are the most relevant when discussing the power balance between law school leadership and faculty. Of these, I will first turn to coercive and legitimate power as both relate to law school leadership.

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15. John R. French & Bertram Raven, *The Bases of Social Power*, in *STUDS. SOC. POWER* 259, 259–63 (1959); Bertram Raven, Joseph Schwarzwald & Meni Koslowsky, *Conceptualizing and Measuring a Power / Interaction Model of Interpersonal Influence*, 28 *J. APPLIED SOC. PSYCH.* 307, 308 (1998) (identifying informational power several years after identifying their original five power constructs).

16. French & Raven, *supra* note 15. The four other types of French and Raven power constructs are as follows: (1) referent (degree to which the led feel a “oneness” with the leader or a “desire” for such an identity); (2) reward (ability to acknowledge actions that cause positive emotions or minimize negative emotions); (3) expert (ability to influence behavior because of perceived knowledge); and (4) information (form of persuasion in which logical argument is used to implement change of attitude or behavior). *Id.*

*A. Law School Leadership: Coercive and Legitimate Power*

Coercive power and legitimate power are the most pertinent to our analysis of formal law school leadership power. The goal of “coercive power” is to change behavior through the threat of punishment.<sup>17</sup> The employee can avoid punishment by conforming to the leader’s direction, demands, and organizational rules.<sup>18</sup> Coercive power is quintessentially illustrated by the fifteenth century writer and politician Niccolo Machiavelli.<sup>19</sup> He who wishes to lead, Machiavelli explained, must “know how to command.”<sup>20</sup> Machiavelli also advised that “it is much safer to be feared than loved.”<sup>21</sup> This may have been good advice in fifteenth-century Florence, where the murder rate was about 500 times modern rates, even compared to the most violent American cities.<sup>22</sup> Machiavelli’s advice, however, is not a productive path to power in modern American law schools. French and Raven explain that coercion undermines the relationship between the leader and the led, an undesirable consequence in the modern academic organizational structure.<sup>23</sup> Of course, a leader may need to employ coercive power in limited circumstances, such as a significant breach of organizational, ethical, or legal rules, or in the face of financial exigency. In most circumstances, asserting coercive power is not the most effective way to influence change in a law school.

Although the dean is the nominal leader of the law school, their direct power to impact the law school’s operations is more limited than one might imagine. One of a dean’s primary responsibilities over which they have the most direct control is law school finances. Law school faculty have significant authority over the legal education program and most other aspects of the law school’s operation.<sup>24</sup> Thus, to effect meaningful change in the law school, a dean must work with the law school faculty to obtain its approval for most meaningful institutional changes. By way of example, if a dean believes it would be financially prudent for a law school to develop expertise in a particular area of law because it will bolster enrollment, they must work through faculty to offer those substantive courses and hire qualified faculty to teach them. It is difficult

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17. *Id.*

18. *Id.*

19. KELTNER, *supra* note 14, at 2.

20. NICCOLO MACHIAVELLI, *THE PRINCE* 25 (2010). The first printed version was published in 1532.

21. *Id.* at 62.

22. KELTNER, *supra* note 14, at 20.

23. French & Raven, *supra* note 15, at 264.

24. STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. 201(c) (AM. BAR. ASS’N 2020–21).

to imagine a law school dean launching any substantial initiative without faculty approval. It is also difficult to imagine any such effort being successful without faculty support and enthusiasm.

The associate dean for academic affairs also has limited formal coercive power. At most law schools, for example, the associate dean's primary responsibilities are to arrange the academic schedule, supervise the faculty, and to oversee the quality of the academic programs. Like the dean does regarding institutional changes, the associate dean works closely with the faculty in setting the schedule, trying to accommodate faculty teaching preferences while balancing those preferences against student interests and the realities of scheduling conflicts. Associate deans have even less practical authority over the quality of the academic programming, even though it is nominally one of their primary responsibilities. If he or she sees a way to improve the quality of the academic program by changing the curriculum, increasing assessment, having more coordination among courses, or modifying the grading system, it must be implemented through faculty approval and not by fiat because of the significant degree of control faculty possess over the curriculum and because of their academic freedom.<sup>25</sup> Thus, law school leaders must influence the behavior of faculty members to execute change and to make improvements in the program of legal education. Law school leaders can make few important changes to the functioning of a law school simply by relying on the "authority" that their titles and positions nominally confer.<sup>26</sup>

The rejection of coercive power as an effective form of law school leadership is echoed by former Dean Robert Post, who wrote one of the few essays addressing the nature of power and law school leadership. Regarding power, Dean Post states that "[i]t is plain that in no circumstances does the Dean of [Yale Law School] stand to his faculty in the way that a CEO stands to her employees."<sup>27</sup> While Dean Post acknowledges that there are mechanisms and methods by which a law school dean can wield "hard" power, especially through "budgetary decisions" (meaning coercive power), he views this type of putative power as "ultimately counterproductive."<sup>28</sup> Dean Post advises, and I agree, that it is wise to deploy the special prerogatives of a dean in the

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25. Many law schools are not currently using best practices in the frequency of assessment and quality of feedback to student. Michael T. Colatrella Jr., *What I Learned About Teaching Law by Being an Art Student*, 69 J. L. Educ. 297 (2020).

26. See Taylor Peyton, Drea Zigarmi & Susan N. Fowler, *Examining the Relationship Between Leaders' Power Use, Followers' Motivational Outlooks, and Followers' Work Intensions*, FRONTIERS PSYCH. 2620 (2018).

27. Post, *supra* note 10, at 1825.

28. *Id.*



form of soft power, using tools of persuasion and emphasis.”<sup>29</sup> In this way, Dean Post concludes, he was best able to “maintain faculty enthusiasm for and psychological investment in the school.”<sup>30</sup>

“Legitimate power” is the most complex of French’s and Raven’s six power constructs.<sup>31</sup> For our purposes, under legitimate power, a leader’s actions are appropriate because of their status in the organization.<sup>32</sup> For example, as noted above, a dean has the legitimate power to make financial decisions for the law school because that is universally understood as one of the dean’s central responsibilities. Similarly, the associate dean for academic affairs has legitimate power over the course schedule.<sup>33</sup> Of particular importance to us is French’s and Raven’s later refinement of the legitimate power construct in which they articulated a sub-category that they called “legitimate reciprocity.”<sup>34</sup> Legitimate reciprocity is a method of acquiring power where a leader creates “a sense of obligation [in their constituents] to reciprocate.”<sup>35</sup> Legitimate reciprocity power relates to a more modern theory of power of particular relevance for law school leadership that I will explore in depth later.

### *B. The Law School Faculty: Legitimate Power and Expert Power*

Although all of French’s and Raven’s power constructs are available to law school faculty, a law school faculty’s most significant influence, in contrast to deans, comes through legitimate power and expert power. Law school faculty possess significant legitimate power. Their legitimate power comes from law school accrediting bodies, which are primarily the American Bar Association (“ABA”) and the American Association of Law Schools (“AALS”). Law school accrediting bodies’ standards provide faculty with a significant degree of control over the legal education program. Law school faculty also have power because of their training as advocates and, in many cases, because of their experiences as practicing lawyers and leaders. The power of law school faculty members can benefit a law school leader only if they recognize and respect their

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29. *Id.*

30. *Id.*

31. French & Raven, *supra* note 15, at 263.

32. *Id.*

33. Legitimate power becomes more complex when one considers how “cultural values” around age, race, sexual orientation and identity, and gender affect power in interpersonal relationships *See id.* These, of course, are important aspects of legitimate power but are beyond the scope of this article. For information on how gender, culture, and race impact legitimate power in organizations, *see generally* Linda Carli, *Gender, Interpersonal Power, and Social Influence*, J. SOC. ISSUES (2002); James R. Elliott & Ryan A. Smith, *Race, Gender, and Workplace Power*, 69 AM. SOCIO. REV. 365 (2004); Paula Johnson, *Women and Power: Toward a Theory of Effectiveness*, 32 J. SOC. ISSUES 99 (1976).

34. Raven et al., *supra* note 15, at 310.

35. *Id.*

power by treating faculty as partners in the law school's operations and mission.

Both the ABA and the AALS rules and standards vest significant legitimate authority in law school faculty for the institution's overall function. The AALS policy states that “[i]n keeping with the principles of shared governance of the American Association of University Professors, a member school shall vest in the faculty primary responsibility for determining academic policy.”<sup>36</sup> The faculty's control of the academic policy is echoed in the ABA accreditation standards (“ABA Standards”) that state that “[t]he dean and the *faculty* shall each have a significant role in determining educational policy.”<sup>37</sup> The ABA Standards provide an even more detailed explanation of the role that faculty play in the law school's educational enterprise: “[t]he dean and the *faculty* shall have primary responsibility and authority for planning, implementing, and administering the program of legal education of a law school, including curriculum, methods of instruction and evaluation, admissions policies and procedures, and academic standards.”<sup>38</sup> Both ABA and AALS accreditation standards further provide that faculty have a significant role in the selection, promotion, and tenure of faculty, as well as the selection of dean.<sup>39</sup> Accordingly, there is a tradition in law schools, perhaps because of the unique composition of their faculties, of strong faculty-governance. Additionally, built into the accreditation standards and most law school bylaws is that faculty have significant control over a school's academic mission, as well as a strong voice in the school's strategic vision.<sup>40</sup> Thus, there is little in the functioning of a law school that faculty do not either have a primary or a consultative role.

Law school faculty members also have “expert” power. Expert power is the ability to influence behavior because of perceived knowledge or skill.<sup>41</sup> Law school faculty have expert power because they are accomplished advocates. Most law school faculty members have law degrees and, thus, have trained intensively to hone their skills of analysis and argument.<sup>42</sup> Accordingly, when faculty members disagree with a

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36. ASS'N OF AM. L. SCHS., BYLAWS § 6.5 (2016).

37. STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. § 201(c) (AM. BAR. ASS'N 2020–21) (emphasis added).

38. *Id.* at § 201(a) (emphasis added).

39. STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. §§ 201(b), 203(c) (AM. BAR. ASS'N 2020–21); ASS'N OF AM. L. SCHS., BYLAWS §§ 6.5(c)–(d) (2016).

40. *Id.*

41. French & Raven, *supra* note 15, at 267.

42. Janelle McPherson, *Where Law Professors Went to Law School*, NAT'L JURIST (2020), <https://www.nationaljurist.com/national-jurist-magazine/where-law-professors-went-law-school> (stating that 77% of American law professor earned their JD from the top 14 law schools, with Harvard and Yale's law schools accounting for about a third of law professors by themselves); Susan P. Liemer & Hollee S. Temple, *Did Your Legal Writing Professor Go to Harvard?: The Credentials of Legal Writing Faculty at*

leader's policy or plan, or have their own vision of the future for themselves or the school, they will typically not be shy in voicing that vision and usually will do so effectively. Faculty members' advocacy can be equally potent if they support a leader's position or vision. This contrasts sharply with other types of university faculty who may be highly credentialed, articulate, and accomplished, but whose expertise and training are in sciences or the arts, where the skill of advocacy is not central to their discipline. Faculty from these other academic disciplines might include fine advocates, but expert advocacy is usually less common in other university academic units than within a law school.

Further, many of a law school leader's faculty have enhanced expert power because of their expertise and experience serving in roles of significant responsibility and leadership. Unlike many other academic disciplines where the normal path to obtain a professorship is to go from one's Ph.D. program directly into academia, most law faculty have practiced law, and many have done so extensively and at the highest levels. For example, many law school faculty members have worked at the most well-regarded law firms in the country, handling weighty and complex matters; many law school faculty members have clerked for courts, including the United States Supreme Court; and many law school faculty members have held leadership positions at large companies, NGOs, government agencies and law schools.<sup>43</sup> My own law school, which is in no way unique, has on its faculty someone who was general counsel at a Fortune 500 company, former partners at well-regarded law firms, and a former head of a division of a prominent federal agency. These are individuals who have been successful leaders and have strong opinions about the direction of their law school. The nature of law school leadership structure must also be considered. When deans step down, they often return to the faculty. Likewise, associate deans for academic affairs, scholarship, experiential learning, and faculty directors of law school programs frequently rotate positions. Thus, a law school's faculty is populated with former law school leaders, giving their voices added credibility.

Therefore, with such an empowered constituency, a law school leader's challenge is to marshal the considerable legitimate power and expert power of law school faculty to a unified vision. To execute that vision, there is the simultaneous challenge and benefit of highly skilled advocates, many of whom have been leaders themselves. My experience is that law school faculty members are hardworking, strive for excellence in all that they do, and are intrinsically motivated individuals. You also

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*Hiring Time*, 46 U. LOUISVILLE L. REV. 383 (2008); Donna Fossum, *A Profile of the Teaching Branch of the Legal Profession*, 5 AM. BAR FOUND. RSCH. J. 501, 551 (1980).

43. Fossum, *supra* note 42, at 551.

have a group of highly invested constituents because they have a substantial voice in the operation and direction of the law school. All this combined can be a powerful force to propel a law school to new heights of success if the leader has the skill to motivate and marshal these forces under a unified vision. Conversely, if improperly motivated or ill-treated, law school faculty can effectively thwart a leader's vision, leaving a law school rudderless and stagnant. Thus, law school leaders must accomplish change primarily through the quality of their relationships, the power of their influence, and their skill as a negotiator. The following sections will address each of these important aspects of leadership.

### III. INFLUENCE THROUGH RELATIONSHIPS

Leadership is a relationship between leaders and their constituents.<sup>44</sup> Thus, law school leaders must devote time and energy in creating strong professional relationships with their faculty. A tried-and-true way of creating these important professional bonds is to get to know faculty on both a personal and professional level, which promotes trust and respect. Research also demonstrates that being seen by one's faculty as advancing the greater good of the law school through one's leadership will also enhance a leader's relationship with their constituents. Finally, the "norm of reciprocity," which says that "we should repay, in kind, what another person has provided us" is another important means to strengthen relationships.<sup>45</sup> Let us now explore each of the modes of relationship building in detail.

#### A. Create Interpersonal Relationships with Faculty

Wise leaders know that they can accomplish little of value on their own.<sup>46</sup> Leaders who wish to accomplish important objectives for their institutions must "mobilize others to struggle for shared aspirations."<sup>47</sup> When leaders have a relationship with their constituents characterized by trust and mutual respect, they can more easily overcome the inevitable obstacles to achieving important goals.<sup>48</sup> In short, "people are willing to follow someone with whom they have a relationship."<sup>49</sup> Yet, establishing quality relationships with faculty can be challenging for formal law school leaders. Deans have challenges in establishing quality

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44. KOUZES & POSNER, *supra* note 2, at 30.

45. CIALDINI, *supra* note 13, at 19.

46. BILL GEORGE, AUTHENTIC LEADERSHIP 51 (2004).

47. KOUZES & POSNER, *supra* note 2, at 30.

48. *Id.* at 30.

49. *Id.* at 290.

relationships with faculty members because their constituency is so large. Deans must regularly meet with alumni, students, potential donors, community organizations and leaders, their direct reports, and university administration while addressing a seemingly endless stream of emails, telephone calls, and paperwork to keep the school functioning properly. These activities can easily result in too little time to get to know faculty, which can undermine one's ability to lead effectively.

Associate deans for academic affairs are often better positioned than deans to have good relationships with faculty because, unlike most deans who are hired from outside the law school, associate deans are typically promoted into the position from within the law school faculty. Thus, they often come into the position with strong faculty relationships. Despite this advantage, the danger for associate deans is that the significant time and energy demands of the position will make it more difficult to maintain faculty relationships. In my experience, associate deans have heavy workloads. They are often responsible for operations of the law school well beyond the functioning of the academic programs. Like deans, their portfolios are often expansive. However, unlike deans, associate deans must also be concerned with the minutia of matters within their sphere. For example, an associate dean must be an expert on ABA standards, university human resource policies, university software, and law school internal policies regarding both faculty and students. So, finding time to maintain strong relationships with faculty members can be challenging. While associate deans have the advantage of meeting individually with faculty members more frequently than deans typically do because of their supervision over the academic programs, these meetings often involve negotiating teaching responsibilities or complying with institutional policies that can place added pressure on their faculty relationships rather than strengthening them. Accordingly, like deans, associate deans and other law school leaders need to invest time, energy, and focus on building and maintaining strong personal relationships with their faculty constituents.

Building strong relationships means getting to know faculty members on a personal level, which can translate into significant benefits for the leader, the faculty, and the school. The myth of keeping social distance between you and your constituency is just that—a myth.<sup>50</sup> The most obvious benefit of maintaining strong relationships with faculty is that a leader knows better how to support faculty colleagues. This means not just knowing what their scholarly interests are and what they teach but also knowing about their personal lives to the extent they feel comfortable sharing that part of themselves. Do they have a partner? Do they have

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50. *Id.*

children at home? Are they caring for an elderly parent? All these life circumstances can affect their work, and a leader may be able to make their lives easier, such as through course scheduling or providing other resources. Knowing faculty members' needs and interests also makes recognizing the good work that they do more targeted and meaningful.<sup>51</sup> Strong personal relationships also promote open and honest communication so that a leader has better information on which to base decisions. It also breeds loyalty.<sup>52</sup> Finally, they provide leaders with a community for their own comfort and support.

Building close relationships with faculty colleagues is most effectively accomplished through informal gatherings and encounters.<sup>53</sup> One does not build close personal connections through faculty meetings, committee meetings, or attending scholarly presentations together, however much these pursuits might be important for other purposes.<sup>54</sup> Accordingly, academic leaders must create informal opportunities to get to know their faculty. Each leader has their own way of building close relationships with faculty, depending on time and temperament. Below are a few ideas that I have seen prove effective. Hosting periodic lunches for no other purpose than for the faculty to gather and socialize promotes faculty cohesiveness.<sup>55</sup> I cannot stress enough the importance of sharing a meal in building personal connections.<sup>56</sup> Sharing a meal creates meaningful social bonds, and you will see this as a theme in my relationship-building suggestions. Hosting a meal for faculty has the dual benefit of giving an academic leader the opportunity to socialize with several faculty members in one event, and it gives faculty members a chance to strengthen their social bonds with one another. These informal, social meetings should be face-to-face because that is how one creates meaningful social connections that create successful teams.<sup>57</sup> When at national conferences, academic leaders should make time to spend just with their faculty members. For example, hosting a lunch or dinner with just them or

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51. *Id.*

52. *Id.*

53. DENNIS ROSS, *STATECRAFT* 195 (2008).

54. *Id.*

55. You should also do this for staff.

56. Kaitlin Wooley & Ayelet Fishbach, *A Recipe For Friendship: Similar Food Consumption Promotes Trust and Cooperation*, 27 J. CONSUMER PSYCH. 1 (2016).

57. MIT: *Human Dynamics Lab*, WEAVE THE PEOPLE (Aug. 31, 2017), <https://weavethepeople.com/wisdomposts/connection/#:~:text=Patterns%20of%20communication%20are%20proven,they%20follow%20successful%20communication%20patterns> (finding that “35% of the variation in a team’s [successful] performance can be accounted for simply by the number of face-to-face exchanges among team members”); Amiee L. Drolet & Michael W. Morris, *Rapport in Conflict Resolution: Accounting For How Face-To-Face Contact Fosters Mutual Cooperation in Mixed-Motive Conflicts*, 36 J. EXPERIM. SOC. PSYCH. 26 (2000); Linda Tickle-Degnen & Robert Rosenthal, *The Nature of Rapport and Its Nonverbal Correlates*, 1 PSYCH. INQUIRY 285, 286 (1990).

arranging an excursion with a few faculty members for a couple of hours. Conferences are usually held in interesting locations with plenty to see and do as tourists. I know that this advice goes against the conventional wisdom of socializing almost exclusively with peers from other schools when attending conferences. These, however, are not mutually exclusive endeavors; both types of relationships are important to cultivate. Accordingly, a leader must invest time in both. Another way to get to know faculty better is to set a goal of having a meal or coffee with each faculty member over the course of the year. This can be accomplished individually or in small groups of two or three, as time and resources permit. Simply roaming the halls and visiting faculty in their offices on a semi-regular basis for a friendly, impromptu chat can also be productive in making personal connections. Finally, establishing good relationships is a two-way street. A leader must not only listen and get to know the faculty on a personal level, but they must also personally share of themselves as well.<sup>58</sup> It is this mutuality that creates trust. It also transforms leadership from a monologue into a dialogue that enhances the potential for the institution to realize its potential by engendering trust in the leader.

Building personal connections is also important because leadership is a creative endeavor. It contemplates seeing an institution for what it is and then envisioning what it could be. Leaders only create personal connections by getting to know their constituents, especially the faculty. As discussed, under law school accrediting bodies, faculty play a paramount role in a law school's operation. Thus, most initiatives designed to advance the law school will require faculty approval and those initiatives not requiring formal approval will almost always need the faculty's informal support to have the best chance of succeeding. The creative act of transforming an institution is a "tribal experience."<sup>59</sup> Leaders need to communicate, collaborate, and negotiate the future with their faculty.

Establishing strong interpersonal relationships with faculty also enhances a leader's ability to successfully negotiate with them. Individuals are more collaborative when negotiating with a person with whom they have a good relationship.<sup>60</sup> For example, experiments suggest

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58. KOUZES & POSNER, *supra* note 2, at 290–91

59. See JULIA CAMERON, *THE ARTIST'S WAY* 66 (2016). This means that the people in the organization, the "tribe," work collaboratively and creatively to create the organization's future. See also Ed Catmull, *CREATIVITY INC.* (2014) (This is the story of Pixar, the highly successful animation company that created such movie hits as *Toy Story*, *Incredibles*, and *Inside Out*. Catmull, Pixar's President at the time of the book's publication, explains that "good leadership can help creative people stay on the path to excellence no matter what business their in." *Id.* at xv.

60. LEIGH L. THOMPSON, *THE MIND AND HEART OF A NEGOTIATOR* 148 (4th ed. 2009); Janice Nadler, *Rapport Negotiation and Conflict Resolution*, 87 MARQ. L. REV. 875, 877 (2004).

that “when negotiators have a positive relationship with each other, they may be willing to forgo economic gain out of concern and respect for the other party . . . .”<sup>61</sup> Furthermore, negotiators are more likely to make concessions and be flexible when they have a good relationship with their counterpart.<sup>62</sup> This kind of cooperation and flexibility makes transformative institutional change easier to accomplish. Transformative change sometimes only happens by disrupting the status quo or by increased effort from faculty, or both. Curricular changes, for example, may mean that faculty members need to take on new course preparations, teach fewer sections of courses closely aligned with their research interests, or teach at less convenient times. Negotiations over these issues will go more smoothly and yield more successful outcomes when the participants have a solid personal relationship.

A good relationship also increases the potential for negotiated outcomes to be efficient. Efficient negotiated outcomes are those that make use of available resources and leave all negotiators in the best position possible under the circumstances.<sup>63</sup> Research shows that negotiators who have a good relationship are more likely to reach efficient agreements. This is so not only because they are more flexible and less likely to use more coercive negotiation tactics, but also because their mutual trust allows them to be more forthcoming with truthful information about their concerns and needs.<sup>64</sup> As discussed further in Section IV, understanding each other’s true concerns and needs in a negotiation enhances parties’ ability to craft mutually beneficial solutions.

### *B. Contribute to the Greater Good*

Within social systems such as a law school community, power represents the “capacity to make a difference” in the organization by stirring others to action.<sup>65</sup> A leader’s judgment and vision are important to be sure, but if law school leaders do not have the skill to implement their vision and exercise their judgment on important strategic issues, no matter how winning a strategy it may be, their judgment and vision are worthless. Law schools share a common need for their leaders to be able

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61. ASHLEY D. BROWN & JARED R. CURHAN, *THE OXFORD HANDBOOK OF ECONOMIC CONFLICT RESOLUTION* 141 (2012).

62. *Id.*

63. See THOMPSON, *supra* note 60, at 77. This is sometimes known as a Pareto-optimal agreement. *Id.*

64. Leonard Greenhalgh & Deborah I. Chapman, *Negotiator Relationships: Construct Measurement and Demonstration of their Impact on the Process and Outcomes of Negotiation*, 7 *GRP. DECISION & NEG.* 465 (1998).

65. KELTNER, *supra* note 14, at 3.



to execute their vision to its fullest potential. Thus, a law school leader must have influential power. The concept of power in the highly horizontal organizational structure of a law school setting, as we have seen, is one where formal titles and authority mean much less than in organizations with more hierarchical structures.<sup>66</sup> Accordingly, a leader's ability to influence faculty opinion and behavior makes a difference at their law school. An important way that leaders can establish this influence is by enhancing the greater good for their law school communities.

The influence that comes with serving the greater good is explained and supported by the work of Dr. Dacher Keltner, a world-renowned University of California-Berkeley psychologist.<sup>67</sup> The theme of Keltner's work on power, and one that this article espouses as most appropriate for law school leaders to embrace, is that "power is not grabbed but is given to individuals by groups."<sup>68</sup> The power the group gives is the ability to influence their behavior, which echoes Raven et al.'s "legitimate reciprocity" power construct.<sup>69</sup> Thus, the appropriate definition of power in modern, horizontally structured organizations like law schools is the ability of "making a difference in the world by influencing others."<sup>70</sup> This view of the nature of power is consistent with the power strategy of "influence and emphasis" that Dean Post of Yale Law School adopted as his preferred method.<sup>71</sup> For law school administrators and faculty members, the ability to influence faculty opinions and behaviors is the kind of power that enables leaders to make a difference at their law schools. The law school faculty gives power to people whom it sees as advancing the greater good of its community.<sup>72</sup>

Advancing the greater good contemplates a broad range of possible outcomes and behaviors. Generally, as one is seen advancing the community's security, status, well-being, and prosperity, the community rewards that person by granting enhanced reputation within the community.<sup>73</sup> Keltner explains that "reputation is about character, trust, and integrity . . . ."<sup>74</sup> Moreover, Keltner's research findings that trust and respect are important factors in successful leadership echoes Dean Post's practical experience, as well as mine, and finds wide support in the

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66. *See id.* at 45.

67. *Id.*

68. *Id.* at 43.

69. *Id.*; Raven et al., *supra* note 15, at 310.

70. KELTNER, *supra* note 14, at 4.

71. Post, *supra* note 10, at 1825.

72. *Id.*

73. *Id.*

74. KELTNER, *supra* note 14, at 54.

scientific literature on leadership.<sup>75</sup> A dean can exercise influential power, Post explains, “only if she retains the respect and trust of her faculty.”<sup>76</sup> Noted leadership experts James Kouzes and Barry Posner further explain that “[t]rust is a strong, significant predictor of . . . acceptance of [a] leader’s influence.”<sup>77</sup> Accordingly, trust and respect are the foundations of a leader’s ability to lead effectively because they are a powerful source of influence.<sup>78</sup>

Although a leader can contribute to the greater good of their school in many ways, one of the most powerful is by adopting a “giving” mindset and acting congruently with that mindset in ways large and small.<sup>79</sup> I use the term “giving” in the broadest possible sense—giving of resources, time, patience, presence, respect, transparency in decision making, and of good ideas. Put differently, the best way of contributing to the greater good, and thereby earning the trust and respect of those you serve, is by adopting and nourishing an “other-focused” mindset.<sup>80</sup> Keltner’s research shows that one can attain power in one’s community by adhering to an other-focused mindset, which he describes as follows: “Stay focused on other people. Prioritize others’ interests as much as your own. Bring the good in others to completion, and do not bring the bad in others to completion. Take delight in the delights of others, as they make a difference in the world.”<sup>81</sup> Keltner’s view that one of the keys to being a successful leader is the desire to give and be other-focused is consistent with the servant-leader leadership model, a philosophy of leadership that has been widely adopted.<sup>82</sup>

The servant-leader model of leadership distinguishes between two extreme types of leader: one who adopts a “servant-first” orientation, which is the preferred leadership focus, and one who adopts “leader-first” orientation.<sup>83</sup> The leader-first orientation describes a person motivated by “an unusual power drive or to acquire material possessions.”<sup>84</sup> The servant-leader orientation, conversely, describes a person who “begins with the natural feeling that one wants to serve” and then comes to

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75. Post, *supra* note 10, at 1825. See also Angela T. Hall et. al., *Leader Reputation and Accountability in Organizations: Implications for Dysfunctional Leader Behavior*, 15 LEADERSHIP Q. 515 (2004). Trust is fundamental in maintaining organizational control and support. *Id.*

76. Post, *supra* note 10, at 1825.

77. KOUZES & POSNER, *supra* note 2, at 219–20.

78. See *id.* at 37.

79. KELTNER, *supra* note 14, at 83.

80. *Id.* at 71.

81. *Id.*

82. Robert H. Jerry, II, *Reflections on Leadership*, 38 U. TOL. L. REV. 559 (2007).

83. ROBERT GREENLEAF, *THE SERVANT LEADER* 15 (2015).

84. *Id.*

leadership as a form of service.<sup>85</sup> Just like Keltner's model, the servant-leadership model asks the leader to serve the "highest priority needs" of the community.<sup>86</sup> Robert Greenleaf, who first articulated the servant-leader model, explains that successful servant-leaders are those who help the people they lead "grow as persons" and "become healthier, wiser, freer, more autonomous," and more likely to become leaders themselves.<sup>87</sup> Leadership researchers Kouzes and Posner agree that good leaders "turn their constituents into leaders."<sup>88</sup> They further explain that good leaders help individuals in their organizational community to "learn new skills, develop existing talents, and provide the institutional support required for ongoing growth and change."<sup>89</sup> Thus, one of a leader's most important responsibilities is to support constituents both personally and professionally.

Greenleaf particularly emphasizes the supportive role of the leader.<sup>90</sup> Greenleaf's inspiration for the servant-leader model came from the short allegorical novel *The Journey to the East* by Hermann Hesse, first published in Germany in 1932.<sup>91</sup> Hesse's book follows a group of men on a quest for knowledge, sponsored by an organization called The League, and who are supported by, among others, a servant named Leo. Leo performed menial tasks for the band of travelers.<sup>92</sup> The narrator describes Leo as an "unaffected man . . . [who was] so pleasing, so unobtrusively winning[,] . . . that everyone loved him."<sup>93</sup> The narrator also explained that "Leo worked in a very simple and natural manner, friendly in an unassuming way, alongside the many forms of our League, which, without doing harm to the value and sincerity of our League had within them something singular, solemn, or fantastic."<sup>94</sup> When Leo disappears one night on their journey, the quest quickly falls apart and is abandoned.<sup>95</sup> The narrator explains "that the more certain his loss became, the more indispensable he seemed; without Leo, . . . his good humour and his songs, without his enthusiasm for our great undertaking, the

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85. *Id.* The "authentic leadership" model is also congruent with the approach this article adopts. In that model, "[a]uthentic leaders genuinely desire to serve others through their leadership. They are more interested in empowering the people they lead to make a difference than they are in power, money, or prestige for themselves." GEORGE, *supra* note 3, at 12.

86. GREENLEAF, *supra* note 83, at 15.

87. *Id.*

88. KOUZES & POSNER, *supra* note 2, at 243.

89. *Id.*

90. GREENLEAF, *supra* note 83, at 9.

91. *Id.*; HERMANN HESSE, *THE JOURNEY TO THE EAST* (1932).

92. HESSE, *supra* note 91, at 25.

93. *Id.* at 24.

94. *Id.* at 25.

95. *Id.* at 37.

undertaking itself seemed in some mysterious way to lose meaning.”<sup>96</sup> Social science demonstrates that the emotional support through unassuming daily benevolent acts like the ones that Leo displays in *The Journey to the East* are similar to the social behaviors of successful leaders.<sup>97</sup>

Keltner and his fellow social scientists have provided a concrete list of supportive social tendencies that contribute most to the greater good and, thus, are most effective in increasing a leader’s influence within her sphere. Social scientists call this list of social tendencies the “Big Five.”<sup>98</sup> The Big Five social tendencies are: enthusiasm, kindness, focus, calmness, and openness.<sup>99</sup> Keltner’s own research on interpersonal power in college dorms, sororities, and fraternities demonstrates that these five social tendencies are consistent predictors of who will emerge as leaders and have influence within a particular group.<sup>100</sup> The research on the efficacy of the Big Five to help a leader acquire influence in social settings is vast.<sup>101</sup> These studies include not only Keltner’s college student studies but studies conducted in financial firms, in hospitals, in the military, and more.<sup>102</sup> They also are “diverse with respect to class, gender, and ethnicity.”<sup>103</sup> In all studies, Keltner explains that “those who rose to power” possessed the Big Five social tendencies.<sup>104</sup>

In Keltner’s own studies, authentic enthusiasm was the best predictor of a rise to influence within the group.<sup>105</sup> Enthusiasm is where a leader will “speak up, make bold assertions, and express an interest in others.”<sup>106</sup> Like all emotions, genuine enthusiasm is contagious and can energize an organization.<sup>107</sup> My own experience reflects that the best deans with whom I have worked or with whom I am familiar, could be described as “cheerleaders-in-chief” for their respective institutions and faculty. They are realistic, but eternally optimistic and are genuinely enthusiastic about the work of their school and faculty and express that excitement frequently and publicly.<sup>108</sup>

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96. *Id.* at 39. See also LEE G. BOLMAN & JOAN V. GALLOS, REFRAMING ACADEMIC LEADERSHIP 100–01 (2011).

97. KELTNER, *supra* note 14, at 48.

98. *Id.*

99. *Id.*

100. *Id.* at 49.

101. *Id.* at 50.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.* at 49.

106. *Id.* at 50.

107. *Id.*

108. See KOUZES & POSNER, *supra* note 2, at 147.

Kindness is a potent form of giving, but sadly not one for which the legal profession is typically associated.<sup>109</sup> Acts of kindness can be exhibited by being flexible with individuals when problem-solving and giving presence and attention when others are speaking.<sup>110</sup> We contribute to the greater good when we “orient[] our thoughts, feelings, and actions towards care for others and genuinely supportive social bonds.”<sup>111</sup> One of my favorite quotes to help inspire kind treatment in the face of unkind behavior is “[b]e kind, for everyone you meet is fighting a hard battle.”<sup>112</sup> Indeed, we are all fighting a hard battle, whether or not it is visible to others. Assume that the people you work with have the best intentions and are doing their best given their life circumstances. Live that assumption by exhibiting kindness. Kindness also supports an individual’s sense of dignity, or “the feeling of inherent value and worth.”<sup>113</sup> The opportunities and ways to be kind to people you work with are too numerous to list. But we know that kindness has a positive impact in the workplace.<sup>114</sup> Keltner’s research demonstrates that enduring power “is surprisingly available in daily acts of social life[,] . . . hing[ing] on doing simple things that are good for others.”<sup>115</sup> Expressing gratitude is one of those good things.<sup>116</sup> Expressing gratitude for work well done, for favors, or for extra effort strengthens social networks within the community.<sup>117</sup> Gratitude that empowers others also motivates “more collaborative and productive action” throughout the organization.<sup>118</sup>

Focusing on shared institutional goals is also a source of a leader’s power and influence.<sup>119</sup> This means not only helping to clarify and articulate shared goals but also working to “keep others on task” in progress toward achieving them.<sup>120</sup> People who work with purpose work

109. *Id.*

110. *Id.* at 50.

111. Emiliana R. Simon-Thomas, *The Four Keys to Happiness at Work*, GREATER GOOD MAG. (May 12, 2021), <https://www.humean.org/wp-content/uploads/2019/06/the-four-keys-to-happiness-at-work-greater-good-magazine.pdf>.

112. *Be Kind; Everyone You Meet is Fighting a Hard Battle*, QUOTE INVESTIGATOR (June 29, 2010), <https://quoteinvestigator.com/2010/06/29/be-kind>. The quote is attributed to John Watson, whose pen name was Ian Maclaren, a writer and professor at Yale University in the late 1800s. The original version of the quote is “Be pitiful, for everyone you meet is fighting a hard battle.” *Id.*

113. DONNA HICKS, DIGNITY 6 (2011) (emphasis omitted).

114. KELTNER, *supra* note 14, at 35. Dr. Christine Porath’s work supports the proposition that acts of kindness at work create more successful leaders, as well as businesses. CHRISTINE PORATH, MASTERING COMMUNITY 57 (2022). Porath explains that even small kindnesses can help businesses to thrive. “Even small actions matter—acknowledging others, sharing credit . . .” *Id.*

115. KELTNER, *supra* note 14, at 34–35.

116. *Id.*

117. *Id.* at 89.

118. *Id.* at 90.

119. *Id.* at 50.

120. *Id.*

better and with greater satisfaction.<sup>121</sup> One has a sense of purpose when they “make valuable contributions to others (individuals and organizations) or to society that [they] find personally meaningful and that [do not] harm anyone.”<sup>122</sup> This focus on purpose provides the community with a sense of self-worth and direction that is a central characteristic of a happier workplace.<sup>123</sup> This is why it is essential for law school leaders, especially deans and associate deans, to set visible concrete goals for their institutions and strive to be seen as working assiduously toward those goals. Yet, it is easy for formal law school leaders to lose focus because of the immense demands on their time and attention. One of the best pieces of advice that I was given when I began my work as associate dean for academic affairs was to pick one or two goals as my primary focus, beyond my day-to-day responsibilities, and try not to accomplish too much in the role, as that was a recipe for accomplishing very little.<sup>124</sup>

Displaying calmness and helping others remain calm in difficult times is also an essential leadership social tendency.<sup>125</sup> It is important to distinguish between displaying calmness and *remaining* calm. Calmness is a physical state, and it is difficult to control, like feeling hot or cold.<sup>126</sup> Displaying calmness, on the other hand, is easier to achieve even when you may not feel very calm. Although displaying calmness may not necessarily be easy either, it is an essential condition if one wishes to have maximum influence in an organizational crisis.<sup>127</sup> One needs to look no further than experience at one’s own institution or institutions and how they handled crises. The COVID-19 pandemic that began in the United States in spring 2020 offers a good example of the importance of calm, steadying leadership in a crisis.

COVID-19 was among the most disruptive crises higher education experienced since the last pandemic in 1919. It tested university and law school leadership in surprising ways. During this crisis, did institutional leaders act with purpose, energy, and optimism, which displayed and

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121. Simon-Thomas, *supra* note 111.

122. *Id.* (quoting MORTEN HANSEN, GREAT AT WORK (2018)).

123. *Id.*

124. In my case, the primary long-term project on which I chose to focus was to improve our bar passage rates because I work at a law school in California where bar passage is a perpetual challenge. Maintaining this focus helped the school significantly improve its bar passage during my tenure as associate dean for academic affairs and interim dean.

125. KELTNER, *supra* note 14, at 50.

126. Cultivating a regular form of mindfulness meditation is one way to help manage strong negative emotions and workplace stress. See Leonard L. Riskin & Rachel Wohl, *Mindfulness in the Heat of Conflict: Taking Stock*, 20 HARV. NEGOT. L. REV. 121 (2015). For an excellent, highly accessible book on the practice and value of mindfulness meditation, see CHADE-MENG TAN, SEARCH INSIDE YOURSELF (2012).

127. KELTNER, *supra* note 14, at 50.

promoted calmness? Or did they act with disorganized responses, lack of collaboration, lack of transparency, complaints about the circumstances, and defensiveness, which displayed and promoted anxiety within the institution? A leader must be seen as making sound, rational decisions if they are to maintain a high level of influence in a crisis. Their ability to influence is also bolstered if they can instill calmness in others.<sup>128</sup> Instilling calmness in others can be achieved by being transparent, collaborating in decision-making, and “remind[ing] people of broader perspectives during times of stress.”<sup>129</sup>

Being open to others’ ideas is the final social behavior on the Big Five list but hardly the least important.<sup>130</sup> Open-minded leadership is especially crucial to embrace with highly empowered constituents like law school faculty members. One must provide opportunities for faculty input on all major decisions affecting the law school, even when that input is not strictly required under accreditation rules or school bylaws. One may not always adopt faculty ideas, but one should always listen to, consider, and respect those ideas. The combination of intelligence and highly engaged constituents can only improve decision making, assuming that one is not under highly limited time pressure to make a decision.<sup>131</sup> Creating an ethos of collaboration helps to “achiev[e] and sustain[] high performance” in organizations.<sup>132</sup>

Too often law school leaders draw hard lines between faculty decisions and administrative decisions. I would point out that in a law school setting, as evidenced by our accrediting bodies’ articulation of the role of faculty in much of the law school operations, there are few hard lines in terms of faculty versus administrative control.<sup>133</sup> More importantly, faculty must be seen and treated as partners in the entire law school enterprise, if for no other reason than that a law school will function better with a shared sense of ownership over law school policies and vision.<sup>134</sup> I once again turn to Dean Post to support my sense that the role of a law school administrator is that of a partner with the faculty. Dean Post illuminates this point when he explains that “a dean is in many respects something like the Chief Justice of the United States Supreme Court: she

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128. *Id.*

129. *Id.*

130. *Id.*

131. Christine Siegel, *What Will Weary Faculty Members Need Post-Pandemic*, CHRON. HIGHER EDUC. (May 5, 2021), <https://www.chronicle.com/article/what-will-weary-faculty-members-need-post-pandemic> (explaining that during the COVID-19 pandemic the best solutions for this author’s institution emerged through working closely with faculty and benefiting from their expertise).

132. KOUZES & POSNER, *supra* note 2, at 218.

133. See STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. 201(b), 203(c) (AM. BAR. ASS’N 2020–21); ASS’N OF AM. L. SCHS., BYLAWS §§ 6.5(c)–(d) (2016).

134. Post, *supra* note 10, at 1825.

is first among equals, with merely one vote like every other faculty member.”<sup>135</sup> This may not be technically true in all spheres of law school operations, but it should be true in practice in most respects if a leader is to retain the respect of the faculty. One of the surest and swiftest ways to lose faculty trust and, thus, influence, is to treat them like employees.

Supporting the work of one’s faculty, being solicitous of their needs to help them do their jobs well, and supporting them emotionally, does not mean that a leader must follow the faculty’s wishes unthinkingly when the ultimate decision rests with the leader. One problem with such an approach is that there will rarely be unanimity of opinion among faculty. Sometimes, too, faculty members are unconsciously biased in their decision based on how those decisions will personally affect them or their sphere within the school and thus give insufficient weight to the overall institutional aspects of the decision in their consideration of the issue. Finally, many of our best faculty members are idealists who seek perfection in organizational structures where there can only be imperfection and compromise.<sup>136</sup> Thus, leaders also bring value and contribute to the greater good through their vision, ideas, and good judgment when navigating systems with competing values and priorities.<sup>137</sup> In his seminal work on the servant-leader model, *The Servant as Leader*, Greenleaf states that a leader must have uncommon intellectual gifts that are not typically measured by “academic intelligence ratings.”<sup>138</sup> Greenleaf explains that “[t]he leader knows some things and foresees some things which those he is presuming to lead do not know or foresee as clearly.”<sup>139</sup> “This is partly,” Greenleaf continues, “what gives the leader his ‘lead,’ what puts him out ahead and qualifies him to show the way.”<sup>140</sup> At the end of *The Journey to the East*, Greenleaf’s inspiration for the servant leader model, the narrator discovers that Leo, the servant and porter for the journey, is in fact the wise leader of The League.<sup>141</sup> So, a leader earns the right from the community to show the way by both the supportive means by which they lead and the quality of the substantive leadership choices they make.

Just as groups may provide power, status, and the right to show the way to individuals who advance the greater good of the community, so too do they punish those who harm the greater good by undermining their

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135. *Id.*

136. *Id.* Dean Post insightfully explains “that excellent faculty are like artists. They are disappointed with the world and wish to make it better. They are unhappy with existing authorities whom they perceive as underwriting a status quo that requires reformation.” *Id.*

137. GREENLEAF, *supra* note 83, at 23.

138. *Id.*

139. *Id.*

140. *Id.*

141. HESSE, *supra* note 91, at 99.



power.<sup>142</sup> The primary mechanism through which groups punish those who are seen as working against the greater good is through sharing reputational information within their social networks, which some would characterize as gossip.<sup>143</sup> Although Keltner laments the use of excessive gossip, he generally makes no moral judgment about it.<sup>144</sup> Rather, Keltner explains that “gossip is an ancient and universal means by which group members give power to select individuals and keep the powerful in check.”<sup>145</sup> Gossip, Keltner further explains, is central to the way that groups construct reputations and, whether one finds the spreading of information relevant to reputation unsavory or not, a leader must be aware that this is a mechanism of how individuals rise to and fall from power within communities.<sup>146</sup> It is the people who are seen to seek power “at the expense of others,” Keltner instructs, who are typically targets of harmful gossip.<sup>147</sup> Social tendencies that are particularly unacceptable to groups are lying, manipulating, and coercing.<sup>148</sup> The community’s intent of spreading this type of information is to derail a person from gaining influence or diminishing a person’s influence within the community.<sup>149</sup>

One need only reflect briefly on one’s own institutional environment to confirm the truth of the empirical research on gossip’s role in reputation formation. If you learn of a faculty colleague taking on a difficult and time-consuming committee assignment for the good of the school and clearly to their own detriment, you may pass on praise about this act to others in your social sphere. This communication enhances the reputation of that colleague within the community. Likewise, if you know of a colleague systematically avoiding important committee work to the detriment of the school and to their own advantage, you will pass on your disapproval of those actions to people in your sphere, too. This will undermine that colleague’s reputation within your community.

In sum, if leaders have been other-focused, treated others with kindness and dignity, expressed gratitude and enthusiasm, they gain substantial credit that enables them to more easily execute visions or initiatives for the law school that they think will advance it in some way.<sup>150</sup> Having built up this credit does not guarantee that leaders will convince their faculty constituents that a particular plan, idea, or vision is the best course of

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142. *Id.* at 63.

143. *Id.*

144. *Id.*

145. KELTNER, *supra* note 14, at 63.

146. *Id.*

147. *Id.* at 65.

148. *Id.*

149. *Id.*

150. *See id.*

action for their institution, but it does make success more likely. People who may have been ambivalent on whether a leader's vision is a good idea or not, will be inclined to trust them because of their other good works. Even people who disagree with them, might accede to their wishes if their feelings of goodwill toward them overcomes their degree of disagreement .

*C. Use the Norm of Reciprocity to  
Strengthen Interpersonal Relationships*

Although the norm of reciprocity has likely guided human behavior from the dawn of our species, it was researcher Alvin Gouldner in 1960 who is credited with providing the first clear articulation of it.<sup>151</sup> In recognizing that the norm of reciprocity is an ancient and universal social rule that guides human interaction, Gouldner, in his seminal article, first cites to Cicero's maxim that "[t]here is no duty more indispensable than returning a kindness."<sup>152</sup> Cicero's corollary to this reciprocity maximum is that "all men distrust one forgetful of a benefit."<sup>153</sup> Indeed, in his review of the social science literature, Gouldner explains that "social equilibrium and cohesion could not exist without 'the reciprocity of service and return service . . . .'"<sup>154</sup> Thus, Gouldner defined what he calls the "universal, moral norm of reciprocity as follows: (1) people should help those who have helped them, and (2) people should not injure those who have helped them.<sup>155</sup> In its simplest expression, the norm of reciprocity dictates that "we should repay, in kind, what another person has provided us."<sup>156</sup>

The norm of reciprocity has the distinction of being one of the few principles of social interaction that transcends cultural boundaries. All human cultures adhere to the norm of reciprocity to a considerable degree.<sup>157</sup> In Robert Cialdini's classic study of the science and practice of influence, which he describes as factors that cause one person to say yes to another person, the norm of reciprocity is first among equals in the arsenal of influence.<sup>158</sup> The norm of reciprocity is engrained in all of us

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151. Alvin, W. Gouldner, *The Norm of Reciprocity*, AM. SOC. J. 161, 161 (1960).

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.* at 162 (quoting GEORGE SIMMEL, *THE SOCIOLOGY OF GEORGE SIMMEL* 387 (1950)). See also KOUZES & POSNER, *supra* note 2, at 234 (stating that the norm of reciprocity is at the heart of a civilized society).

155. Richard E. Goranson & Leonard Berkowitz, *Reciprocity and Responsibility Reactions to Prior Help*, 3 J. PERSONALITY & SOC. PSYCH. 227 (1966).

156. CIALDINI, *supra* note 13, at 19.

157. *Id.*

158. *Id.* The other five social principles of influence that Professor Cialdini identifies are

from a young age.<sup>159</sup> Cialdini explains that “each of us knows the social sanctions and derision applied to anyone who violates it.”<sup>160</sup> Consequently, understanding the norm, or rule, of reciprocity provides a source of interpersonal influence.<sup>161</sup> “The rule possesses awesome strength,” Cialdini states, “often producing a yes response to a request that, except for an existing feeling of indebtedness, would have surely been refused.”<sup>162</sup> In an environment where coercive power is both unproductive and often unavailable, influential power that is available through the norm of reciprocity is an essential aspect of success for any law school leader.

The relevant nuances of the rule are best conveyed through an experiment conducted by researcher Dennis Regan that Cialdini relates in his classic book, *Influence*.<sup>163</sup> Regan’s experiment is set in a situation where two people working together were asked to evaluate the quality of paintings.<sup>164</sup> They were told that the experiment was an art appreciation study, but it was really a study of the norm of reciprocity.<sup>165</sup> One person in the pair was the subject of the experiment and the other person, unbeknownst to the subject, was a research assistant who acted as a confederate for Regan.<sup>166</sup> The experiment observed the subject’s behavior under two different experimental conditions.<sup>167</sup> In the first condition, during a break from rating the quality of paintings, Regan’s assistant did a “small, unsolicited favor” for the subject by buying him a *Coca-Cola* soda during a short break.<sup>168</sup> The exact words the assistant used after returning from the break were, “I asked him [the experimenter] if I could get myself a Coke, and he said it was OK, so I bought one for you, too.”<sup>169</sup> In the second condition, the assistant did not do the subject a favor, but in all other ways acted the same.<sup>170</sup> In both conditions, after the pair finished rating the paintings, the assistant asked the subject to do him a favor by buying raffle tickets.<sup>171</sup> The assistant explained that the raffle was for a

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commitment and consistency, social proof, liking, authority, and scarcity. *Id.*

159. *Id.* at 21.

160. *Id.* at 21–22.

161. *Id.*

162. *Id.* at 22.

163. *Id.* See also Eric L. Stocks, Felicia Mirghassemi & Luis V. Ocejja, *How Is Your Day Going? Reciprocity Norm in Everyday Communication*, 53 INT’L J. PSYCH. 167–75 (2018).

164. CIALDINI, *supra* note 13, at 22.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

new car and the tickets were 25 cents each.<sup>172</sup> The assistant further explained that if he sold the most tickets, he could win a \$50 prize.<sup>173</sup> The exact words the assistant used in asking the subject to buy the raffle tickets were: “Any would help, the more the better.”<sup>174</sup>

Unsurprisingly, the assistant sold, on average, more raffle tickets in the condition where he did the subject a favor than in the condition where he did not do the subject a favor.<sup>175</sup> But the experiment revealed other important, less obvious consequences of the norm of reciprocity. First, the norm of reciprocity works regardless of whether the person obliged to you likes you or not.<sup>176</sup> We know this because in the Regan art appreciation experiment, Regan had each subject fill out a questionnaire where they rated how much they liked their partner, the assistant.<sup>177</sup> In the non-favor condition, the more they liked the assistant the more raffle tickets they bought.<sup>178</sup> However, under the condition in which the assistant did the subject a favor, the assistant sold as many tickets regardless of the degree to which the subject liked the assistant.<sup>179</sup> In Cialdini’s words, the norm of reciprocity’s “awesome strength” destroyed the “relationship between liking and compliance.”<sup>180</sup> This is an important aspect of reciprocity for a law school leader to appreciate. No matter how affable, hardworking, and successful a law school leader is, some faculty will not like them. This dislike may have been engendered because of decisions they had made with which a faculty member may have disagreed or because of perceived slights, real or imagined. Dean Post observes that “[f]aculty who are happy barely notice their dean; they simply go about their business. But dissatisfaction and anxiety spread easily among faculty, and unhappy faculty characteristically regard the dean as the source and abettor of their troubles.”<sup>181</sup> But feelings of dislike or even animosity are overcome when the norm of reciprocity is at work.

The second important lesson from the Regan art appreciation experiment is that the norm of reciprocity can “trigger unequal exchanges.”<sup>182</sup> In the late 1960s when the experiment was conducted, a bottle of *Coca Cola* cost 10 cents.<sup>183</sup> On average, subjects in the favor-

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172. *Id.* at 23.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. Post, *supra* note 10, at 1825.

182. CIALDINI, *supra* note 13, at 33.

183. *Id.*

condition of Regan's experiment bought two 25 cent tickets, which resulted in a 500% return on the dime investment.<sup>184</sup> Some subjects in the favor-group purchased as many as seven raffle tickets!<sup>185</sup> The take-a-way for law school leaders here is that the benefits that they bestow on faculty often will be returned with added value and zeal. The research confirms that "[w]hen you treat others as you'd like for them to treat you, it's likely that they'll repay you many times over."<sup>186</sup> In other words, you can create a positive reciprocity cycle that can build greater rewards for the institution and your personal connection with faculty. The reverse is also true, however. If the faculty member thinks that their law school leader intentionally harmed them or undermined their interests, it can create a negative reciprocity cycle, where they will seek to undermine the leader.<sup>187</sup> As Cialdini poetically puts it, the norm of reciprocity "assures that, whether the fruit of our actions is sweet or bitter, we reap what we sow."<sup>188</sup>

Law school leaders, at any level, formal or informal, should understand that when they provide resources, benefits, or assistance to one of their constituents that are perceived as above and beyond any duty that the leader may owe the constituent, it creates a powerful obligation for that constituent to return the favor. As Gouldner suggests, the constituent may fulfill the obligation in the form of providing proactive help or it may come in the form of forbearance in not harming a cause for which a leader is advocating.<sup>189</sup> The application of the norm of reciprocity in the one-on-one relationship is nearly limitless. It applies to a dean's relationship with law school donors, alumni, staff, students, and faculty, as well as university staff and leadership.

It is important to remember that the use of the norm of reciprocity is triggered on a one-to-one basis only when the benefit conferred is seen as something above and beyond one's obligations.<sup>190</sup> For example, if a dean approves a faculty member's travel expenses for attending a scholarly conference that exceeds the faculty member's annual travel budget, the faculty member will likely perceive this act as a benefit, which will trigger a feeling of obligation.<sup>191</sup> However, approving travel expenses as a matter of routine that are within the faculty member's annual travel budget is not seen as a benefit, but rather a perfunctory duty, and thus the norm of

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184. *Id.*

185. *Id.*

186. KOUZES & POSNER, *supra* note 2, at 234.

187. *Id.*

188. CIALDINI, *supra* note 13, at 21.

189. Goranson et al., *supra* note 155, at 227.

190. CIALDINI, *supra* note 13, at 19.

191. *See id.*

reciprocity is not triggered.<sup>192</sup> So, it is important for a leader to appreciate whether the granting of benefits is perceived as an entitlement or as a discretionary act.

As an example, the use of discretionary travel budgets offers an excellent way to create goodwill among faculty. A dean's or associate dean's discretionary funds are useful in helping faculty to promote their work and achieve their professional goals, thereby advancing the greater good of the institution. A leader can use such funds proactively. Instead of waiting for a faculty member to ask for funds for additional travel, a leader can keep an eye open for conferences, speaking engagements, or training opportunities in which faculty members would benefit. If the faculty member also believes the opportunity is worthwhile, a dean or associate dean could offer to fund these opportunities out of their own budget. A dean should be particularly keen on making these opportunities available to newer faculty members who are often not as adroit in seeking additional travel funds as more experienced faculty members are. Additionally, discretionary funds could be utilized to promote faculty and their work through hosting conferences or symposia in their discipline in which they would have a featured role.

One should also be cognizant of the important role that non-academic events can play in enhancing the greater good of the faculty. As noted above, one might host breakfasts, lunches, dinners, or other gatherings with no other purpose than socializing as a community. Further, if a faculty member were ill or otherwise needed support, a leader should marshal resources above and beyond what is minimally required or expected to make their recovery or situation as stress free as possible, showing with deeds, rather than just words, the importance they play in the law school community and that faculty are not fungible. These are examples of acts of good servant-leadership.<sup>193</sup> The natural consequence of assiduously supporting a faculty's professional endeavors, building community, and supporting faculty members during difficult personal challenges is that the leader creates good will. As a result, it becomes easier for the leader to obtain support or consent from faculty when a policy needs changing or an initiative needs doing, even when that change or initiative might render faculty jobs harder and even, sometimes, when some faculty members may doubt the wisdom of that policy change or initiative. In other words, you will have the influence that comes with trust.

A law school leader also must keep in mind that the norm of reciprocity is, in fact, reciprocal; it works in two directions. When a faculty member

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192. *See id.*

193. *See* GREENLEAF, *supra* note 83, at 16.

provides a leader or the school a benefit above and beyond their duty, they have created an obligation in the leader and the school.<sup>194</sup> Consider Cicero's corollary to his reciprocity maxim that "all men distrust one forgetful of a benefit."<sup>195</sup> Cialdini emphasizes that those who do not follow the rule of reciprocity are seen as socially undesirable.<sup>196</sup> Indeed, every culture has names for those who do not at least try to return a benefit.<sup>197</sup> We call them "freeloader[s]," "moocher[s]," or "ingrate[s]," and worse.<sup>198</sup> Thus, reciprocity by its very nature cannot be a one-way street for law school leaders. A leader cannot accept or request benefits from a faculty member above and beyond their duties without creating an obligation to return the benefit. This point is illustrated by the following hypothetical:

You are an associate dean of academic affairs. A faculty member, Jasmine, has asked that you schedule her to teach only in the fall term, in which she will teach her entire annual required load, so that she can participate in a research project that would take her abroad for two-months in the spring, which will result in a published work of some merit. She has been an excellent institutional citizen of the law school. She has chaired several important committees with energy and aplomb over the last few years. Jasmine also has been highly flexible in scheduling courses and teaching courses that you needed to be taught, even though they were sometimes new preparations for her. Moreover, three years ago, she deferred a sabbatical to cover classes for the law school because of an unexpected faculty illness. Jasmine's request would be an exceptional accommodation, although not unprecedented. That same week, another faculty member, Henry, asks you for a similar accommodation. He was offered a semester in practice at a prestigious think tank in Washington D.C. for the spring term based on an article he wrote the previous year. Henry has been a poor institutional citizen of the law school. He focuses on his scholarship and teaches his classes but has shown no flexibility in staffing courses that need coverage and his service on committees has been perfunctory at best. Accommodating either of these requests would make scheduling more difficult in the spring, but either accommodation would be workable. However, you cannot grant both requests and still meet your scheduling obligations to the students. What is the most productive course of

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194. See CIALDINI, *supra* note 13, at 19.

195. Gouldner, *supra* note 151, at 161.

196. CIALDINI, *supra* note 13, at 22.

197. *Id.* See e.g., The French word for ingrate is "ingrate." NTC'S NEW COLLEGE FRENCH AND ENGLISH DICTIONARY (1991) (ungrateful person); The Italian word for ingrate is "ingrato." BARRON'S ITALIAN-ENGLISH DICTIONARY (2007) (thankless person).

198. *Id.*

action?<sup>199</sup>

If one is honoring the norm of reciprocity—as I suggest—under this scenario one should grant Jasmine’s request and not Henry’s. Jasmine has conferred many benefits on the school so the school has an obligation to reciprocate if it can.<sup>200</sup> I have seen this happen several times at various institutions over my twenty years as a full-time academic. Good faculty will leave or become disengaged with the institution if their continuous and substantial above and beyond contributions are not adequately reciprocated when the institution has the opportunity and means to do so.

Some might argue that if one cannot grant both Jasmine’s and Henry’s requests, the associate dean in this scenario should not grant either. The problem with that thinking is that it wrongly assumes that treating faculty members the same is treating each of them fairly. That is not the case. These faculty members are not similarly situated. One has given substantial time and energy—for the good of the institution and at the request of the institution—that she might have rightly reserved for herself. The other has only done what was minimally required and no more. Denying Jasmine’s request violates reciprocity, a basic social norm. Denying Henry’s request violates no such norm. Of course, the situation could be avoided by not asking or accepting favors from faculty members. But this is not a practical solution. Most law schools will need to ask faculty members to perform tasks above and beyond required duties from time to time for the institution to function. For example, when faculty members fall ill, sometimes leaving with little warning, classes need to be covered on short notice. Additionally, substantial faculty service obligations arise unexpectedly and must be done by someone.<sup>201</sup> Thus, if one accepts the benefit, one must also be willing to answer the obligation. In short, institutions can be ingrates, too.

To close this section, allow me to distinguish reasonable reciprocation from falling into the trap of faculty exceptionalism. I use the term exceptionalism to refer to the circumstances where law school leadership applies one set of policies to notable faculty and a different set of policies to all other faculty. Exceptionalism can take the form of easy teaching assignments, preferential teaching schedules, limited committee

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199. I created this hypothetical for a training session given at the AALS Annual Meeting. Michael J. Colatrella Jr., Co-Panelist, Address at the AALS Annual Meeting, Associate Deans Section, Connecting at the Crossroads: Sustaining Alliances in Tough Times (Jan. 2–5, 2020).

200. See CIALDINI, *supra* note 13, at 22.

201. In addition to their teaching and scholarly work, law school faculty typically have significant work obligations in the functioning of the law school that is known as “service.” While these obligations vary from school to school, at most law schools, faculty will serve on several faculty committees. By way of examples, these committees can include a Curriculum Committee that approves new courses, a Grading and Advancement Committee that creates grading policies and hears student grade appeals, and a Budget and Planning Committee that works with the dean on law school financial matters.



assignments, preferential office assignments and much more. This kind of exceptionalism breeds resentment among faculty and undermines their trust in leaders who support such a system and, thus, should be avoided. Doing one's job well—even to the point of establishing a national or international reputation—is not a favor to the school and should not be perceived to invoke the norm of reciprocity. While such success might come with appropriate merit raises, awards, enhanced title, or other benefits that flow from formal processes, it should not come with special treatment. I recognize the temptation is great to provide perquisites and dispensations to faculty who significantly contribute to the school's good reputation through their work, but the consequence of succumbing to exceptionalism is a patchwork of inconsistent work policies that breed discontent and resentment among the faculty.

#### *D. Adopt a Giving Personal Reciprocity Preference*

Although the norm of reciprocity is universal, individuals differ in their preferences for the degree of reciprocity they expect in their social exchanges at work. These reciprocity preferences can affect a leader's success.<sup>202</sup> Based on research conducted by Adam Grant, a professor at The Wharton School of the University of Pennsylvania, we know that differences in reciprocity preferences affect who becomes leaders and how successful those leaders are in that role.<sup>203</sup> Notably, Grant's research complements Keltner's research on leaders gaining influence by promoting the greater good of the community.<sup>204</sup> Individuals' differing preferences for reciprocity in their interactions with others is an area of particular importance for leaders who wish to govern primarily through influence, as I suggest law school leaders should do. It is important because it illuminates how one essential aspect of "how we interact with another person at work" impacts our reputation and, thus, affects our power to influence within our organization.<sup>205</sup>

At the center of Grant's research is the question of how much a person seeks to gain in work-related interactions versus how much a person seeks to give.<sup>206</sup> Grant's research identifies three general categories of reciprocity preferences: "givers," "takers," and "matchers."<sup>207</sup> Givers, which represents the smallest population, "tilt reciprocity" in favor of

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202. ADAM GRANT, GIVE AND TAKE 5 (2013).

203. *Id.*

204. *Compare Id.* at 6-7 with KELTNER, *supra* note 14, at 46-47.

205. *Id.* at 4.

206. *Id.*

207. *Id.* at 4-5.

“giv[ing] more than they get.”<sup>208</sup> Givers give with no expectation of receiving anything in return.<sup>209</sup> Takers, on the other hand, give strategically, giving only when they believe that there is a benefit to be gained.<sup>210</sup> Matchers, the most populated of the categories, “striv[e] to preserve an equal balance of giving and getting.”<sup>211</sup> While people can shift their reciprocity style, research shows that most people adopt a default reciprocity style at work.<sup>212</sup>

Grant’s motivation in studying individuals’ reciprocity preferences was to track how each of these strategies correlated with how successful individuals were in their work environments.<sup>213</sup> Although Grant found that people using any of the three strategies can be successful, givers are overrepresented at the top of the success ladder.<sup>214</sup> Perhaps surprisingly, givers are also overrepresented at the bottom of the success ladder.<sup>215</sup> Takers and matchers, on the other hand, are “more likely to land in the middle.”<sup>216</sup> Grant’s research is important to law school leaders for at least two reasons. First, Grant’s findings provide additional support for how an interpersonal relationship strategy of giving can lead to greater success and influence within an organization, independently supporting Keltner’s research that providing professional and personal support to one’s work colleagues enhances a leader’s reputation in the community.<sup>217</sup> Second, it highlights that those who adopt a giving strategy also need to do so in ways that avoid the pitfalls that can lead to sub-optimal performance and burnout.

The quantitative and qualitative research on reciprocity preferences demonstrates that givers earn more and are more successful, on average, than matchers or takers.<sup>218</sup> Like Keltner, Grant and other researchers have found that the community rewards givers with influence and favors.<sup>219</sup> Psychologist Edwin Hollander explains that “people who act generously in groups . . . earn idiosyncratic credits” that create positive impressions

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208. *Id.* at 4–5, 22.

209. *Id.* at 5.

210. *Id.* at 4.

211. *Id.* at 5.

212. *Id.* at 6. To find out your reciprocity style, go to <https://www.adamgrant.net/quizzes/give-and-take-quiz>.

213. *Id.* at 6.

214. *Id.* at 6–7.

215. *Id.*

216. *Id.*

217. KELTNER, *supra* note 14, at 83–85.

218. GRANT, *supra* note 203, at 202.

219. *Id.* at 74 (“Research reveals that people who give their time and knowledge regularly to help their colleagues earn more raises and promotions in a wide range of settings, from banks to manufacturing companies.”).

in the minds of the group.<sup>220</sup> Matchers are particularly aware of who are givers and who are takers in their sphere.<sup>221</sup> Independent of Keltner's research, Grant found that matchers will "go out of their way to reward givers who act generously . . . [and] will sacrifice their own interests to punish takers who act selfishly," which, in part, explains the givers' success.<sup>222</sup> Additionally, Grant's findings on reciprocity preferences are also consistent with the servant-leadership model.<sup>223</sup> Takers tend to value wealth, power, pleasure, and winning, while givers tend to value helpfulness, responsibility, social justice, and compassion.<sup>224</sup> Adopting a preference for giving in our work interactions also encourages the organization to create a culture of helpfulness. Research shows that giving is contagious. When a group includes at least one "consistent giver," other members of the group are inclined to give more, too.<sup>225</sup>

However, the giver's success is also premised on a healthy self-interest. As discussed previously, Grant's research found that givers were overrepresented at both the top and bottom of the success ladder. The successful givers, Grant's research suggests, develop strategies to protect themselves from exploitation from takers in ways that unsuccessful givers do not.<sup>226</sup> Self-interest and other-interest, as it turns out, are independent traits and not, as one might suppose, mutually exclusive.<sup>227</sup> Thus, successful givers never lose sight of their own important interest when giving, unlike less successful givers.<sup>228</sup> Illustrating this point, a Canadian study conducted by researchers Jeremy Frimmer and Larry Walker on the motivations of "highly successful givers" found that motivators such as "gaining influence, earning recognition, and attaining individual excellence" were not inconsistent with motivations of helping others.<sup>229</sup> Consequently, givers can be just as ambitious as takers.<sup>230</sup> This is an important finding for law school leaders to appreciate who might otherwise have seen their ambition for excellence and achievement as inconsistent with their desire to help others and for social justice. It is not. The difference in successful givers is what Grant calls an "otherish" focus.<sup>231</sup>

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220. *Id.* at 76. (emphasis omitted).

221. *Id.* at 49.

222. *Id.*

223. GREENLEAF, *supra* note 83, at 15.

224. *Id.*

225. *Id.* at 57.

226. *Id.* at 189.

227. *Id.* at 157.

228. *Id.* at 193.

229. *Id.* at 157–58.

230. *Id.*

231. *Id.* at 189.

Otherish focus is a healthy combination of self-interest and other-interest.<sup>232</sup> Grant explains that otherish is “being willing to give more than you receive, but still keeping your own interests in sight, using them as a guide for choosing when, where, how, and to whom you give.”<sup>233</sup> Successful givers integrate self-interest and other-interest in healthy ways.<sup>234</sup> This type of integration will be familiar to those who understand interest-based bargaining—a subject to which we will turn to in Section IV—where a negotiator can focus on both their interests and their negotiation counterpart’s interests at the same time.<sup>235</sup> Those less successful givers tend to be selfless, quite literally to a fault and score low on self-interest indicators.<sup>236</sup> Thus, they have the propensity to become overwhelmed and burnt out by their unchecked giving.<sup>237</sup> Leaders are particularly susceptible to burnout, and if one is to have a long, successful career as a leader, one must find healthy ways to manage the workload and stress that frequently come with such service.<sup>238</sup>

There are three important strategies that successful givers use to sustain themselves as long-term givers. First, successful givers do not confuse a person’s affability with a person’s reciprocity preference for giving because these are independent social traits.<sup>239</sup> This is an important distinction because givers can be overly trusting and are more susceptible to exploitation than takers or matchers.<sup>240</sup> Takers can be agreeable and charming yet still exploitive.<sup>241</sup> Conversely, givers can be curmudgeonly, but still generous.<sup>242</sup> The key to identifying “fake givers” is to focus on the person’s reciprocity behaviors, paying special attention to the values and motives those behaviors suggest.<sup>243</sup> In short, agreeability is “noise” that confounds the reciprocity preference “signal.”<sup>244</sup> One tell-tale sign of individuals who prefer a taker reciprocity style is that they “tend to be dominant and controlling with subordinates.”<sup>245</sup> Grant explains that takers

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232. *Id.* at 157.

233. GRANT, *supra* note 202, at 158.

234. *Id.*

235. ROGER FISHER, WILLIAM L. URY & BRUCE PATTON, GETTING TO YES 161–62 (3d ed. 2011).

236. *Id.* at 158.

237. GRANT, *supra* note 202, at 157.

238. Burnout is a common and growing concern among leaders across industries. See Edward Segal, *Leaders and Employees Are Burning Out at Record Rates: New Study*, FORBES (Feb 17, 2011), <https://www.forbes.com/sites/edwardsegal/2021/02/17/leaders-and-employees-are-burning-out-at-record-rates-new-survey/?sh=679a9d656499>.

239. GRANT, *supra* note 202, at 191.

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.* at 192.

244. *Id.* at 193.

245. *Id.* at 32.

tend to “kiss[] up [and] kick[] down.”<sup>246</sup>

The second important strategy is that once a giver determines that a person is acting like a taker, one would be wise to shift their reciprocity style to a matcher when interacting with that person.<sup>247</sup> To not do so risks exploitation. This strategy punishes taking-behaviors and rewards giving-behaviors.<sup>248</sup>

Finally, ample research suggests that givers can help to protect themselves from burnout by knowing the good results of their giving.<sup>249</sup> Thus, as a leader, it is useful to take stock of the good results to which your otherish focus, hard work, and sacrifices have contributed. Knowing such impact is sustaining and recuperative. As importantly, a leader should assure that the givers in their organization know the valuable impact to which their otherish mindset has contributed because it is not always apparent to them. This, of course, can be done through awards and public acknowledgements, as most law schools do. But do not underestimate the power of regular, simple acts of acknowledgment and appreciation that one can achieve through a brief visit to an office, a phone call, an email, a message, or a text. Sustaining oneself and others as givers is important leadership work.

#### IV. NEGOTIATION

There are few skills more important to an academic leader than negotiation. An academic leader can accomplish very little of real significance for the organization without the consent or help of others, and such endeavors frequently involve negotiation and interpersonal problem-solving. This is especially true regarding an academic leader’s relationship with their faculty. Two negotiation concepts that are particularly useful for a leader to have a facility are interest-based negotiation and the use of reciprocity in concession-making. Both concepts will be explored below. Of course, I recommend a more thorough study of negotiation for all academic leaders but understanding interest-based negotiation and the role reciprocity plays in bargaining will make a meaningful difference in one’s negotiating outcomes and, consequently one’s ability to achieve institutional goals.<sup>250</sup>

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246. *Id.*

247. *Id.* at 198.

248. *Id.*

249. *Id.* at 164–65.

250. Two popular negotiation books that I highly recommend are *Getting to Yes* by Roger Fisher, William Ury, and Bruce Patton (3d ed. 2011) and *Bargaining for Advantage* by G. Richard Shell (2006). Both are written by academics for a general readership. For a more academic negotiation reading experience, I recommend *The Mind and Heart of a Negotiator* by Leigh L. Thompson (7th ed. 2019) and *The Manager as Negotiator* by David A. Lax and James K. Sebenius (1986).

### A. Engage in Interest-Based Negotiation

When people hear the word “negotiation,” most conjure the mental image of two people trading offers in the give-and-take of making a deal.<sup>251</sup> In this kind of milieu, each party is posturing to communicate to the other that they could not possibly give or accept an iota more or less than previously offered. This is positional bargaining, also known as distributive bargaining, a default negotiation style for many people, especially those trained as lawyers. For academic leaders however, the default negotiation style with those with whom they work, especially faculty, should be interest-based, also known as integrative negotiation, arguably the very opposite of positional bargaining.<sup>252</sup> At its most basic, interest-based negotiation emphasizes the parties’ underlying concerns and needs that are motivating the negotiation.<sup>253</sup> The most common and powerful interests usually focus on our most fundamental human needs.<sup>254</sup> These needs include “security, economic well-being, a sense of belonging, recognition, and control over one’s life.”<sup>255</sup> Unlike distributive negotiation, interest-based negotiation is not as focused on the parties’ initial concrete offers and demands and the haggling that usually accompanies this type of bargaining. Instead, interest-based negotiation focuses first on the actual problem and then—and only then—do the parties craft offers that may sufficiently satisfy all parties’ concerns and needs to arrive at a resolution. As we will see, adopting a preference for interest-based negotiation will not only help to maintain good relationships with one’s negotiating counterparts but will also increase the likelihood of making good agreements.

As someone who has taught and worked in the dispute resolution field for more than two decades, writing about interest-based negotiation feels trite. The concept of interest-based negotiation is ubiquitous in negotiation and mediation. Mary Parker Follett, an American social worker and business consultant, is credited with introducing the idea of interest-based negotiation in the first half of the twentieth century.<sup>256</sup> However, the concept entered the mainstream with the publication of the

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251. MICHAEL R. FOWLER, *MASTERING NEGOTIATION* 8 (2017).

252. *Id.* at 23. As a leader, it is useful to know your “default” negotiation style. The Thomas-Kilmann Conflict Mode Instrument (“TKI”) is one of the most popular and effective negotiate style instruments. You can take the TKI online at this website: <https://kilmanniagnostics.com/overview-thomas-kilmann-conflict-mode-instrument-tki>.

253. FOWLER, *supra* note 251, at 23.

254. FISHER ET AL., *supra* note 235, at 50.

255. *Id.*

256. Deborah Thompson Eisenberg, *Beyond Settlement: Reconceptualizing ADR as “Conflict Process Strategy,”* 35 OHIO ST. J. ON DISP. RESOL. 705, 719 (2020). See also Amy J. Cohen, *A Labor Theory of Negotiation: From Integration to Value Creation*, J. L. & POL. ECON. (2020) (detailing Mary Parker Follett’s contribution to the field of ADR).

best-selling negotiation book *Getting to Yes* in 1981.<sup>257</sup> It was *Getting to Yes* that popularized the expression “win-win” negotiations.<sup>258</sup> Despite its widespread use in the dispute resolution field and the popularity of *Getting to Yes*, surprisingly few leaders, academic or otherwise, appreciate the power and utility of interest-based negotiation. This should not be surprising for law school leaders because as of this writing, most law school leaders attended law school during a time when law schools typically did not offer a course in negotiation. Even now, few law schools require education in negotiation, despite that in nearly every survey conducted for the last three decades, negotiation was deemed an essential lawyering skill.<sup>259</sup> So, however trite it may feel, no article on the foundational elements of academic leadership would be complete without explaining what interest-based negotiation is, how it works, and why it is a foundational leadership skill.

A classic example of interest-based negotiation, developed by Mary Parker Follett, provides a good place to start in understanding the difference between interest-based negotiation and the better known positional, or distributive, negotiation. Follett explains:

Consider [the ]story of two men quarreling in a library. One wants the window open and the other wants it closed. They bicker back and forth about how much to leave it open: a crack, halfway, three-quarters of the way. No solution satisfied them both. Enter the librarian. She asks one why he wants the window open: “To get some fresh air.” She asks the other why he wants it closed: “To avoid the draft.” After thinking a minute, she opens wide a window in the next room, bringing in fresh air without a draft.<sup>260</sup>

This short, elegant tale communicates a central difference between interest-based and positional negotiation. The men quarreling over whether the window should be closed or open and, if open, how much, is indicative of positional bargaining. Both offer their preferred solutions to the problem, which are incompatible. Even if the men had reached an agreement without the librarian’s help, it would have been a compromise, with one man getting some fresh air, but not as much as he might like and the other man avoiding the worst of the draft but not all of it. Using an interest-based approach, the librarian looks behind the men’s positions to their underlying concerns to find a solution. Knowing their concerns, she

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257. FISHER ET AL., *supra* note 235.

258. See Michael Rogers, Maria Garrett, *Get Out of Jail Free Testimony and Other Examples of Interests-Based Bargaining in the Criminal Justice System*, 22 CARDOZO J. CONFLICT RESOL. 1, 4 (2020).

259. Michael T. Colatrella Jr., *Learning “The True, the Good and the Beautiful” in Law School: Educating the Twenty-First Century Litigator*, 33 REV. LITIG. 741, 748 (2014); DEBORAH JONES MERRITT & LOGAN CORNETT, *BUILDING A BETTER BAR: THE TWELVE BUILDING BLOCKS OF MINIMUM COMPETENCE 69–72* (2020) (report of the Institute for the Advancement of the American Legal System).

260. FISHER ET AL., *supra* note 235, at 42.

can craft a solution that better satisfies the interests of both men—one gets plenty of fresh air and the other entirely avoids a draft. Such a solution was not possible with positional bargaining. Like a religious parable, this famous of negotiation examples, imparts an important negotiation lesson: “interests define the problem.”<sup>261</sup> Parties negotiate to satisfy a need, alleviate a concern, meet a desire, or quell a fear.<sup>262</sup> Thus, interests are the animating source of negotiation on which the parties’ attention should be primarily focused.

As important, although not part of Follett’s library dispute example, is that interests in a negotiation are frequently multidimensional. Parties often have more than one interest they wish to satisfy in any negotiation even where the solution they propose appears to address a singular issue.<sup>263</sup> Consider a common issue that most deans have confronted, or future deans will confront—faculty compensation. At many law schools, faculty compensation is an issue that can be negotiated. The compensation issue is also one that has been particularly difficult in the past decade because of the decline in enrollment that many law schools have struggled with, leaving budgets tight. As of this writing, with significant increases in the cost of living and faculty compensation at many law schools either flat or not keeping up with inflation, compensation is a frequent decanal issue. A common situation is where a dean (or university) provides no annual raise or provides an annual raise with which the faculty member is unsatisfied. If the faculty member engages the dean on this issue, the dean could take a positional negotiation approach, like the two men in the library described above. They could offer the raise and the faculty member could object. They could then argue about the amount, perhaps reaching a compromise. Too often these days, however, deans have too little extra funds in their budget and, by the time positional negotiations begin, they have already provided the maximum raise amount the budget can accommodate. This would leave the faculty member unsatisfied and, often, the relationship between the faculty member and the dean (or university) marred. But look instead at an interest-based approach where the dean endeavors to understand the faculty member’s interests in the compensation issue.

From a typical faculty member’s perspective, compensation touches on several of the fundamental human concerns listed above: economic well-being, recognition, and control over one’s life. So, the first thing to notice is that looking at this circumstance from an interest-based perspective transforms the negotiation from a single-issue discussion—money—to a multi-dimensional discussion—at least three distinct interests. Although

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261. *Id.*

262. *Id.*

263. *Id.* at 49.



it is counter-intuitive, multi-issue negotiations are often easier to resolve than single issue ones because an increase in the number of issues also increases the variety of possible solutions.<sup>264</sup> When the parties frame the negotiation around money alone, however, then only money can be a solution. But when the parties frame a negotiation around interests, then the parties can create solutions that can prioritize one or more interests over others, thus increasing the variety of possible solutions to the problem, thereby increasing the likelihood of reaching an agreement. From a dean's perspective, compensation issues also raise multiple concerns. Common faculty compensation interests for a dean are a desire to demonstrate how much they value the faculty member, sufficient funding, and compensation equity as compared to other faculty members' compensation.

With an interest-based approach, the negotiator(s) first analyzes both parties' interests closely to see where they may be aligned and where they may diverge. To start, both the dean and the faculty member want to show the faculty member how much they are valued. Their interests are completely aligned on this point. Additionally, both would likely agree that the faculty member should also feel economically secure and in control of their career. Turning to the dean's other two interests, we might reasonably assume that the faculty member does not want their compensation to cause inequities in the general pay scale among faculty members. Maybe that is naive, but they would at least likely understand the concern. Finally, the faculty member would also need to be sympathetic to overall law school budget concerns. Thus, shifting focus from positional negotiation where the parties could be in significant conflict over a raise, an interest-based approach reveals significant common ground in the parties' interests and, at minimum, less room for polarization on the dean's other interests. Understanding the interests in this way provides a promising platform for a discussion and potential for a mutually satisfactory solution.

Like in the library dispute, focusing on the parties' underlying concerns creates more potential solutions. In this circumstance, it might be financially untenable for the dean to give any raise to the faculty member because to satisfy the dean's equity concerns, they would need to give a similar raise to several similarly situated faculty members, which they could ill-afford. Thus, if this scenario were conducted as a positional negotiation, that would be the end of the discussion because the dean's interest in compensation equity would win over the faculty member's interest in getting paid more. But, because this is being conducted as an interest-based negotiation, the parties can explore other ways to meet their

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264. THOMPSON, *supra* note 61, at 75, 94.

needs. For example, a common solution to this situation is to provide the faculty member other ways to earn more money. They might be offered the opportunity to do overload teaching, which would address the economic need.<sup>265</sup> Alternatively, the dean might appoint the faculty member to direct a center within the law school or work on a special administrative project for additional compensation, which might address not only their economic need but also their need for recognition. Both these potential solutions also satisfy the dean's desire to show how much they value the faculty member without creating equity concerns in base faculty compensation. There are many more ways to solve this problem by effectively uncovering the parties' interests. That said, an interest-based approach does not guarantee that the parties will reach a mutually acceptable solution. It does, however, increase the number of possible solutions, which in turn increases the likelihood of an agreement.

In addition to increasing the likelihood of reaching an agreement, interest-based negotiation offers at least two other benefits. First, interest-based negotiation is usually more amicable.<sup>266</sup> The very nature of this approach is to be collaborative in finding a solution to the problem that works well for all parties.<sup>267</sup> Ideally, in a well-conducted, interest-based negotiation, "parties come to feel joint ownership in the problem or opportunity."<sup>268</sup> Accordingly, interest-based negotiation makes it more likely that deans will be able to maintain, or even strengthen, their relationship with the faculty members with whom they negotiate. This contrasts with positional bargaining that relies on posturing, withholding information, misleading information, and relative negotiating power—tactics that are more likely to engender distrust, argument, and bad feelings.<sup>269</sup> Second, interest-based negotiation also makes it more likely that the parties will create a well-tailored solution to the problem.<sup>270</sup> Positional bargaining most often ends with compromise. There is nothing inherently wrong with a compromise; it is sometimes the best strategy to reach an agreement. But an academic leader should compromise only when they believe that an interest-based solution is impossible or impractical. The goal of interest-based bargaining is to understand the nature of the problem more fully and, thus, to create solutions that might work even better than a compromise for all involved, like the solution in

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265. Overload teaching is where a faculty member teaches more courses or credits than is required by the school. But sometimes courses need faculty to teach them and typically, the school pay faculty members to teach a course above their required teaching load.

266. FOWLER, *supra* note 251, at 24–25.

267. *Id.*

268. *Id.* at 23.

269. *Id.* at 19.

270. FISHER ET AL., *supra* note 235, at 53-54.

the library dispute related above.

Interest-based negotiation, however, is not a panacea for all problems. Like all tools, it has its uses and limitations. Interest-based negotiation works best when there are multiple interests involved.<sup>271</sup> If a faculty member, for example, is only concerned with their base-monetary compensation and is uninterested in exploring other ways to enhance their earnings or increase their recognition, then this unavoidably will be a positional negotiation. Positional negotiation is just another tool, and it has its place in an academic leader's skills repertoire. We will address an important aspect of this skill in the next section when we discuss the norm of reciprocity's role in concession-making. The point I emphasize here is that interest-based negotiation should be an academic leader's default negotiation strategy with faculty because it offers significant advantages over positional negotiation when available.

Now that we have covered what interest-based negotiation is, we turn to how to conduct one effectively. Uncovering a party's interest is not always easy. There is a misconception in western negotiation that sharing *any* information in a negotiation will undermine one's chances of doing well, so parties are often disposed to keep their concerns and needs hidden.<sup>272</sup> Interest-based negotiation, however, relies on the parties sharing information about their true needs and concerns.<sup>273</sup> This does not mean that one needs to be an open book, but negotiating parties must at least signal their concerns, needs, and preferences. One of the advantages in this process that academic leaders have is a previous relationship with their faculty, so there hopefully will be a degree of trust between the dean and their faculty negotiation counterpart.<sup>274</sup> It has been correctly observed that "[w]ith trust deals get done."<sup>275</sup> And without trust, agreements are more difficult to create and implement.<sup>276</sup> The degree of trust notwithstanding, three strategies can improve a leader's ability to uncover interests in a negotiation: 1) endeavoring to see the other party's perspective; 2) asking questions designed to uncover the other party's interests and their relative importance to them; and 3) providing truthful information about your own interests and their relative importance to you. We will now explore these strategies in greater detail.

The most effective negotiators "develop the ability to see the world

271. THOMPSON, *supra* note 61, at 75 and 85.

272. *Id.* at 82.

273. FISHER ET AL., *supra* note 235, at 52–53.

274. It is important to note that if a person is good friends with another faculty member, there is a danger that they will not reach the most efficient interest-based agreement. THOMPSON, *supra* note 60, at 150. When negotiating, friends tend to compromise quickly because, "to avoid conflict and minimize the threat of impasse, they are likely to leave value on the table." *Id.*

275. G. RICHARD SHELL, *BARGAINING FOR ADVANTAGE* 58 (2d. ed. 2006).

276. *Id.*

from the other party's point of view."<sup>277</sup> By seeing the other side's perspective in a negotiation, a person is better able to identify ways to create value for them and to see potential obstacles in reaching an agreement.<sup>278</sup> Knowing what the other party values and identifying potential obstacles makes it infinitely easier to understand what solutions might work for both parties. An associate dean, for example, who can understand the concerns that underlie a faculty member's belief that their committee assignments are too onerous in comparison to others' assignments is better positioned to parse out the problem and craft potential solutions. But being able to see another's perspective does not mean agreeing with it. It means understanding why the faculty member is objecting, which helps one better understand the problem. In this situation, a faculty member may simply be counting the number of committees that the associate dean has assigned them as compared to others as a basis of their objection. "I have five committees and Sarah has only three!" Knowing the basis of this objection allows you to see that they are not necessarily considering the relative workload of different committees. Thus, providing information about committee workload as compared to other committees would be helpful in this situation. But one would not know to share this information unless they tried to see the problem as their constituent sees it.

Adopting another person's perspective does not come naturally for most people. It is a difficult intellectual muscle to exercise. One reason it is difficult is that it is interpersonally risky. When we honestly commit to seeing the world from another's perspective, our own perspective becomes vulnerable. Taking another's perspective implicitly raises questions like: What if I'm wrong? Am I missing important information? Am I biased? These internal inquiries are often uncomfortable. Yet, they are necessary self-reflections when one is trying to evaluate a problem as objectively as possible, which, in turn, enhances our negotiating effectiveness. For example, if you spent most of your academic career doing overload teaching to make ends meet, you may not appreciate why a faculty member would refuse to take on extra teaching. Conversely, if one was a faculty member who spent their career never taking on overload teaching so they could have more time for scholarly pursuits, they may not easily identify with a faculty member who regularly seeks out overload teaching. In short, we all have our individual histories and experiences that create biases and blind spots. Despite the difficulty, maybe even because of it, making a concerted effort to see the world as one's negotiating counterpart sees it can make one a better negotiator.

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277. *Id.* at 76.

278. *Id.*

Academic leaders can also improve their facility at interest-based negotiation by asking questions designed to uncover the other party's concerns, needs, desires, fears, and priorities. I find this an especially vital strategy for lawyers to internalize. For lawyers, most training and legal practice experience has been on arguing and providing information on why other people should see things their way. This may be an effective tool in an adjudication, but, as we will explore more fully in the next section, it has limited utility in negotiation. Asking questions, regrettably, is simply not an activity generally associated with negotiation. But it should be. One notable experiment found that less than 10% of people asked questions during negotiations about party preferences.<sup>279</sup> Despite this misconception, asking questions about party interests and preferences is central to effective negotiation.<sup>280</sup> Studies show that parties that ask questions are more likely to achieve interest-based agreements.<sup>281</sup> One of the seminal and most thorough negotiation studies ever conducted demonstrated that the most skilled negotiators asked, on average, twice as many questions during negotiations than average negotiators.<sup>282</sup> In sum, to be a more effective negotiator, ask more questions!

When negotiating with a faculty member, academic leaders should have a relentless curiosity about that person's interests.<sup>283</sup> They should find out what is animating the meeting, the issue, or the problem. The best chance of uncovering those interests is to "ask, listen, and probe."<sup>284</sup> One of the most powerful interest-based questions a person can ask is "why?" When a faculty member makes a request in a negotiation, the leader should try to uncover how granting the request makes the faculty member's life better. This is not a defensive "why," but a genuinely inquisitive "why."<sup>285</sup> Further, if the leader suggests a solution that is rejected by the faculty member, the leader can then ask, "why not?"<sup>286</sup> or, "[w]hy does that offer not work for you?" In both circumstances, the leader should listen to the response for underlying interests. What interests appear to be satisfied by a suggestion or what interests remain unsatisfied by the suggestion they rejected? In this way, a leader can begin to isolate the other party's interests and then craft potential solutions to

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279. THOMPSON, *supra* note 61, at 82.

280. *Id.*

281. *Id.*

282. SHELL, *supra* note 275, at 148. The classic negotiation study found that skilled negotiators sought information from their counterpart 21.3% of all of their negotiating behavior, while average negotiators sought information only 9.6% of the time. Neil Rackham & John Carlisle, *The Effective Negotiator*, 2 J. OF EUROPEAN INDUSTRIAL TRAINING 1, 5 (1978).

283. FOWLER, *supra* note 251, at 102.

284. DAVID LAX & JAMES SEBINIUS, 3D NEGOTIATION 77 (2006).

285. FISHER ET AL., *supra* note 235, at 46.

286. *Id.*

satisfy them in a way that also satisfies the leader's own interests.

Because people tend to think in positional terms rather than interest-based terms when negotiating, it is often necessary to probe by asking follow-up questions designed to drill down to the heart of a person's concerns and needs.<sup>287</sup> Take, for example, a situation where a dean is negotiating with the assistant dean of students who has requested to expand their portfolio to do student academic advising, which has been historically the purview of the associate dean for academic affairs at this school. In this situation, the dean might ask why they are requesting to expand their portfolio. The dean of students might respond that this would increase their status on the dean's management team. So, now we know that status is clearly an interest here. It could be tempting for a leader to leave it at that. But a skilled negotiator would probe further to ascertain if status is the most fundamental and only interest motivating the request. In further probing, the dean might ask, why is status particularly important to you at this time? The assistant dean might then reveal that in recent interactions with other management team members, they have felt less valued because they are not a lawyer while most of the team *are* lawyers. Now we have uncovered a different and deeper interest: feeling more valued. Something that at first appears like an interest—status—is actually a solution to the assistant dean's deeper feeling of vulnerability. Having taken the initiative to probe further, the dean now better understands the problem and is thus in a better position to work with the assistant dean to craft a solution. Maybe adding more work is not the best solution? Perhaps instead the assistant dean could more effectively increase their value by highlighting how their social work degree has made a meaningful difference at the school. Thus, asking, listening, and probing are the best tools to get to the heart of an interpersonal problem.

Finally, interest-based agreements require a two-way flow of information. Academic leaders must share their true needs and concerns so that other parties can meaningfully participate in crafting solutions.<sup>288</sup> Interest-based agreements create value by determining what common interests the parties have, what interests are complimentary and what interests may be conflicting, as explored above. This is most effectively accomplished when all parties understand each other's concerns and needs. It also is usually helpful for leaders to take the initiative in sharing their needs first, or at least one or two of them, to build trust in the negotiation. This often has a "priming the pump" effect in that it motivates other parties to reciprocate in sharing their true needs and concerns.

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287. LAX & SEBINIUS, *supra* note 284 at 77.

288. THOMPSON, *supra* note 61, at 75, 82.

*B. Utilize Concessions in Distributive Negotiation*

Not all problems can be solved through an interest-based approach to negotiation.<sup>289</sup> Sometimes there is a single fixed resource over which the parties are negotiating. By way of example, a negotiation between a dean and a faculty member over the amount of the budget the faculty member will have to host a conference may be a distributive issue because the faculty member wishes for a larger budget and the dean wishes for a smaller one. Even negotiations that have integrative elements also frequently have distributive elements, too, in which a fixed resource like money or time must be divided among the participants.<sup>290</sup> This is sometimes referred to as a “mixed motive” negotiation because parties may need to cooperate to create value through integrative agreements, but also must compete to claim their share of the value in the negotiation.<sup>291</sup> For example, in the faculty compensation scenario above, if the dean offers the faculty member a special administrative project to work on as a means to earn extra compensation, they also will need to determine what that compensation will be. Although they arrived at the administrative project idea through interest-based bargaining, they will need to arrive at compensation through distributive bargaining. The norm of reciprocity figures prominently in the distributive aspect of those negotiations, which we will now explore.

In distributive bargaining, the norm of reciprocity creates an obligation to inspire us to make a concession if someone has made a concession to us.<sup>292</sup> I cannot emphasize enough that trading concessions is the main engine of distributive bargaining.<sup>293</sup> This tenet is particularly important for leaders who happen to be lawyers to appreciate because it is unintuitive considering our professional training as advocates. As advocates, lawyers often assume that argument is the main force behind forward movement in negotiations.<sup>294</sup> Lawyers who make rational arguments that are supported by evidence and law tend to think, to themselves, that their negotiation counterpart will see things their way.<sup>295</sup> This notion is unsupported by the science. Argument has its place to be sure, but it is over-relied upon in collaborative processes like

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289. *Id.* at 58.

290. THOMPSON, *supra* note 61, at 95.

291. *Id.*

292. CIALDINI, *supra* note 13, at 36.

293. THOMPSON, *supra* note 61, at 50–51. The skill of trading concessions is more complex than this article addresses. The timing, frequency, and magnitude of concessions also are an important consideration. *See id.*

294. *Id.* at 88.

295. *Id.*

negotiation.<sup>296</sup> Argument as a tactic is most potent in adjudicatory processes like litigation and arbitration where there is a neutral party to decide the dispute by assessing the merits of the respective arguments.<sup>297</sup> But in negotiation, there is no third-party to decide the dispute. The parties must agree on a solution to solve their problem.<sup>298</sup> The technical term for “arguments for one’s position or against the other’s position” in negotiation literature is “substantiation.”<sup>299</sup> Substantiation does not advance a cause in a negotiation as much as many attorneys think it does. Rather, “substantiation begets more substantiation.”<sup>300</sup> Thus, this tactic will frequently bog down the negotiation in argument and counterargument, and so on, with little progress toward an agreement.

Progress toward an agreement in a distributive negotiation, or an aspect of interest-based negotiation with a distributive element, is most powerfully fueled by trading concessions. Cialdini in *Influence* calls this the “rejection and retreat technique.”<sup>301</sup> In the context of leadership, the leader asks a constituent to perform a task that requires time and energy.<sup>302</sup> If the constituent says no to the initial request, the leader immediately follows with a request that requires meaningfully less time and energy.<sup>303</sup> Because the second request is perceived as a concession, the constituent is more likely to say yes to the second request than they would have if the leader presented it as the first request because of the norm of reciprocity.<sup>304</sup> One of Cialdini’s classic experiments illustrates this concept more fully.

In the first condition of the “reject and retreat” experiment, Cialdini’s researchers posed as employees of the “County Youth Counseling Program” and randomly asked college students whether they would be willing to escort a group of juvenile offenders “on a day trip to the zoo.”<sup>305</sup> As you might expect, only a few students agreed to this request, just 17%.<sup>306</sup> In the second condition of the experiment, the researcher asked for an “even larger favor” before asking the student to chaperon the juveniles to the zoo.<sup>307</sup> Before asking if the student would accompany the

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296. Michael T. Colatrella Jr., *Learning “The True, the Good and the Beautiful: in Law School: Educating the Twenty-First Century Litigator*, REV. LITIG. 741, 756–57 (2014).

297. *Id.*

298. *Id.*

299. THOMPSON, *supra* note 61, at 88.

300. *Id.*

301. CIALDINI, *supra* note 13, at 37.

302. *Id.* at 37–38.

303. *Id.* at 38.

304. *Id.*

305. *Id.*

306. *Id.*

307. *Id.*



kids to the zoo, the researchers first asked if the student could volunteer “two hours per week as counselors to the juvenile . . . [offenders] for a minimum of two years.”<sup>308</sup> Only after the student rejected this request, did the researcher ask the student if they would be willing to chaperon a group of juvenile offenders “on a day trip to the zoo.”<sup>309</sup> This time, the researcher obtained a 50% agreement rate on the chaperon request, three times the amount in the first experiment condition.<sup>310</sup> Cialdini and his co-researchers explain that the substantial increase in the agreement rate was because the request to chaperon the kids was seen as a concession and, thus, the students felt an obligation to reciprocate by making a concession themselves.<sup>311</sup>

There are two other important benefits of emphasizing concession-making in negotiation of which a leader should be cognizant. Agreements that one reaches because of concession trading leave the constituent with “feelings of greater responsibility for and satisfaction with the arrangement.”<sup>312</sup> Through the “give and take” of concession-making, a person feels that they have a role in the outcome.<sup>313</sup> Thus, they will feel a particular need to honor the agreement.<sup>314</sup> Further, because they have influenced the outcome, they will be more satisfied with it than if they were forced to work under the same arrangement without input or control.<sup>315</sup>

Thus, concessions should be a prominent feature in anyone’s negotiation arsenal, even more so than substantiation, a favorite default for lawyers. This means that if a leader has a task that they need a faculty member to do, they should have a fallback request when at all possible or something to trade in exchange for the faculty member agreeing to the request. For example, let us consider a situation where an associate dean for academic affairs wishes that a faculty member teach a new course in a subject that is not squarely within the faculty member’s area of expertise. In this circumstance, it is helpful for the associate dean to also have a lesser request in mind in case the faculty member rejects the first request, such as asking the faculty member to take on a course schedule that is less convenient but would allow the associate dean more flexibility

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308. *Id.* at 39.

309. *Id.*

310. *Id.*

311. *Id.* Researchers replicated Cialdini’s experiment in 2020, finding it still a potent form of persuasion. Oliver Genschow et al., *Does Social Psychology Persist Over Half a Century? A Direct Replication of Cialdini’s (1975) Classic Door-in-the-Face Technique*, 120 J. PERSONALITY & SOC. PSYCH. e1 (2021).

312. CIALDINI, *supra* note 13, at 44.

313. *Id.* at 45.

314. *Id.*

315. *Id.*

to meet school-wide course needs in a different way, perhaps by approaching a different faculty member to teach the new course. Or, for example, in asking the faculty member to take on the new course, the associate dean might offer a more advantageous schedule than they would otherwise be willing to provide or some relief from committee work. In another example, the dean of the law school would like a faculty member to serve on an important university search committee that was convened on short notice because of an unplanned departure of a university leader. In such a case, the dean might first make the request outright and hope that the faculty member says yes. But if they reject the request, the dean should have a planned concession to offer to entice an agreement, perhaps a future course release in exchange for the substantial service. The dean could even offer the course release as a package deal with the committee service in the first instance if the dean had the resources to do so and felt it was a fair arrangement, with a further concession in place if the faculty member rejected this offer. In short, concessions are the primary fuel of effective distributive bargaining, not argument.

I do not advocate using the rejection and concession technique in manipulative ways, which, of course, is possible to do. For example, to increase the chances of a faculty member saying yes to your real need, one might be tempted to manufacture and request a bigger favor that one does not really need to influence the faculty member to be more likely to say yes to the real request. This type of manipulation backfires because people will uncover the unethical pattern eventually.<sup>316</sup> Remember, manipulation is highly disfavored by groups and comes with negative reputational consequences.<sup>317</sup> However, when concessions are used in an honest fashion with real initial requests and legitimate back-up requests they will be perceived as concessions, and people do not resent concession-making tactics.<sup>318</sup> Indeed, the social science evidence suggests that people tend to follow through and are most satisfied with agreements arrived at through concession-making.<sup>319</sup>

Lawyers are trained to argue, support their positions, or undermine another's position with facts, law, standards, and other principles. For many lawyers, this is the default style of persuasion. But argument is a less efficient tactic in collaborative processes like negotiation.<sup>320</sup> Leaders should *of course* marshal the arguments in support of a request, vision, or plan they wish to pursue. But overreliance on substantiation is misplaced when one is not dealing with a neutral third party who can decide the issue

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316. See KELTNER, *supra* note 14, at 64-65.

317. *Id.* at 65.

318. CIALDINI, *supra* note 13, at 45.

319. *Id.* at 43.

320. THOMPSON, *supra* note 61, at 88.

and impose a solution, as one would be in a courtroom setting.<sup>321</sup> New visions and plans usually involve change that will impact constituents. Big changes in how an organization runs or the re-ordering of an institution's priorities are seldom easy.<sup>322</sup> This is especially true when a leader proposes changes that contemplate more work for faculty. Trading concessions, a form of reciprocity, serves as an engine that propels negotiators closer to advantageous agreements and can overcome a natural resistance to change.

#### V. CONCLUSION

Quality relationships with one's constituents, especially faculty, lie at the heart of effective law school leadership. Achieving meaningful institutional goals is a group endeavor, and a law school leader must have the skills and abilities to marshal faculty energy and enthusiasm in support of a unified vision. As discussed previously, strong relationships with faculty engender trust, mutual respect, and make interpersonal problem solving through negotiation more productive. Law school faculty members are highly empowered participants in nearly all aspects of the law school enterprise, and meaningful institutional advancement is possible only with their consent and support. Thus, law school leaders must embrace them as partners.

Many of the traditional constructs of organizational power, such as coercive power and legitimate power, have limited utility in the flat organizational structure under which American law schools operate. If one is to be an effective leader in law school environments, one must accept the premise that the power to lead is a power granted by the law school faculty. By earning faculty respect and trust, a law school leader acquires the power to influence institutional change.

Groups give influence to those they see as contributing to the greater good of their community. The greater good contemplates a wide range of actions, outcomes, and behaviors that are seen to improve the well-being and prosperity of the community. Social scientists have identified five social tendencies, dubbed the Big Five, that are particularly potent in inspiring a group to grant a person the privilege of influence over them. These tendencies include the following: enthusiasm, kindness, focus, calmness, and openness. The theory that the group grants power to the leader, and that the leader does not acquire power as a function of formal title, is consistent with the servant-leader model in which the leader is granted the right to influence and lead the group because their primary

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321. Colatrella, *supra* note 296, at 757.

322. CIALDINI, *supra* note 13, at 45.

orientation is to serve the interests of the group.

The norm of reciprocity is another means to improve relationships and gain personal influence. The norm of reciprocity is a moral social rule instructing that “we should try to repay, in kind, what another person has provided us.”<sup>323</sup> The norm of reciprocity has significant utility in one-on-one exchanges with faculty. When one gives resources, time, and energy above and beyond what is perceived to be required, one creates an obligation. This reciprocal obligation is that (1) “people should help those who have helped them,” and (2) “people should not injure those who have helped them.”<sup>324</sup> As leaders give resources, they build goodwill with faculty that can translate into support for policies they wish to implement, or they can obtain help from faculty in ways that promote the good of the school. A leader must not forget, however, that the norm of reciprocity works in both directions. If a leader asks for or accepts favors on behalf of the school, the leader must be willing to return the benefit in kind if able, or else risk losing that constituent’s respect and support, and, perhaps, through the spreading of reputational information or gossip, the support of others.

Although the norm of reciprocity is one of the few principles of social interaction that transcends culture, people differ in their preferences for reciprocity at work. Some people give without expectation of return (givers), some people give only out of strategic benefit (takers), and some people try to evenly match giving and taking (matchers). The research shows that givers are overrepresented at the top of the success ladder of status and income. This is, in part, because matchers, the most populated of the three reciprocity-preference categories, socially reward givers and punish takers. Surprisingly, however, givers are also overrepresented at the bottom of the success ladder. These less successful givers do not adequately protect their own self-interests and thus can more easily be exploited or more readily suffer from burnout. Importantly, self-interest and other-interest are not mutually exclusive. Successful givers focus on their own interest while giving more than they get. They also screen for fake givers and will shift their reciprocity style from giving to matching to minimize being exploited when interacting with takers. Successful givers also protect themselves from burnout by seeking out and acknowledging the effect of their giving. Knowing the good that your giving has created is an effective way to sustain future healthy giving.

Negotiation is also a foundational leadership skill. Two aspects of negotiation that are particularly valuable to law school leaders are interest-based negotiation and the reciprocity of concessions. Interest-

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323. *Id.* at 19.

324. Goranson & Berkowitz, *supra* note 155, at 227.

based negotiation focuses on underlying concerns and needs that motivate the negotiation.<sup>325</sup> Common interests include “security,” “economic well-being,” “a sense of belonging,” “recognition,” and “control over one’s life.”<sup>326</sup> Interest-based negotiation focuses first on the actual problem so that the parties may craft solutions to satisfy all parties’ concerns and needs. Three effective strategies to uncover interests in a negotiation are as follows: (1) endeavoring to see the other party’s perspective; (2) asking questions designed to uncover the other party’s interests and their relative importance to them; and (3) providing truthful information about your own interests and their relative importance to you.

The norm of reciprocity is also invaluable in negotiations with faculty members to inspire concession-making in distributive negotiations. Many lawyers mistakenly believe that argument, also known as substantiation, is the most potent technique to propel negotiations to agreement. But that title goes to the exchanging of concessions, which are animated by the norm of reciprocity. Argument has an important role in negotiations, but its efficacy is limited. Argument tends to inspire more argument and not advance the participants toward agreement. Conversely, by relying on the norm of reciprocity, concessions tend to inspire like concessions from one’s negotiation counterpart, making agreements more likely and more satisfying for all.

Law school leaders, formal or informal, earn the capacity to influence organizational change at their respective institutions primarily by creating quality relationships with faculty and other constituents, by being seen as contributing to the overall good of the school, and by effectively negotiating interpersonal issues that might otherwise stand in the way of institutional progress. A leader’s vision for a law school is blind without the skills to implement it. Earning the faculty members’ trust and goodwill provides a leader with the ability to “make a difference” in their law school by giving them the opportunity to execute a vision, which, in the final analysis, is the most a leader reasonably can ask of constituents, especially highly empowered faculty.

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325. FISHER ET AL., *supra* note 235, at 50–51.

326. *Id.*