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Activating Systemic Change Toward Full Participation: The Pivotal Role of Boundary Spanning Institutional Intermediaries

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**ACTIVATING SYSTEMIC CHANGE TOWARD FULL
PARTICIPATION: THE PIVOTAL ROLE OF BOUNDARY
SPANNING INSTITUTIONAL INTERMEDIARIES**

SUSAN STURM*

INTRODUCTION

Racial and social justice advocacy is in an era of transition. Race continues to permeate people's lives and to structure the social and economic hierarchy, but often in complicated ways that elude bright line categories. Disparities frequently result from cognitive bias, unequal access to opportunity networks, and other structural dynamics, rather than from intentional exclusion.¹ For example, disparities in access to higher education persist as a result of differences in access, information, resources, networks, and evaluation, which give rise to achievement differentials at each critical turning point affecting successful advancement. These differences accumulate to produce substantial disparities in college participation rates, graduation, and movement into graduate and faculty positions.²

Recent Supreme Court decisions provide further evidence that the hallmark narratives and strategies of the civil rights era have to be rethought.³

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1. See Andrew Grant-Thomas & John A. Powell, *Structural Racism and Color Lines in the United States*, in TWENTY-FIRST CENTURY COLOR LINES: MULTIRACIAL CHANGE IN CONTEMPORARY AMERICA 119 (Andrew Grant-Thomas & Gary Orfield, eds., 2009); John A. Powell, *Structural Racism: Building Upon the Insights of John Calmore*, 86 N.C. L. REV. 791 (2008); Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 COLUM. L. REV. 458 (2001).

2. Susan Sturm, *The Architecture of Inclusion: Advancing Workplace Equity in Higher Education*, 29 HARV. J. L. & GENDER 248, 254-55 (2006).

3. In a series of Supreme Court decisions, the Court has reaffirmed and deepened its investment in a color-blind, fault-based, individualistic formal equality frame. See *Ricci v. DeStefano*, 557 U.S. ___, 129 S. Ct. 2658, 2676 (2009) (applying an equal protection analytical framework in a disparate impact case); *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*,

Discrimination—as defined by the courts—does not adequately account for persistent disparities in the core institutions that define citizenship, including education, criminal justice, housing, employment, and political participation.⁴ The federal judiciary has largely withdrawn from the affirmative project of eradicating persistent bias and structural inequality.⁵ Civil rights advocates are more likely to be in court to defend the legality of long-standing programs, rather than to advance affirmative racial justice goals.⁶ Community mobilization now takes forms that may differ dramatically from the grass roots, protest-based mobilization of the 1960s.⁷ Activism's center of gravity has shifted from a singular focus on federal government action to a multi-level, public/private array of local, regional, national, and international arenas.⁸ There is a need for new frameworks and narratives for advancing full participation that are informed by a fuller understanding of the mechanisms that sustain disparities and are connected to new locations and institutions for making those narratives meaningful in practice.

At the same time, current conditions present new possibilities for tackling structural inequality and advancing genuine citizenship. Many lawyers, leaders, activists, and academics have acknowledged the need to redesign

551 U.S. 701 (2007) (applying a color-blind policy to invalidate a school district's voluntary integration plan).

4. See, e.g., Samuel R. Bagenstos, *The Structural Turn and the Limits of Antidiscrimination Law*, 94 CAL. L. REV. 1, 2 (2006); see also Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161 (1995); Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 318–21 (1987).

5. Scott L. Cummings, *The Internationalization of Public Interest Law*, 57 DUKE L.J. 891, 907 (2008); Martha Minow, *Lawyering for Human Dignity*, 11 AM. U. J. GENDER SOC. POL'Y. & L. 143, 146–47 (2003).

6. See Devon W. Carbado & Cheryl I. Harris, *The New Racial Preferences*, 96 CAL. L. REV. 1139 (2008); see also NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, THE CIVIL RIGHTS PROJECT, STILL LOOKING TO THE FUTURE: VOLUNTARY K-12 SCHOOL INTEGRATION, A MANUAL FOR PARENTS, EDUCATORS, & ADVOCATES 3 (2008), http://www.naacpldf.org/content/pdf/voluntary/Still_Looking_to_the_Future_Voluntary_K-12_School_Integration;_A_Manual_for_Parents,_Educators_and_Advocates.pdf.

7. Jennifer Gordon, *The Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CAL. L. REV. 2133 (2007); Duane Ruth-Heffelbower, *Louder Than Words: Lawyers, Communities and the Struggle for Justice: A Report to the Rockefeller Foundation*, 34 J. COMM. DEV. SOC'Y 130, 130–31 (2003) (reviewing PENDA D. HAIR, *LOUDER THAN WORDS: LAWYERS, COMMUNITIES AND THE STRUGGLE FOR JUSTICE* 23–29 (2001)); see also Minow, *supra* note 5, at 146–47; Susan Sturm, *Lawyers and the Practice of Workplace Equity*, 2002 WIS. L. REV. 277, 293 (2002).

8. See generally Cummings, *supra* note 5; Louise G. Trubek, *Public Interest Lawyers and New Governance: Advocating for Health Care*, 2002 WIS. L. REV. 575 (2002).

strategies, roles, and institutions.⁹ At least in some areas, pivotal institutions have begun experimenting with new ways to pursue inclusiveness in an era of complexity and legal uncertainty. The interdisciplinary character of structural inequality has attracted attention from researchers in many different disciplines and policy makers in many different domains. New technologies are creating promising opportunities for sharing knowledge and mobilizing groups. Collaborative networks of activists, professionals, and institutions have emerged. Public and non-profit intermediaries are developing the architecture to connect information and action within and across organizations. Unlikely alliances between insiders and outsiders have emerged in areas such as education, policing, and housing, and these alliances have sometimes propelled ongoing institutional reform. Multi-racial, multi-issue coalitions are emerging to address problems at the intersection of their different agendas.

The challenge is to figure out how to link this complex, interdependent, yet de-centered, activity. Conventional approaches tend to focus on one level at a time—individual behavior, organizational practice, regulatory policy. Strategies are needed that will enable mobilization that, at a minimum, take account of the multi-level dynamics that will influence the scope, impact, and effectiveness of any intervention. More ambitiously, there is a need to develop the capacity to take systematic approaches to systemic problems. Are there ways to configure the mobilization of change that can act on multiple levels simultaneously and thus locate action at leverage points that will maximize impact on those multiple levels?

This Article focuses on a particular institutional form that has the potential to activate change across different levels and spheres contributing to structural inequality. This institution does so by developing the role of boundary spanning institutional intermediaries: pivotally located catalysts with the capacity to mobilize multi-level sustainable change. These institutional intermediaries operate across multiple systems, organizations, and fields of knowledge and practice. They have the potential to serve as the instigators of institutional change, the linkages for cross-institutional learning and collaboration, the leverage to induce institutions to rethink themselves, and the architecture to sustain these networks of learning and accountability. This Article identifies the potential of boundary-spanning institutional intermediaries, using the “action arena” of higher education as a context for developing and illustrating their potential to leverage the impact of

9. See, e.g., *id.* at 575–76 (describing the movement of responsibility for “designing, implementing, and enforcing social programs” as moving away from the federal government and toward non-governmental actors, such as public interest lawyers).

programmatic innovation and thus to produce systemic improvements in access and success of underrepresented groups.¹⁰

It is also important to emphasize what this Article is not doing. It is not suggesting that institutional intermediaries necessarily, or even usually, play a transformative role that advances full participation. Indeed, as Lauren Edelman's important work illustrates, institutional intermediaries often serve as a gatekeeper for the status quo.¹¹ This Article is instead offering two important observations: first, that institutional intermediaries are influential actors that are positioned to influence organizational practice and, second, that under certain conditions and with adequate conceptual tools, they have the capacity to play a transformative role. As such, they should be the focus of explicit attention and design.

I. THE CHALLENGE OF CHANGING THE MULTI-LEVEL DYNAMICS OF STRUCTURAL INEQUALITY

To understand the need and potential of change-oriented institutional intermediaries, it is first necessary to understand the multi-level dynamics that give rise to the need for multi-level, systemic change. This section provides that background by focusing on one arena in which these dynamics play out—higher education.

A. *Structural Inequality as a Multi-dimensional Dynamic*

Higher education institutions have become the gatekeepers to full social, economic, and political citizenship.¹² Yet, they remain a long way from reaching the goal of becoming genuinely inclusive, diverse, and democratic. Although deliberate racial and gender exclusion from higher education has

10. The term "action arena" is borrowed from Elinor Ostrom's 2005 important book, *Understanding Institutional Diversity*. See ELINOR OSTROM, *UNDERSTANDING INSTITUTIONAL DIVERSITY* 13–16 (2005) (describing analytical arenas as "structured human interactions"). As we use the term, action arenas are defined by a shared, ongoing project involving a set of "repeat players" who interact over time in relation to a common problem or goals. *Id.* They often operate across formal organizational boundaries. *Id.* An action arena often consist of (1) the identified organizations, programs and people operating at different levels in relation to a common project, (2) the rules of the game that shape the choices available to those whose decisions influence the context for the targeted behavior, and (3) the choice points for those shaping those contexts. *See id.* 14–16, 32–55.

11. See Lauren B. Edelman & Mark C. Suchman, *Why the "Haves" Hold Court: Speculations on the Organizational Internalization of Law*, 33 *LAW & SOC'Y REV.* 941, 942–44 (1999).

12. WILLIAM G. BOWEN ET AL., *EQUITY AND EXCELLENCE IN AMERICAN HIGHER EDUCATION* 2–3 (2005); see generally Lani Guinier, *Admissions Rituals as Political Acts: Guardians at the Gates of Our Democratic Ideals*, 117 *HARV. L. REV.* 113 (2003) (discussing the role of education institutions as gatekeepers).

been largely eliminated, higher education continues to operate as an agent of stratification. Socio-economic status, race, and gender continue to structure higher education opportunity, participation, and advancement.¹³ For example, College Trust's recent analysis shows that "[n]ationwide, 60 percent of whites but just 40 percent of African Americans and 49 percent of Latinos who start college earn bachelor's degrees six years later."¹⁴ People of color, women, and people from lower socio-economic status are less likely to be represented in graduate school, post-graduate programs, and faculties.¹⁵ Differences in opportunity and treatment accumulate over the sequence of transitions through higher education to produce substantial disparities in college participation rates, graduation, and movement into graduate and faculty positions.¹⁶

This stratification of opportunity and participation is replicated and reinforced at the institutional level. Systems are stratified by prestige, resources, and selectivity of both faculty and students.¹⁷ There are huge disparities between elite, predominantly white research universities and comprehensive universities that primarily serve people of color. Forty-two percent of all the PhDs earned each year by African-Americans are earned by graduates of Historically Black Colleges and Universities.¹⁸ HBCUs and other minority serving institutions often have inclusive and supportive programs and demographically diverse faculties, but many of them lack adequate financial resources, research capacity, and access to social capital and professional networks.¹⁹ Four-year, predominantly white, research institutions fall short in

13. See Joseph Kahne & Kim Bailey, *The Role of Social Capital in Youth Development: The Case of "I Have a Dream" Programs*, 21 EDUC. EVALUATION & POL'Y ANALYSIS, 321, 324 (1999).

14. The Education Trust, *Some Colleges—Not Enough—Show Gaps in Graduation Rates Need Not Be Inevitable*, <http://www.edtrust.org>.

15. See WILLIAM G. BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* 1–3 (1998) (describing how African Americans have been historically excluded from education).

16. See Jonathon R. Cole & Burton Singer, *A Theory of Limited Differences: Explaining the Productivity Puzzle in Science*, in *THE OUTER CIRCLE: WOMEN IN THE SCIENTIFIC COMMUNITY* 277, 279 (Harriet Zuckerman et al. eds., 1991); Claude M. Steele, *A Threat in the Air: How Stereotypes Shape the Intellectual Identity and Performance*, 52 AM. PSYCHOLOGIST 613, 613 (1997); see also VIRGINIA VALIAN, *WHY SO SLOW? THE ADVANCEMENT OF WOMEN* 1–22 (1999).

17. Josipa Roksa et al., *United States: Changes in Higher Education and Social Stratification*, in *STRATIFICATION IN HIGHER EDUCATION: A COMPARATIVE STUDY* 165, 165 (Yossi Shavit et al. eds., 2007).

18. Keivan G. Stassun et al., *The Fisk-Vanderbilt Masters-to-PhD Bridge Program: Broadening Participating of Underrepresented Minorities in the Physical Sciences. Recognizing, Enlisting, and Cultivating 'Unrealized or Unrecognized Potential' in Students*, 79 AM. J. PHYSICS ___, ___, (forthcoming 2010) (on file with author), draft available at <http://people.vanderbilt.edu/~keivan.stassun/jge.pdf>.

19. See *id.*

providing environments that support and engage students and faculty who do not come from privileged backgrounds.²⁰ They tend toward passivity in shaping the incentives, knowledge, and resources available to those currently excluded from opportunity networks. These institutions frequently fail to provide individuals from underrepresented groups with the resources, relationships, and networks to gain access to high quality education and nurture their potential. The diverse student populations that are entering into institutions to study, and those minorities that are currently in the profession, end up feeling isolated, overburdened, and marginalized.

The dynamics contributing to underparticipation by underrepresented groups are thus complex and multi-dimensional, for a variety of reasons. First, underparticipation in higher education takes various forms, ranging from the structural to the cognitive to the interactive to the intentional.²¹ Underrepresented group members experience implicit bias, exclusion from opportunity networks, and stereotype threat.²² The academic context offers a powerful illustration of the role of tacit knowledge in shaping access and mobility at the critical junctures affecting advancement. Much of this information takes the form of tacit knowledge—informal and unstated rules and practices that are understood, rather than communicated, but that govern what is valued and how it is evaluated. Women and people of color are particularly vulnerable to exclusion from these informal knowledge networks.

Second, the dynamics producing underparticipation operate on multiple levels. Decisions reproducing racial and gender bias operate at the level of the organization but are also sustained by broader cultural and practice fields. Underrepresented group members may be clustered in high schools, colleges, departments, or disciplines that are marginalized by conventional value systems and recruitment practices.²³ Departmental decision makers also interact with their counterparts in other institutions, as well as in professional networks that both cooperate and compete in field development. Even within organizations, racial and gender bias involves interactions across multiple levels of university interaction. Practices implicating participation by underrepresented group members are both highly decentralized and

20. Anthony Lising Antonio, *Diverse Student Bodies, Diverse Faculties*, 89 *ACADEME* 14–17 (2003).

21. See generally VALIAN, *supra* note 16 (discussing the hidden issues that lead to gender discrimination, including those present in education).

22. Steele, *supra* note 16; Patricia Rankin et al., *Weak Links, Hot Networks, and Tacit Knowledge: Why Advancing Women Requires Networking*, in *TRANSFORMING SCIENCE AND ENGINEERING: ADVANCING ACADEMIC WOMEN* 31, 31–47 (Abigail J. Stewart et al. eds., 2007); VALIAN, *supra* note 16, at 1–22.

23. Steele, *supra* note 16, at 613–29 (discussing the limits to educational access that have been placed on underrepresented groups).

interconnected with those of other departments and the central university.²⁴ The decisions and practices reproducing marginalization are a product of culture and operate at level of artifact, espoused values, and basic, embedded assumptions.²⁵ Transforming these patterns requires multi-level intervention at the level of underlying assumptions, institutional behaviors, processes, and organizational fields.²⁶

Third, the conduct contributing to underparticipation is diffused in time, place, and manner. Large gaps in current status result from the accumulation of small differences.²⁷ These differences arise in a wide range of decisions that shape the trajectory into and through higher education for both students and faculty. Many people and institutions may participate in the production of these small treatment differentials. They can occur within a particular department, within the larger university, or across a research field. A response directed only at the problem's visible manifestation will not necessarily reach the series of decision points that combine to produce persistent inequality.

Fourth, racial and gender bias is difficult to detect at the level of the individual, except in its most egregious form. Because it is often automatic or unconscious, those involved in it do not necessarily know of their bias. Bias often interacts with other motivations and factors; it is only through observing patterns over time that gender's role becomes visible.²⁸ Those who experience bias may not themselves understand their experiences in relation to gender or race. Even if they do, they may see their experience as unusual or unique, or simply not worth the risk or trouble that might accompany an individual complaint. They may also resist claiming gender as a public identity or explanation for their status.²⁹

24. See ROBERT BIRNBAUM, *HOW COLLEGES WORK: THE CYBERNETICS OF ACADEMIC ORGANIZATION AND LEADERSHIP* 6–7 (1988).

25. EDGAR H. SCHEIN, *ORGANIZATIONAL CULTURE AND LEADERSHIP* 1–2 (3d ed. 2004).

26. JEFFREY MILEM ET AL., *ASS'N AM. COLLEGES & UNIVERSITIES, MAKING DIVERSITY WORK ON CAMPUS: A RESEARCH-BASED PERSPECTIVE* 14 (2005) (“Diverse learning environments provide unique opportunities for *and* challenges to learning and teaching that must be addressed. If we are to maximize opportunities and minimize negative outcomes that may emerge from campus diversity, it is important that we understand more completely the forces that interact to create the often contested conditions under which students can successfully learn from diversity.”); ADRIANNA J. KEZAR, *UNDERSTANDING AND FACILITATING ORGANIZATIONAL CHANGE IN THE 21ST CENTURY: RECENT RESEARCH AND CONCEPTUALIZATIONS* 77 (2001); see generally Sturm, *supra* note 2

27. See Cole & Singer, *supra* note 16, at 279 (describing the gradual emergence of disparities in scientific productivity between men and women); VALIAN, *supra* note 16, at 1–22 (discussing the “invisible factors” that occur over time to create gender discrimination).

28. Rankin et al., *supra* note 22, at 37–38; see also JOYCE FLETCHER, *DISAPPEARING ACTS: GENDER, POWER, AND RELATIONAL PRACTICE AT WORK* 2–3 (1999).

29. MASSACHUSETTS INSTITUTE OF TECHNOLOGY, *A STUDY ON THE STATUS OF WOMEN FACULTY IN SCIENCE AT MIT: HOW A COMMITTEE ON WOMEN FACULTY CAME TO BE*

Fifth, racial and gender bias is linked with, and yet distinct from, other problems with governance, decision-making, participation, and bias. Selection, advancement, and governance practices can be problematic and unfair in ways that may be experienced more acutely by people of color and women but that have far broader effects. Bias is integrated with and often results from inadequate organizational systems and conflict resolution processes. Some of the dynamics of underparticipation also affect universities' capacities to adapt to other complex problems, such as the rigidity of disciplines, their resistance to interdisciplinarity and collaborative scholarship, and their undervaluation of teaching.

Finally, race and gender initiatives are deeply interconnected with and dependent upon other cultural, governance, and regulatory systems, both inside and outside the university. Women and people of color face disadvantages built into the ecosystem, such as ground rules for determining who participates in decision-making and what is valued within a particular workplace. Implicit and uninterrogated cultural norms determine who participates in important decisions and how leaders are chosen, how work is assigned and how opportunities are allocated. Decision-making often proceeds without much self-consciousness about the criteria used and whether those criteria are applied consistently or produce avoidable disparities in outcomes. In addition, substantive ground rules often reflect the priorities and values put in place at a time when women and people of color were not part of the conversation.³⁰ These ground rules involve important issues of value and merit, such as the value of time, the relative importance of different fields of work, and the attributes or qualities that signal success. These substantive ground rules frequently operate beyond public deliberation; they also emerge from the accumulation of decisions made at an early time and structures that reflect those accumulated decisions. The rules may frequently have embedded assumptions that devalue the work that women and people of color are more likely to do.³¹ Changing these ground rules requires the participation of university and community leaders, entities which have broader responsibility

ESTABLISHED BY THE DEAN OF THE SCHOOL OF SCIENCE, WHAT THE COMMITTEE AND THE DEAN LEARNED AND ACCOMPLISHED, AND RECOMMENDATIONS FOR THE FUTURE, Mar. 1999, at 3, available at <http://web.mit.edu/fnl/women/women.html> [hereinafter "MIT 1999 Report"].

30. See generally Mark C. Suchman & Lauren B. Edelman, *Legal Rational Myths: The New Institutionalism and the Law and Society Tradition*, 21 LAW & SOC. INQUIRY 903, 905–06 (1996) (describing how the rules and "ceremonial aspects" of organizational life are the result of the values, beliefs, symbols, and rituals embedded in our culture at the time of the organization's formation).

31. See Londa Scheibinger, *Getting More Women in Science: Knowledge Issues*, 30 HARV. J. L. & GENDER 365, 365–67 (2007).

for the governance of their domains and which treat diversity and inclusion as one of a much larger set of values and concerns.³²

Structural inequality is thus a multi-dimensional and systemic, embedded problem. Its remediation requires operating not only deeply within particular contexts (to get at the microlevel and cumulative interactions) but also broadly across contexts (to enable the reworking of the environmental conditions and incentives that shape internal practices).³³ Multi-dimensional problems require multi-dimensional solutions. Full participation cannot be achieved without addressing institutional climate, culture, and practices, as well as networks that shape the flow of information and mobility. These dynamics occur at the level of individual or group interaction yet are reinforced—and potentially transformed—through institutional policies, practices, and interventions, which are in turn encouraged by macro-level policies and incentives.³⁴ This requires a sustained institutional change strategy that bridges and sustains the different interventions necessary to change culture.

B. *The Need for Multilevel, Linked Interventions*

In light of the multi-dimensional character of structural inequality, effective intervention requires changing the systems, values, and logics that shape the contexts for decisions and practices.³⁵ Research and experience have demonstrated that higher education institutions are notoriously resistant to change, as evidenced by continued underparticipation of women and people of color in the academy.³⁶ Many efforts aimed at institutional transformation remain marginal within their larger organizations; these efforts do not get incorporated into ongoing practices, supported by core resources, or built into organizational cultures—practices that have been identified as necessary to successful implementation and sustainability.³⁷

Focused collaboration across levels and institutions needed for institutional transformation has also proven challenging. Efforts to cultivate active networks that collaborate and develop systems of accountability and

32. See Suchman & Edelman, *supra* note 30, at 905–06.

33. Sturm, *supra* note 2, at 255.

34. For a general theory of multi-level institutional analysis in advancing systems change, see generally ELINOR OSTROM, UNDERSTANDING INSTITUTIONAL DIVERSITY (2005).

35. KEZAR, *supra* note 26, at iv–v.

36. Kenneth I. Maton et al., *Enhancing Representation, Retention and Achievement of Minority Students in Higher Education: A Social Transformation Theory of Change*, in TOWARD POSITIVE YOUTH DEVELOPMENT: TRANSFORMING SCHOOLS AND COMMUNITY PROGRAMS 115 (Marybeth Shinn & Hirokazu Yoshikawa eds., 2008).

37. *Id.*; Adrianna Kezar, *Redesigning for Collaboration Within Higher Education Institutions: An Exploration into the Developmental Process*, 46 RES. IN HIGHER EDUC. 831, 831–36 (2005) [hereinafter Kezar, *Redesigning for Collaboration*]; DARYL G. SMITH, DIVERSITY'S PROMISE FOR HIGHER EDUCATION (2009).

information sharing have similarly proven difficult. Many collaborations do not last. One study of institutional collaborations reported over a 50% rate of failure of institutional collaborations in higher education.³⁸ Programs are only beginning to realize the potential and importance of connecting different programs addressing different points in the opportunity cascade. Many related programs operate separately within the *same* institution and do not even know others exist.³⁹ Each program struggles in isolation and faces common institutional barriers that must be changed at the level of institutional practice for each program to succeed. These programs have yet to be linked to each other in a way that influences more general institutional norms and practices. Institutions do not know how to sustain collaboration or integrate technology into their practices in a way that enables knowledge sharing connected to institutional transformation.

Research shows that many of these programs have limited systemic effect because of difficulties in not only sustaining and building out from discrete interventions and advocacy efforts but also in building them into the institutional architecture.⁴⁰ Many innovative initiatives that have been able to improve access and success rates for their direct participants have found it difficult to expand the scope of their impact and to sustain institutional commitment over the longer term.⁴¹ Many diversity, partnership, bridge, and affirmative action programs leave institutional incentive structures and environmental dynamics intact, which means that their participants will face barriers to participation and advancement once they get to the university.⁴² The programs subsequently struggle with how to sustain collaborations, spread

38. Kezar, *Redesigning for Collaboration*, *supra* note 37, at 832.

39. *Id.* at 832 (suggesting that collaborative organization is needed for higher education institutions).

40. *See, e.g., id.* at 850–56 (discussing the difficulties of sustaining collaboration on university campuses).

41. One well-documented example of innovative initiatives that provide initial success—but ultimately fail—are strategic alliances formed between corporations in the development of new businesses and products. *See* Yves L. Doz, *The Evolution of Cooperation in Strategic Alliances: Initial Conditions or Learning Processes?*, 17 STRATEGIC MGMT. J. 55, 57–74 (1996) (discussing the failure of Ciba Geigy-Alza and AT&T-Olivetti collaborations).

42. For example, while MIT has tried to increase the percentage of women faculty members, the women faculty there reported being excluded from participation in group grants and feeling a lack of influence in important decision-making. *See, e.g.,* NANCY HOPKINS ET AL., THE STATUS OF WOMEN FACULTY AT MIT: AN OVERVIEW OF REPORTS FROM THE SCHOOLS OF ARCHITECTURE AND PLANNING; ENGINEERING; HUMANITIES, ARTS, AND SOCIAL SCIENCES; AND THE SLOAN SCHOOL OF MANAGEMENT 4–5 (2002), available at <http://web.mit.edu/faculty/reports/overview.html>. Additionally, women faculty members were found to face lower salaries due to marginalization of entire fields that have been historically included a higher percentage of women. *Id.* at 5–6.

innovation from one setting to another, withstand leadership transitions, and change reward structures.

Those involved in institutional transformation currently lack adequate frameworks, strategies, and tools to guide their work. Practitioners face a paradoxical combination of an overwhelming abundance of information and lack of usable knowledge.⁴³ Interviews with change agents involved in these programs reveal that they are improvising new roles by the seat of their pants, with only intuitive knowledge developed through trial and error.⁴⁴ They lack adequate tools to monitor and learn from their decisions and practices.⁴⁵ They find themselves continually reinventing the wheel, and they possess only limited access to knowledge about effective roles and strategies for developing and sustaining institutional change. Practitioners and researchers also lack the tools to incorporate analysis of institutional change into the way they undertake and assess their programs, to define with precision what success means and how it can be measured, and to differentiate successful from unsuccessful interventions.

There is thus a need to build the capacity, commitment, and architecture to enable multi-level change to occur in many locations at the same time. Institutional intermediaries have emerged with features that situate them to activate and sustain this kind of systemic change.

II. INSTITUTIONAL INTERMEDIARIES AS ACTIVATORS OF SYSTEMIC CHANGE

A. *The Boundary and Level Spanning Capacities of Institutional Intermediaries*

Boundary-spanning institutional intermediaries occupy a position that enables them to play a crucial role in both identifying significant inflection points and linking multiple levels of analysis and intervention. Their boundary-spanning role and location within multiple networks situates them to build capacity (through reflective engagement over time, common metrics, data and information pooling, and networking), introduce incentives (through establishing shared norms, visibility, convening power, competition, and resources), and provide accountability (through grassroots participation and self, peer, and external assessment). Thus, institutional intermediaries have considerable promise in developing the architecture of learning, mobilized

43. HELLEN HEMPHILL & RAY HAINES, DISCRIMINATION, HARASSMENT, AND THE FAILURE OF DIVERSITY TRAINING: WHAT TO DO NOW 47–57 (1997) (discussing that programs such as diversity training have failed due to the emphasis of the programs being placed on delivering information to understand and appreciating differences rather than teaching usable skills to foster diversification).

44. *See* Sturm, *supra* note 2 at 258 (discussing the interviews).

45. *See id.* at 258–59.

participation, institutionalization, and accountability necessary to bring about and sustain multi-level change.

Crucially, institutional intermediaries are both embedded and independent. They are located outside the normal chain-of-command, and they work with actors in many different parts of the system.⁴⁶ Institutional intermediaries generally do not have governance or organizational duties that tie them to particular routines or lines of authority.⁴⁷ They operate independently from outside supervision over how they define and address problems.

Institutional intermediaries' boundary-spanning location and role situates them to perform a crucial linking role, connecting information, people, and problems that are interdependent but otherwise lack regular opportunities to interact.⁴⁸ Their position at the nodal point of multiple systems provides a vantage point for aggregating information over time and space, detecting patterns and using that knowledge to address multi-level problems. Intermediaries' recurring interactions with people and issues in different locations provides them with the opportunity and incentive to identify systemic problems and figure out interventions that will work at the broadest possible level. Conversely, their understanding of the "big picture" often provides them with increased capacity to understand and solve problems at the micro-level, and to involve those across the system who are in a position to develop effective solutions at both the individual and institutional levels. An intermediary's effective involvement in one context often gives rise to occasions to address analogous problems occurring at other times or locations. This work as a repeat-player generates cultural and institutional knowledge that enable intermediaries to spot patterns, interpret dynamics, and enlist participation of relevant actors. This permits different forms of knowledge, issue, and actor aggregation, which the intermediary can adapt to the nature of the problem as well as the pragmatic opportunities for intervention.

Institutional intermediaries are in a position to work at multiple levels of the organization and with the parties that fit the contours of the conflict or problem.⁴⁹ They bring together people who do not ordinarily work together

46. One such example of an institutional intermediary located outside of normal chain-of-command is a workplace ombud. See Leah Meltzer, *The Federal Workplace Ombuds*, 13 OHIO ST. J. ON DISP. RESOL. 549, 551 (1998) (describing a workplace ombud as a highly placed person who reports to an organization, without being part of the chain of command). For a discussion of the role of intermediaries as catalysts for innovation in the private sector, see Jeremy Howells, *Intermediation and the Role of Intermediaries in Innovation*, 35 RESEARCH POLICY 715 (2006).

47. See *id.* at 559–97 (describing how ombud offices are structured and operate within five different federal agencies).

48. Cf. MALCOLM GLADWELL, *THE TIPPING POINT* 46–59 (2000) (describing the important role of connectors in promoting change).

49. Institutional intermediaries frequently serve both the management of the institution and the parties that are affected by the institution—whether it be employees of an organization or the

and do not otherwise have easy access to each other. They also enable initiatives to adopt a more long-term approach to entrenched problems. Too often, interventions resolve short run concerns affecting only the direct participants in a crisis, with limited consideration of their systemic dimensions. Institutional intermediaries develop opportunities to use information obtained in the context of a discreet problem to understand and design solutions addressing broader concerns.⁵⁰ They frequently have access to a range of intervention strategies, which expands their flexibility and scope.⁵¹ Because they perform multiple roles prompted by the demands of problem solving, they have the opportunity to intervene at the level appropriate to contextually determined needs and opportunities. Their mandate and range of intervention strategies thus provide the access and the tools to engage in multi-level change.

B. *A Taxonomy of Mission-Driven Institutional Intermediaries*

There are at least five types of institutional intermediaries that have committed to use their roles to advance institutional transformation and influence national networks and policies: (1) program intermediaries; (2) cross-institutional role intermediaries; (3) problem solving intermediaries; (4) funding intermediaries; and (5) knowledge intermediaries.

Each of these boundary-spanning institutional intermediaries shares the following features: (1) a core mission that creates greater access and success for underserved communities; (2) a focus on institutional transformation as part of their mission; (3) a location at the intersection of multiple systems and communities; and (4) a goal of connecting and building out from innovation to affect broader change. Below is a brief description of each type of institutional intermediary and its relationship to activating multi-level change.

1. Program Intermediaries: The Example of the Posse Foundation

“Program intermediaries” operate programs that link distinct organizational units or entities under the umbrella of a shared project or goal. This role produces ongoing collaborations across organizational boundaries that also have the capacity to transform participating institutions or cultures.

students and faculty of a university—in resolving systematic issues. See Meltzer, *supra* note 46, at 549–50 (describing how work place ombuds serve both an organization’s management and its employees).

50. Marsha L. Wagner, *The Organizational Ombudsman as Change Agent*, 16 NEGOTIATION J. 99, 100 (2000) (addressing individual issues institutional intermediaries often have the obligation to look for “the possibility of an reoccurrence or pattern and to take steps to change the structure in order to prevent a similar problem in the future”).

51. The available methods for fostering change can vary greatly depending on the type of intermediary and their relationship with the institution. Intervention strategies by institutional intermediaries may vary from making informal suggestions to actively facilitating resolutions to conflicts. *Id.* at 100–03.

Program intermediaries may also occupy a strategic location within larger networks and thus have the potential to influence broader policy and practice through those networks. The Posse Foundation is one example of such a program intermediary: The Posse Foundation is best known for its simple yet powerful ideas of “posses”—supportive multi-cultural teams of 10 Scholars, an idea developed because of one student who said, “I never would have dropped out of college if I had my posse with me.” Building from this core concept, Posse has developed partnerships with 37 selective colleges and universities, with whom Posse collaborates to select, train and support “posses,” and develop a vibrant network of Posse scholars who occupy a wide range of leadership positions. Posse has received national recognition for its success in identifying high-potential leaders from urban public schools who might be overlooked by the conventional admissions process, and enabling them to succeed at selective colleges and universities. Since its creation in Posse has since has identified, recruited and trained 3,110 public high school students to become Posse Scholars.⁵²

The Center for Institutional and Social Change is currently conducting a study of the Posse Foundation’s role as a catalyst of institutional change within certain of its partner institutions. Preliminary results of this research suggest that “Posse has tremendous potential to leverage its partnerships to produce institutional transformation so that Posse has an impact on students at Posse partner schools beyond the Posse scholars, and on the campus’ overall capacity to identify and enable the success of students from underserved communities.”⁵³ Posse has built a variety of relationships, strategies, and networks that enable the organization to provoke multi-level change within its partner institutions and, more generally, the higher education arena.⁵⁴ Posse’s ongoing interactions with a loose network of partner schools situate the Posse organization such that it can act as an influential intermediary that can develop broader institutional capacity and provide incentives for institutional transformation. In addition to developing a network of Posse scholars, Posse

52. <http://www.possefoundation.org/>.

53. *Id.*; see also Stacy Childress & Andrea Alexander, *The Posse Foundation: Implementing a Growth Strategy* 6, 9 (Harv. Bus. Review, Working Paper No. 9-309-056, 2009) (describing retreats hosted by Posse and Posse Access, a database created to allow universities to search for high potential students not chosen for the Posse program); The Posse Foundation, *Posse Access*, <http://www.possefoundation.org/about-posse/program-components/posse-access/> (“By identifying candidates through the Posse Access database, partner schools will benefit from Posse’s holistic approach to evaluating student potential and see a much greater pool of highly qualified students.”) (last visited Aug. 1, 2010).

54. These partnerships extend beyond the partner undergraduate programs as six different universities have pledged scholarships or stipends to support the graduate studies of Posse alumni. Childress & Alexander, *supra* note 54, at 9.

develops ongoing relationships with community-based organizations, administrators, faculty, scholars, and alumni.⁵⁵

At least one institution has created Posse Posses, which are “cohorts of faculty and administrators aiming to develop the group’s capacity to identify leadership potential, serve as effective mentors, anticipate and address problems, and develop the potential of students, alums, (and faculty) as transformative leaders.”⁵⁶ Posse has devoted considerable resources to developing its partners’ capabilities to identify, admit, nurture, and place groups of “transformative leaders.”⁵⁷ This capacity-building work has yielded demonstrable strengths as a catalyst for institutional transformation, including: (1) close working relationships with change agents at many different levels within and across partner institutions; (2) regular convenings of similarly situated leaders such as students, faculty mentors, admissions directors, and presidents; (3) concrete tools, rewards, and strategies that directly enable institutional partners to undertake innovative (and otherwise “risky”) approaches to admission, mentoring, cohort development, and leadership development; (4) regularized feedback and assessment practices that introduce broader accountability for actual progress and outcomes achieved; (5) opportunities and capabilities to pool, analyze, assess, and feed back this cross-institutional knowledge of what does and does not work; and (6) access to key policy and thought leaders in the educational, foundation, business, and political arenas.⁵⁸

2. Role Intermediaries: The Example of the Liberal Arts Diversity Officers Organization (LADO)

The Liberal Arts Diversity Officers Organization (LADO) is an institutional intermediary that brings together people with similar roles and responsibilities in liberal arts colleges as a way to advance an institutional change agenda:

LADO is a consortium of 25 chief diversity officers who occupy high-level positions within higher education institutions with a focus on liberal arts, and whose role involves transforming their institutions to be more diverse and inclusive of people from underserved communities. It has undertaken to build the capacity of people in similar roles to create effective “organizational catalysts” within their own institutions (Sturm, 2006), learn from each other’s successes and failures, leverage their resource and opportunity networks, collaborate on projects, share knowledge, and influence broader policy and

55. *Id.* at 6–7.

56. Center for Institutional and Social Change, *supra* note 54; *see also* Childress & Alexander, *supra* note 54, at 6.

57. Center for Institutional and Social Change, *supra* note 54.

58. *See* Childress & Alexander, *supra* note 54, at 1–6.

practice across institutions. LADO is extremely active, meeting four times a year and developing projects aimed at producing concrete results of institutional transformation.⁵⁹

LADO concentrates its activities on generating information sharing, pooling knowledge, catalyzing change at member institutions, and leveraging cross-institutional networks to increase access and opportunity.⁶⁰ The consortium also uses each organizational meeting as an occasion to prompt attention and reflection within the host institution.⁶¹ LADO is pursuing an active agenda focused on developing networks of access, resource sharing, and mobility for institutions, communities, and schools that serve underserved groups.⁶²

3. Conflict Resolution Intermediaries: The Example of NIH's Center for Cooperative Resolution/Office of the Ombudsman

Conflict resolution intermediaries explicitly undertake to link individual conflict resolution to systemic change.⁶³ These intermediaries undertake to integrate systemic analysis and, where appropriate, intervention into the fabric of their casework. A prime example of a conflict resolution institutional intermediary is the Center for Cooperative Resolution (CCR)/Office of the Ombudsman at the National Institutes of Health.⁶⁴

CCR is a comprehensive conflict resolution program offering assistance to employees in addressing conflicts and concerns involving scientific and workplace issues at the National Institutes of Health (NIH). NIH is "the federal focal point for medical research in the United States," and its mission is "to uncover new knowledge about the prevention, detection, diagnosis and treatment of disease and disability."⁶⁵ "CCR was created in 1998, following a one-year pilot program." Its mission is to provide "conflict prevention and intervention, conflict management including education, and case-specific

59. Center for Institutional and Social Change, *supra* note 54.

60. *Id.*

61. *Id.*

62. *See id.*

63. For a thorough analysis of the role of conflict resolution intermediaries in linking individual and systemic change, see generally Susan Sturm & Howard Gadlin, *Conflict Resolution and Systemic Change*, 1 J. DISP. RESOL. 1 (2007).

64. NIH Office of the Ombudsman, Center for Cooperative Resolution, <http://ombudsman.nih.gov/overview.html>.

65. NATIONAL INSTITUTES OF HEALTH, FINAL FY2003 GPRA ANNUAL PERFORMANCE PLAN (2003), available at <http://www1.od.nih.gov/gpra/fy2003final.pdf>. NIH is comprised of twenty-seven institutes and centers located on its Bethesda campus, plus relationships with universities, hospitals, research institutions, and pharmaceutical and biotechnology companies that conduct research directed and/or funded by NIH. About 10% of the NIH's budget supports projects conducted by nearly 6000 scientists in its own laboratories, most of which are on the NIH campus in Bethesda, Maryland. NIH has an annual budget of approximately \$28 billion. *Id.*

follow up” for NIH scientists and administrative employees.⁶⁶ It operates as the hub of NIH’s conflict processing system by providing: (1) dispute resolution through neutral, confidential, and informal processes; (2) conflict management and prevention through training and education; and (3) dispute systems design to create or improve mechanisms to effectively handle disputes.⁶⁷

As an embedded, though independent, conflict resolution intermediary, CCR has been structured to produce critical inquiry, accountability, and independence. In the process, it has developed the capacity to produce effective individual outcomes as part of a long term process of generating systemic improvements and norms.

4. Funding Intermediaries: The Example of NSF ADVANCE

Funding intermediaries, such as NSF ADVANCE, use their ongoing, capacity building role within a particular domain to: (1) build knowledge (through establishing common metrics, information pooling and networking); (2) introduce incentives for change (through funding, reporting, and visibility); and (3) provide accountability and an architecture for institutional improvement. NSF ADVANCE exemplifies this kind of entity.⁶⁸ It is an independent federal agency that “promotes and advances scientific progress in the United States by competitively awarding grants and cooperative agreements for research and education in the sciences, mathematics, and engineering.”⁶⁹ As a major supporter of academic science, the agency resists the label of regulator, notwithstanding its considerable impact on the practices

66. NIH OFFICE OF THE OMBUDSMAN, THE CENTER FOR COOPERATIVE RESOLUTION, ANNUAL REPORT 1 (1999), <http://www4.od.nih.gov/ccr/ombudsman.pdf> [hereinafter 1999 ANNUAL REPORT]. According to CCR’s 2005 Business Plan, “Cases increasingly involve scientific matters (collaboration issues, scientific vision, and authorship) or entire organizations (lab units, branches, offices). In 2003, 45% of the cases involved scientific matters and 50 of 518 cases—almost 10%—were with groups of different sizes.” *Id.* In addition, CCR works closely with the EEO community, and this collaboration produced a 17% increase in the resolution of precomplaints. *Id.* at 4–5.

67. Sturm & Gadlin, *supra* note 64, at 15.

68. See Olatunde C.A. Johnson, *Disparity Rules*, 107 COLUM. L. REV. 374, 408–10 (2007) (documenting a comparable role played by the Office of Juvenile Justice and Delinquency Prevention).

69. NAT’L SCIENCE FOUNDATION, ADVANCE: INCREASING THE PARTICIPATION AND ADVANCEMENT OF WOMEN IN ACADEMIC SCIENCE AND ENGINEERING CAREERS 15, available at <http://www.nsf.gov/pubs/2005/nsf05584/nsf05584.pdf>. “With an annual budget of about \$6.06 billion, we are the funding source for approximately 20 percent of all federally supported basic research conducted by America’s colleges and universities. In many fields such as mathematics, computer science and the social sciences, NSF is the major source of federal backing.” National Science Foundation, *NSF at a Glance*, <http://www.nsf.gov/about/glance.jsp> [hereinafter *NSF at a Glance*].

of the universities it funds.⁷⁰ NSF operates primarily as a grant-making, rather than a compliance agency, although as such it does have responsibilities for monitoring compliance with legal diversity requirements.⁷¹ The agency has significant and ongoing involvement in the core work of the organizations it seeks to influence.⁷² NSF's goal is "to support the people, ideas and tools that together make discovery possible."⁷³

5. Knowledge Intermediaries: The Example of the Center for Institutional and Social Change and Policylink

Knowledge intermediaries use their research capacity, relationships, and convening power to build the capacity for institutional change. So, for example, the Center for Institutional Social Change⁷⁴ and Policylink⁷⁵ work through projects, networks, and gatherings in different institutional settings to develop cross-cutting frames, strategies and methodologies that can be used to advance inclusion and public problem solving. The Center's emphasis is explicitly on building individual and institutional capacity to advance full participation and institutional citizenship through institutional transformation. Its research operates to develop usable knowledge about effective approaches for producing sustainable and systemic change. Policylink partners "with equity advocates around the country to lift up best practices and create policies that build a just and fair society."⁷⁶

C. *The Crucial Role of Linkages, Leverage and Pivot Points*

Three key concepts characterize the institutional intermediation approach: capacity building, linkages, and leveraging communities of inquiry and practice. Each type of institutional intermediaries focuses on building the capacity of individuals and institutions to advance full participation. Institutional intermediaries bring concrete benefits to the table in the form of new frameworks, strategies, resources, expertise, convening capability, and legitimacy. For example, NSF's monitoring role is linked to capacity building: developing adequate knowledge, incentives, and institutional infrastructure with the aim that universities can tackle the difficult problem of increasing participation.

70. See *NSF at a Glance*, supra note 70.

71. GOV'T ACCT. OFFICE, WOMEN'S PARTICIPATION IN THE SCIENCES HAS INCREASED, BUT AGENCIES NEED TO DO MORE TO ASSURE COMPLIANCE WITH TITLE IX at 11 (2004), <http://www.gao.gov/new.items/d04639.pdf>.

72. *NSF at a Glance*, supra note 70.

73. National Science Foundation, Office of Polar Programs, *About Discoveries*, <http://www.nsf.gov/discoveries/about.jsp?org=OPP&from=home>.

74. The Center for Institutional and Social Change, <http://www.groundshift.org/>.

75. Policylink, <http://www.policylink.org/>.

76. *Id.*

Institutional intermediaries also play a crucial role of linking issues, actors, knowledge, and incentives around a common problem and goal. These linkages are both substantive and strategic.⁷⁷ Substantive linkages connect problems that share common goals, causes, or remedies. Bringing issues together for integrated consideration changes the understanding of each issue and enables identification of common causes and remedies. Linkages also connect actors who operate independently in relation to the problem but whose actions are in fact interdependent. This interdependence may be knowledge based. The information needed to understand the problem and identify solutions may be dispersed among different actors who do not ordinarily share information. Institutional intermediaries create ways for new information to flow, bridging these knowledge gaps. They also generate opportunities to act on available knowledge and bring usable information to those in a position to act. Strategic linkages leverage incentives and tools from one domain to another which, in turn, increases the tools for motivating change. Treating issues together enhances the knowledge, incentives, or collaboration needed to address each. The actions of one affect the success of the other and, when certain steps require coordination of actors who otherwise lack opportunities or incentives for joint action, those actors can choose to collaborate.

Institutional intermediaries forge linkages that enable them to act as catalysts and integrators of multi-level systems change. They do so through their attributes as insider-outsiders, because their organizational position requires them to interact regularly with very different types of stakeholders. These linkages occur at strategic locations or pivot points that either perpetuate or alter prevailing assumptions and practices. Through the creation and exploitation of pivot points, intermediation creates occasions to detect problems and reshape underlying structures and assumptions.⁷⁸ This approach is simultaneously internal and external; it is both embedded enough to overcome the information asymmetries that characterize traditional monitoring relationships yet independent enough to avoid capture. So, for example, Posse, NSF, and CCR can wield internal legitimacy and still remain sufficiently outside routines to destabilize the status quo. Problem-solving intermediation thus develops the requisite conditions to mobilize grassroots efforts and to generate new leadership that is committed to sustaining ongoing change. Its attentiveness to the conditions for effective involvement, at a minimum, encourages the possibility for creating accountable participation.

Finally, institutional intermediaries use their location within a thick network of pre-existing relationships to link and leverage networks. For

77. For a helpful analysis of the role of linkages in the international law context, see generally David W. Leebron, *Linkages*, 96 AM. J. INT'L L. 5 (2002).

78. Cf. Claire Moore Dickerson, *Corporations as Cities: Targeting the Nodes in Overlapping Networks*, 29 J. CORP. L. 533, 536 (2004).

example, NSF creates a community of practice with universities that interact regularly with each other that operates independently from NSF. These universities compete with each other for students, faculty, funding, and status. They cooperate with each other to share research, knowledge, and strategies. They are part of varied professional and disciplinary networks that regularly meet and share research and strategies. Universities already have incentives to pay attention to the practices and outcomes of other universities. They must meet regularly in the course of their ongoing work. NSF piggybacks on these preexisting competitive and cooperative relationships. Similarly, Posse and CCR develop and then build on networks of relationships among institutional and individual actors that already are connected to each other. This strategy of linking existing communities enables institutional intermediaries to expand their reach and have reverberating impact.

III. CONCLUSION

Looking across the five types of boundary-spanning institutional intermediaries, this Article identifies the following institutional transformation roles that enable multi-level systems change toward full participation:

- Developing shared vision, agendas, institutional change strategies, and language;
- Providing for learning and reflection about success and failure, including developing a shared research agenda;
- Pooling knowledge and serving as carriers of ideas across organizational fields;
- Developing metrics and generating, sharing and comparing data about institutional transformation;
- Identifying and researching “positive deviants”: examples of innovation and effective practice;
- Building information and collaboration networks among people with similar roles, interests, or concerns;
- Developing roles for and capabilities of organizational catalysts and transformative leaders;
- Validating and supporting those involved in this work;
- Creating occasions for participation and mobilization by community members, thus bringing them to the table and enhancing their social capital; and
- Creating occasions for comparing performance and creating benchmarks and robust best practices, thus leveraging innovation and best practices to create pressure for change among member institutions;

This analysis of boundary-spanning institutional intermediaries also offers a way to broaden and deepen the discussion of the law’s relationship to the promotion of public values. Law is not limited to formal norm elaboration through articulating general rules enforceable by state coercion. The law is

also about creating systems that foster the capacity of actors in different settings to identify, generate, and revise norms, and to structure systems that are more likely to produce desired conditions and practices. This process involves engaging with the practices that encourage or undermine those values we care about. Public values are thus embedded in an institutional understanding and analysis. Only through realizing norms in institutional practice can we give concrete meaning to Robert Cover's profound articulation of the role of law: "To live in a legal world requires that one know not only the precepts, but also their connections to possible and plausible states of affairs. It requires that one integrate not only the 'is' and the 'ought,' but the 'is,' the 'ought,' and the 'what might be.'"⁷⁹

79. Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 10 (1983).

