

*Articles***The Pen Is Mightier: Rethinking the “Gladiator” Ethos of Student-Edited Law Reviews**

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ABSTRACT

Law reviews serve two critical functions: to publish a diverse body of scholarly articles and to provide students with an opportunity to edit those articles and write their own for publication. Now, more than ever, membership on a law review or journal is a significant credential for an aspiring lawyer. However, certain aspects of law review culture may run counter to a law review’s goals. This Article analyzes that tension by applying Columbia University Law Professor Susan Sturm’s “gladiator model,” which describes the culture of U.S. law schools, to the culture of U.S. law reviews.

After discussing the value of diversity in law schools and in the legal profession, I discuss the prevailing gladiator model and the feminist theory that challenges the model. I argue that most law reviews teach members to behave like gladiators by emphasizing competition over collaboration, prioritizing rules over relationships, and encouraging “masculine” leadership characteristics that may alienate potential leaders. Law reviews—and the legal profession—are better-served when a law review’s culture recognizes a variety of leadership styles that include, rather than exclude. Such measures would benefit law reviews nationwide by creating a team-oriented approach to editing and publishing a superior journal.

I. INTRODUCTION

Law reviews, the academic journals for U.S. law schools, are one of the most integral, and intriguing, aspects of American legal education. Most law schools rely upon students to edit and publish the journals several times each year. Each issue of the journal contains analyses by law professors, practitioners, judges, and students. A student seeking membership on the school’s law review competes for one of the most significant honors of his or her legal career.¹ In an advice book for law students, attorney Robert Miller strongly urges participation on the law review because it is “a tremendous honor—among the biggest you can get in law school, and everybody knows it.”² Miller concludes that the value of law review membership opens doors and creates opportunities that no other student association can.³

1. See, e.g., ROBERT H. MILLER, LAW SCHOOL CONFIDENTIAL 202–04 (2000). Miller argues that adding “law review” to one’s resume may help a student land a job, as employers intentionally seek out members of law reviews. *Id.* at 202. Furthermore, “membership on a law review is almost a prerequisite to getting a high-level clerkship” or for working in academia. *Id.* at 203.

2. *Id.* at 202.

3. See *id.* at 202–04.

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Given the value of this experience, it is unfortunate that law review membership does not always reflect the diversity of law-school populations.⁴ While men and women enter law schools in roughly equal numbers,⁵ law reviews remain dominated by men.⁶ Women at Harvard and Yale law schools, for instance, have not joined law reviews in percentages commensurate with their representation in their respective J.D. classes.⁷ Therefore, women at these schools—and countless more—may find themselves at a distinct disadvantage when they graduate because they have less access to the journal experience.

Scholars have studied the effects of law school culture on female law students, but relatively few have written about the impact of law review culture on female law students.⁸ The lack of female representation on law reviews is especially troubling given that the goals of student-edited journals include publishing innovative, prestigious scholarship and teaching students editing and writing skills. A law review lacking diversity, including gender diversity, will face a heightened challenge in achieving these goals.⁹ That is, without diverse perspectives, published scholarship may not be as representative or as innovative as it can be. Of course, simply adding women does not *necessarily* mean that perspectives will be any more diverse, but there is at least a possibility for diverse views when people from different backgrounds join the review.

This Article offers a feminist critique of law review culture by demonstrating that Columbia University Law Professor Susan Sturm's "gladiator model," which she uses to characterize the culture of law schools, also describes the culture of many law reviews. Sturm argues that the model applies to law schools because these institutions socialize students to become tough and quick-thinking adversarial warriors.¹⁰ I argue that the model, and the ethos it creates, also explains the culture of law reviews in encouraging individualism and competition. This adversarial law review culture may, in turn, alienate women and discourage productivity, thus undermining publication.

4. See Ann Bartow, *Symposium Paper: Still Not Behaving Like Gentlemen*, 49 KAN. L. REV. 809, 832 (2001) [hereinafter Bartow, *Still Not Behaving Like Gentlemen*]; Sari Bashi & Maryana Iskander, *Why Legal Education Is Failing Women*, 18 YALE J.L. & FEMINISM 389, 424 (2006); Adam Neufeld, *Costs of an Outdated Pedagogy? Study on Gender at Harvard Law School*, 13 AM. U. J. GENDER SOC. POL'Y & L. 511, 514 (2005).

5. Carolyn B. Lamm, *Diversity and Justice: Promoting Full and Equal Participation in the Legal Profession*, 48 JUDGES' J. 1,1 (2009).

6. See sources cited *supra* note 4.

7. See Bashi & Iskander, *supra* note 4, at 424–25.

8. See ROY S. GUTTERMAN, L. REV.: THE LAW REVIEW EXPERIENCE IN AMERICAN LEGAL EDUCATION 7 (2002). *But see* sources cited *supra* note 4.

9. See, e.g., Mark A. Godsey, *Educational Inequalities, the Myth of Meritocracy, and the Silencing of Minority Voices: The Need for Diversity on America's Law Reviews*, 12 HARV. BLACKLETTER J. 59, 79–89 (1995) (explaining the educational and scholarly value of law review with diverse members).

10. See Susan P. Sturm, *From Gladiators to Problem Solvers: Connecting Conversations About Women, the Academy, and the Legal Profession*, 4 DUKE J. GENDER L. & POL'Y 119, 121 (1997).

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Part II discusses the importance of diversity on law reviews and situates this goal within the need for more diversity in the legal profession. Parts III and IV introduce the gladiator model and the feminist legal theory that challenges the model. Part V provides background about the institutional history, function, and membership of law reviews. Part VI argues that law review culture emphasizes competition over collaboration, prioritizes rules over relationships, and encourages particularly “masculine” leadership characteristics to the detriment of some student members. Part VII offers solutions designed to encourage new modes of law review performance and leadership. This Article recommends that law review editors implement changes to the process of joining and working on the law review and develop leadership opportunities for editors. These solutions should benefit all law review members by creating a team-oriented approach to editing and publishing a superior journal.

II. THE VALUE OF DIVERSITY IN LAW SCHOOLS AND IN THE LEGAL PROFESSION

There is little disagreement that the legal profession is well-served by embracing diverse perspectives. Generally, sociologists have argued that each time an excluded group joins the larger legal discourse, society learns more about the “limits of [its] current way of seeing.”¹¹ One professor has suggested that instead of feeling threatened by diversity in the legal profession, the legal community should appreciate the opportunity to learn about new ways to do things.¹² Women and minorities should not be forced to assimilate into a certain way of thinking, because it produces a “potentially bland world” that “blot[s] out differences by abstracting away particularities.”¹³

Practitioners and judges have recognized the value of diversity to improving the legal profession as a whole. As the former president of the American Bar Association, Carolyn Lamm, wrote in the summer 2009 issue of *The Judges’ Journal*, greater diversity is important for the legal profession because “fairness and equal treatment are defining principles of the law, and lawyers have an obligation to eliminate discrimination and ensure that all people who aspire to become lawyers and judges have an equal opportunity to do so”¹⁴ Moreover, she argues that “homogeneity of lawyers and judges leads to cynicism and reduces confidence in the justice system”¹⁵ Justice Ruth Bader Ginsburg shared this sentiment at her investiture in 1993, declaring that the legal system “will be poorer” if all of its law students, lawyers, and judges are “cast from the

11. See Carrie Menkel-Meadow, Symposium, *Excluded Voices: Realities in Law and Law Reform: Excluded Voices in the Legal Profession Making New Voices in the Law*, 42 U. MIAMI L. REV. 29, 52 (1987) [hereinafter Menkel-Meadow, *Excluded Voices*].

12. *Id.*

13. *Id.*

14. See Lamm, *supra* note 5, at 1.

15. *Id.*

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same mold.”¹⁶ Accordingly, a pedagogic model that encourages homogeneous thinking at the expense of diversity is not one that will benefit the legal profession. It is particularly troubling when that flawed model is replicated in the operations of student publications.

While women represent the majority of law-school applicants, they account for only twenty-six percent of state court judges,¹⁷ “[fifteen percent] of federal judges and law firm partners, [ten percent] of law school deans and general counsels, and [five percent] of managing partners of large firms.”¹⁸ As Justice Ruth Bader Ginsburg told the *New York Times*, “[i]t matters for women to be there at the conference table to be doing everything that the court does. . . . If you’re going to change things, you have to be with the people who hold the levers.”¹⁹

Improving these statistics begins with women’s access to opportunities during and after law school. To increase the number of women in the upper echelons of the profession, women need to be as qualified and competitive as possible. Law-school success is often measured by students’ grades; unfortunately, women may not appear to be as qualified as men because they may not present academic success in the same way that men do.²⁰ This is why membership in other activities, including the law review, is very important. Indeed, some have called law review “the Great Equalizer.”²¹

A law review staff composed of people from a variety of backgrounds supports its school’s broader education goal of increased diversity.²² This is because many assume that a staff with diverse life experiences will advocate for the publication of a wider variety of articles than would a staff composed of people from the same background with the same views. Without diversity, a law review cannot provide the “perspective necessary to ensure the law’s continuing vitality and responsiveness to social concerns.”²³ Law review staffs need to be more diverse in order to realize the goal of publishing a variety of legal perspectives. In sum, the value of having diverse student populations—and diverse student membership on law reviews—cannot be overstated. However,

16. See Bartow, *Still Not Behaving Like Gentlemen*, *supra* note 4, at 818.

17. Malia Reddick et al., *Racial and Gender Diversity on State Courts*, 48 JUDGES’ J. 28, 31. (2009).

18. See Deborah L. Rhode, *Gender and the Profession: The No-Problem Problem*, 30 HOFSTRA L. REV. 1001, 1003 (2002) [hereinafter Rhode, *Gender and the Profession*].

19. Emily Bazelon, *The Place of Women on the Court*, N.Y. TIMES (July 12, 2009), <http://www.nytimes.com/2009/07/12/magazine/12ginsburg-t.html> (on file with the *McGeorge Law Review*).

20. See Bartow, *Still Not Behaving Like Gentlemen*, *supra* note 4, at 832. Studies have shown that women tend to perform less well than men do in law school. See *id.* For example, research has indicated that women enter law school with significantly higher undergraduate grades and LSAT scores but are less likely than men to be represented in the top ten percent of their class. *Id.* at 831–32.

21. See MILLER, *supra* note 1, at 198.

22. See Godsey, *supra* note 9, at 91.

23. See *id.* at 89.

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that value is often in tension with the gladiator ethos that dominates several aspects of law review culture.

III. THE GLADIATOR ETHOS IN LAW SCHOOLS

At first blush, the image of an ancient gladiator, wielding a shield and clad in sandals, may seem a world away from the typical modern law student in the United States. Gladiators were “professional combatant[s] in ancient Rome,” performing alone and battling to the death before a huge arena of spectators.²⁴ The stakes were high because the gladiator might die, but the potential rewards—honor, adulation, an enhanced reputation—were great. Thus, the life of a gladiator was characterized by strength, endurance, and fighting as an individual before a large audience.²⁵

These warrior-like qualities also describe the socialization of students in U.S. law schools.²⁶ According to Professor Sturm, who named the gladiator model,²⁷ the law student, like the gladiator, is taught to define “success” as winning in battle.²⁸ The law student’s battle takes place in an arena-shaped classroom when the professor employs the Socratic Method to test the student’s knowledge. For instance, faculty members reward the students who exhibit the “warrior-like” characteristics of a gladiator, such as “toughness[] and quick thinking.”²⁹ A professor using the Socratic Method might praise a student who decisively defends a difficult position in the face of professorial challenge.

The stakes are high because the student does not want to fail during her questioning, nor does she want to appear unprepared before an audience of her classmates. Furthermore, in both the gladiator’s arena and the law-school classroom, the spectators’ role is important: the tension and excitement surrounding each fight or Socratic performance creates a need to display bravado.³⁰ Despite the pressures, the rewards for successful performance—good grades, glowing recommendation letters, and an enhanced reputation among peers—make the battle worth it for some.

24. See *Gladiator*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/eb/article-9036961/gladiator> (last visited Jan. 30, 2012) (on file with the *McGeorge Law Review*).

25. See generally GLADIATOR (DreamWorks 2000) (illustrating hero status of successful gladiators).

26. The gladiator model is not unique to law schools in the United States. Molly Townes O’Brien offers an interesting and relevant analysis of the model’s destructive characteristics in *Facing Down the Gladiators: Addressing Law School’s Hidden Adversarial Curriculum*, 37 MONASH U. L. REV. 43 (2012). She notes that all schools in the United States and Australia require adversarial courses (such as civil procedure), but no school requires students to learn about the non-adversarial process. *Id.* at 45–46, 48–49.

27. See Sturm, *supra* note 10, at 129.

28. See *id.*

29. See *id.* at 128.

30. See Autumn Mesa, *A Woman’s Climb up the Law School Ladder*, 9 CARDOZO WOMEN’S L.J. 379, 389 (2003) (explaining stress of “performance” during class time in law school).

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A second battle begins when the student takes an exam under time pressure.³¹ On an exam, a professor will reward the student who quickly spotted the issues, considered all sides of the argument, and moved on to the next question.³² The students' job in law school is to "steadfastly avert[their] gaze from the human . . . misery, justice, and injustice found in the story."³³ Instead, the predominant culture in law schools requires conforming one's views to those of one's peers and professors, thus transforming into a lawyer.³⁴ Many law schools have structured their curricula around the gladiator model, which means they train students to become adversarial warriors.³⁵ Note that the gladiator ethos is *de rigueur* in most U.S. law firms as well, as young associates are "[c]oming from a place of hunger" and "grow mean, rapacious, grasping" as they are "starve[d] . . . of friends, of free time, of control over [their] own [lives] and decisions, of praise and appreciation for who [they] are and what [they] do."³⁶

Professor Sturm notes several problems with the "one-size-fits-all" gladiator model of law-school socialization.³⁷ Not all students relish the adversarial nature of the gladiator's fight. Certainly, the gladiator represents a gendered usage: the word "gladiator" evokes images of a tough (most likely Caucasian or white) man fighting an adversary.³⁸ The gladiator builds a tough image in part by withstanding teasing and harassment from others. To achieve elite status within law school, arrogant, gladiator-like students tolerate and encourage some level of peer and faculty harassment.³⁹ The gladiator model excludes those who cannot stand being provoked and therefore may find it more difficult to speak in class and participate in academic discourse.⁴⁰ Moreover, the model is incomplete because it does not acknowledge those persons, including some women and

31. See Sturm, *supra* note 10, at 131.

32. See *id.*

33. See ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER" 10 (2007); see also Mesa, *supra* note 30, at 385 (noting that the female voice often "express[es] an ethic of caring and compassion").

34. See Mesa, *supra* note 30, at 385 (asserting that women must learn how "to speak male" in order to "survive in law school"); Clifford S. Zimmerman, "Thinking Beyond My Own Interpretation": Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum, 31 ARIZ. ST. L.J. 957, 974 (1999) (discussing the discouragement of original thought in teacher-centered classes).

35. See Sturm, *supra* note 10, at 131.

36. Kashmir Hill, *Biglaw Attorney Turned Psychotherapist Analyzes the Legal Profession*, ABOVE THE L. BLOG (Feb. 11, 2010, 3:02 PM), <http://abovethelaw.com/2010/02/biglaw-attorney-turned-psychotherapist-analyzes-the-legal-profession/> (on file with the *McGeorge Law Review*).

37. See Sturm, *supra* note 10, at 132.

38. See, e.g., GLADIATOR, *supra* note 25 (starring Russell Crowe, a burly, Caucasian male, as the main character).

39. See Sturm, *supra* note 10, at 130 (explaining many law schools operate within a culture that "tolerates or condones students' behavior that actively excludes, harasses, and devalues their female colleagues").

40. See *id.* at 131–32.

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people of color, who do not wish to challenge their professors or defend their thinking in front of an audience.⁴¹

In fact, Professor Sturm notes that the gladiator ethos ignores several abilities useful to a good lawyer: counseling, mediating, problem-solving, and planning.⁴² She concludes that lawyers should move away from working as gladiators and instead play the role of problem-solvers.⁴³ Such an opportunity could be encouraging to lawyers from underrepresented groups.⁴⁴ In sum, the gladiator model of law school pedagogy poses a number of problems. Chief among them, it encourages homogeneous thinking at the expense of diversity, which ultimately does no service to the legal profession.

IV. THE GLADIATOR ETHOS AND WOMEN

The view that the gladiator ethos—or any male-oriented institution, for that matter—excludes large segments of the population, including women, is not new. Professor Robin West first posited her “connection thesis” in 1988, after building on developments by other feminist scholars in the 1980s.⁴⁵ Professor West argues that women are “actually and materially connected” to one another and that women seek relationships to develop connections.⁴⁶ Building connecting relationships in schools and workplaces can be difficult. With respect to parity in the workplace, Professor Sturm suggested that it is not enough simply to “add women and stir.”⁴⁷ The same can be said about women in law school: despite increasing numbers, many women still do not experience genuine inclusion and opportunities for full participation in law schools. In the mid-1990s, Professor Sturm suggested that it is not enough simply to “add women and stir,” because women still do not experience genuine inclusion and opportunities for full participation in law schools.⁴⁸ Thus, improving female participation will be

41. *See id.* at 132. The model also explains the professional legal culture after law school. The adversarial imagery of the gladiator works in tandem with the imagery of the “tournament” in law firm partnerships. According to “tournament theory,” associates “joust” and “battle” one another to see who might become a partner. *Id.* at 129; *see also, e.g.*, Marc Galanter & Thomas M. Palay, *Why the Big Get Bigger: The Promotion-to-Partner Tournament and the Growth of Large Firms*, 76 VA. L. REV. 747, 747 (1990); Marleen O’Connor, *Women Executives in Gladiator Corporate Cultures: The Behavioral Dynamics of Gender, Ego, and Power*, 65 MD. L. REV. 465 (2006) (explaining tournament theory and gladiator mentality).

42. *See Sturm, supra* note 10, at 137.

43. *See id.*

44. *See id.* at 141.

45. *See* Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 58 (1988).

46. *See id.* at 14.

47. *See Sturm, supra* note 10, at 140.

48. *See id.*; *see also* Rebecca K. Lee, *The Organization as a Gendered Entity: A Response to Professor Schultz’s The Sanitized Workplace*, 15 COLUM. J. GENDER & L. 609, 652 (2006).

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realized only if more is done than simply increasing the number of women in work or education settings.⁴⁹

The gladiator ethos also exposes gendered characterizations of American institutions, including the legal system and legal education.⁵⁰ The legal system is “male,” Professor West argues, because the doctrines of tort, contracts, and constitutional law, among others, have no place for the values and dangers of women’s lives.⁵¹ Law schools also have components of “maleness” that are best described by the gladiator model. That is, these institutions leave little room for women’s values, and women may often find that behaviors such as disguising their own beliefs instead of conforming to male values are rewarded.⁵² To further illustrate this point, concepts in feminist legal theory help explain gender-related shortcomings of the gladiator model.⁵³ While not all women or excluded groups may identify with the “different voice” theory described below, the theory helps illuminate areas in which the current model for law review culture could be improved.

A. *Women May Speak in a “Different Voice”*

The “different voice critique” is a theory that helps identify behaviors and values that are especially “male” or especially “female.”⁵⁴ The theory, grounded in the work of social psychologist Carol Gilligan, suggests that society values

49. A similar sentiment emerged at the time of Solicitor General Elena Kagan’s nomination to the United States Supreme Court in spring of 2010. Pamela Harris, then-executive director of the Supreme Court Institute at the Georgetown Law Center, told the *New York Times* that “[a]ny practitioner of diversity will tell you that you can’t bring in a few token people and get a real diversity of viewpoint” Mark Leibovich, *Reshaping Court’s Culture, a Woman at a Time*, N.Y. TIMES (May 10, 2010), http://www.nytimes.com/2010/05/11/us/politics/11women.html?_r=0 (on file with the *McGeorge Law Review*). Moreover, Harris stated that having three female Justices could be a “powerful ‘optic’ that could potentially change the makeup of the lawyers who argue before it.” *Id.* Outside of the legal profession, others have wondered about whether more women in leadership positions, such as at major U.S. banks, would have led to the same financial crisis the United States has experienced. William D. Cohan, *Does Wall Street Need an Estrogen Injection?*, OPINIONATOR BLOG, NYTIMES.COM (Apr. 1, 2010, 9:00 PM), <http://opinionator.blogs.nytimes.com/2010/04/01/does-wall-street-need-an-estrogen-injection/> (on file with the *McGeorge Law Review*).

50. See, e.g., Menkel-Meadow, *Excluded Voices*, *supra* note 11, at 45 (relying upon the scholarship of Carol Gilligan, and especially Gilligan’s seminal work, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT* (1982)); see also O’Connor, *supra* note 41, at 479 (arguing corporations are “male institutions”).

51. See West, *supra* note 45, at 58.

52. See Lee, *supra* note 48, at 659–60.

53. Many scholars have written about the gladiator model (although they may not necessarily label it as such) and the role of women in the legal profession. See, e.g., Anna Archer, *From Legally Blonde to Miss Congeniality: The Femininity Conundrum*, 12 CARDOZO J. L. & GENDER 1, 1 (2006); Peter Nickles et al., *Symposium Panel III: Creating Models for Progressive Lawyering in the 21st Century*, 9 J.L. & POL’Y 297, 320 (2001); O’Connor, *supra* note 41; Banu Ramachandran, *Re-Reading Difference: Feminist Critiques of the Law School Classroom and the Problem of Speaking From Experience*, 98 COLUM. L. REV. 1757, 1780 (1998).

54. See Katharine T. Bartlett, *Feminist Perspectives on Ideological Impact of Legal Education upon the Profession*, 72 N.C. L. REV. 1259, 1263–64 (1994).

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“female” features as less valuable than “male” ones.⁵⁵ That is, male characteristics such as “individual performance, competitiveness, and autonomy” are valued over female characteristics, such as “group process, cooperation, and collective learning.”⁵⁶ In the legal profession, a woman might reveal her nurturing and compassionate qualities only when “not being judged by the male standards within the legal institution.”⁵⁷ One scholar has suggested that, in order to succeed in their legal careers, women need to speak fluently in a second language, which she calls “male.”⁵⁸ Because many women “speak in a voice” or behave in a manner that eschews individualism or competition, if they work on the law review, they may find themselves forced to adopt a “male” voice—or choose not to speak at all.⁵⁹

Where the culture of an institution values male qualities and male communication styles, women who embrace a “different voice” and choose not “to speak male as a second language”⁶⁰ may feel ignored and marginalized.⁶¹ They may choose not to be part of an institution that calls on them to hide personal attributes of nurturing and teamwork.⁶² Professor Carrie Menkel-Meadow’s work is useful to illustrate the ways in which the gladiator model marginalizes women who speak in the different voice. Menkel-Meadow suggests, borrowing a concept of Gilligan’s and applying it to the legal community, that women reason by an “ethic of care” instead of an ethic of justice.⁶³ According to Menkel-Meadow, this framework may explain why women spend more time than men helping others.⁶⁴ The emphasis on caring helps explain why the gladiator model leaves many women feeling alienated in the legal profession, and

55. See *id.*; see also GILLIGAN, *supra* note 50. Note that I am using “male” and “female” in reference to the characteristics associated with gender and not males and females themselves.

56. See Bartlett, *supra* note 54, at 1263.

57. See Mesa, *supra* note 30, at 386.

58. See Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize, Don’t Feminize*, 7 S. CAL. REV. L. & WOMEN’S STUD. 37, 54–55 (1998) (suggesting women act on multiple levels of consciousness); see also Mesa, *supra* note 30, at 386 (arguing for women to develop fluency in “male”).

59. But see JUDITH BAER, *OUR LIVES BEFORE THE LAW* 42–54 (1999) (finding fault in Gilligan’s attempt to classify “female” traits so generally).

60. Mesa, *supra* note 30, at 386 (internal quotation marks omitted) (quoting K.C. Worden, *Overshooting the Target: A Feminist Deconstruction of Legal Education*, in *FEMINIST LEGAL THEORY II*, at 1145 (Frances E. Olsen ed., 1995)).

61. See Rosato, *supra* note 58, at 47; see also O’Connor, *supra* note 41, at 468 (arguing women often lack self-confidence to take risks, engage in covert forms of hostility, and downplay their achievements).

62. See Mesa, *supra* note 30, at 386–87.

63. See Carrie Menkel-Meadow, *Portia Redux: Another Look at Gender, Feminism, and Legal Ethics*, 2 VA. J. SOC. POL’Y & L. 75, 106–08 (1994) [hereinafter Menkel-Meadow, *Portia Redux*]; see also Menkel-Meadow, *Excluded Voices*, *supra* note 11, at 45.

64. See Menkel-Meadow, *Portia Redux*, *supra* note 63; see also Menkel-Meadow, *Excluded Voices*, *supra* note 11, at 45.

especially in the law school classroom, which focuses on individual performance and competition.⁶⁵

B. Limited Opportunities Due to “Different Voice”

Building on the different voice critique, Professor Deborah Rhode has posited that women’s opportunities have been limited by gender stereotypes and an assumption that women’s presence in greater numbers in the workplace means discrimination no longer exists.⁶⁶ If there are disparities, people assume that time will correct them—but, as Rhode argues, “[I]f we wait for time to correct the problem, we will be waiting a very long time.”⁶⁷ Recently, former American Bar Association President Carolyn Lamm stated that “despite superb talent and tremendous gains, [women lawyers and other minority lawyers] still do not have equal opportunities to succeed.”⁶⁸ Such a sentiment further supports Rhode’s position. Rhode’s theory also illustrates two ways in which the gladiator model influences female leadership in the legal profession.

First, Rhode notes that women in “law, as in life, are underrepresented at the top and overrepresented at the bottom,” meaning that women account for the majority of law-school applicants, but few judges, law-school deans, and law-firm partners.⁶⁹ Rhode explains this poor showing by arguing that women are limited by female stereotypes that are “at odds with those [characteristics] traditionally associated with professional success,” including assertiveness and competitiveness.⁷⁰ These stereotypes can create self-fulfilling prophecies that cause supervisors to expect less of women. These women may, in turn, leave the workplace when they are not supported.⁷¹ Such differences could mean women

65. See Rosato, *supra* note 58, at 47.

66. See Rhode, *Gender and the Profession*, *supra* note 18, at 1001–02. Note that such a mode of thinking is not limited to gender disparities. See, e.g., Kimberly Thomas Rapp & Claudia Peña, *The Battle for Equality*, CAL. LAWYER, Nov. 2009, at 40 (arguing that racial disparities linger now even while many claim America is “post-racial” and therefore does not need to support “equal opportunity programs.”).

67. Rhode, *Gender and the Profession*, *supra* note 18, at 1003.

68. Lamm, *supra* note 5, at 1.

69. Rhode, *Gender and the Profession*, *supra* note 18, at 1002; Deborah L. Rhode, *The “No-Problem” Problem: Feminist Challenges and Cultural Change*, 100 YALE L.J. 1731, 1788–90 (1991) [hereinafter Rhode, *The “No-Problem” Problem*]. For a more complete view of law firm leadership, including the small role that women play as equity partners, rainmakers, lateral hires, and the impact of involuntary terminations, please see the report by the National Association of Women Lawyers and the NAWL Foundation, *Report of the Fourth Annual National Survey on Retention and Promotion of Women in Law Firms 2009* (Oct. 2009), available at <http://nawl.timberlakepublishing.com/files/2009%20Survey%20Report%20FINAL.pdf> (on file with the *McGeorge Law Review*).

70. See Rhode, *Gender and the Profession*, *supra* note 18, at 1004.

71. See *id.* at 1006; see also Eli Wald, *Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Firms*, 78 FORDHAM L. REV. 2245, 2255–56 (2010).

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face less support when evaluating legal issues and when leading others in a legal setting, such as a law firm or on a law review staff.⁷²

Second, Rhode argues that many people refuse to recognize that large numbers of women have failed to attain leadership positions in the same numbers as men.⁷³ They point to women’s growing numbers in law schools and the legal profession as “proof” that the playing field is level and women enjoy equal opportunities to succeed.⁷⁴ Journalist Anna Quindlen calls women’s supposed rise to the top a “charmingly naïve belief,” noting that in 2008, only eighteen percent of partners at law firms were female (up from thirteen percent in 1993).⁷⁵ She criticizes the law firms that “trot those few partners out to prove the fallacy that women are well represented in leadership of the law.”⁷⁶ These firms recognize no consequential difference between women and men, which means certain women feel excluded from legal institutions.

C. Criticism of the “Different Voice”

Some feminists argue that the “different voice” theory (and the “no-problem problem”) and its implications for women’s success as leaders is not instructive.⁷⁷ For instance, Professor Joan Williams argues that the different voice critique associates one voice with men and the other with women, which are sweeping generalizations.⁷⁸ Furthermore, by assigning “nurturing” roles to women who speak with a more collaborative voice, some women may feel forced to accept their own difference and be content with these roles.⁷⁹ Women may identify with a certain voice simply because society has told them they should.⁸⁰

While these critiques have some merit, the “different voice” theory is still useful in understanding the culture of law schools and law reviews because it

72. Such differences may also result in unequal pay for those in the legal profession, which has the widest wage disparity of any field tracked by the United States Labor Department. Jill Redhage, *Gender Gap in Legal Pay Remains Large*, L.A. DAILY J., Aug. 24, 2009, at 1. According to a recent report, the median woman’s salary in the legal field is only fifty-seven percent of a man’s. *Id.* For lawyers in private practice, some researchers speculate that wage disparities for new lawyers cannot be explained by any other means than discrimination. *Id.*

73. See Rhode, *The “No-Problem” Problem*, *supra* note 69.

74. See *id.*

75. Anna Quindlen, *The Leadership Lid*, NEWSWEEK, Oct. 13, 2008, at 86 [hereinafter Quindlen, *The Leadership Lid*].

76. *Id.*

77. See BAER, *supra* note 59, at 42–47 (explaining critiques of “different voice” theory); Ramachandran, *supra* note 53, at 1781 (arguing that the “different voice” theory is premised on the idea that women remain “different” or “outsiders” and does not acknowledge that some women may be outsiders in general society but insiders compared to other women).

78. See Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797, 813 (1989).

79. See Lisa R. Pruitt, *A Survey of Feminist Jurisprudence*, 16 U. ARK. LITTLE ROCK L.J. 183, 192–94 (1994).

80. See *id.* at 194 (citing to Catherine MacKinnon’s criticisms of Gilligan’s theory).

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explains why some women may use modes of reasoning that are different from men's.⁸¹ The theory also helps elucidate the discomfort some women may feel in organizations that do not acknowledge these differences. Further, as Professor Rhode has used it, the different voice theory may help account for the lag in female leadership in the legal profession. If legal institutions, such as law review, do not value the "different voice" associated with women, women may either opt out of these institutions or fail to flourish in them. Of course, before moving forward, it is necessary to examine the historical influences that have shaped law review culture.

V. DEVELOPMENT OF LAW REVIEWS

A. *History of Law Reviews*

Since the late nineteenth century, U.S. law schools have hosted student-edited journals.⁸² The oldest continuously published law review, the *University of Pennsylvania Law Review*, began as a monthly periodical, edited by attorneys, with digests and notes of recent decisions, as well as professional news items.⁸³ Men organized the writing and publishing of early law reviews in large part because few women, if any, were then permitted to participate in the legal profession.⁸⁴

As the twentieth century approached, law students took over the editing duties as part of a "novel experiment" designed to give students an opportunity to contribute to academic discourse through writing and editing their own journal.⁸⁵ Law reviews continued to gain status, and in the early twentieth century, judges began citing journals in their opinions, thereby acknowledging the journals as a

81. *See id.* at 196.

82. *See* Michael I. Swygert & Jon W. Bruce, *The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L.J. 739, 756 (1985).

83. *Id.* at 755–57.

84. *See* Ann Bartow, *Some Dumb Girl Syndrome: Challenging and Subverting Destructive Stereotypes of Female Attorneys*, 11 WM. & MARY J. WOMEN & L. 221, 236–37 (2005) [hereinafter Bartow, *Some Dumb Girl Syndrome*]. Professor Bartow notes that the first woman to pass the Illinois bar, Myra Bradwell, was denied admission in 1869 because she was a woman. *Id.* Bradwell went on "to found and edit the *Chicago Legal News*, the most successful legal publication of its time." *Id.* at 237. The Illinois bar subsequently admitted her in 1890. *Id.* Thus, women had some presence—albeit a very limited one—in the realm of legal publications in the late 1800s. *See id.* at 136–37.

85. *See* Swygert & Bruce, *supra* note 82, at 764 (internal quotations omitted) (quoting *The Albany Law School Journal*, 3 CENT. L.J. 136 (1876)). Faculty at Albany Law School, which began publishing its law review in 1875, saw the journal as a way for "the boys" at the law school to "work off energy" by participating in the high-stress environment of publishing. *Id.* The idea was that male law students would dedicate themselves to writing and editing, instead of their preferred activities, "stopping chimneys and robbing suburban hen-roosts." *Id.* Thus, deans could transform rowdy male law students into hard-working legal professionals by requiring them to comply with a law review's strict publishing deadlines. *Id.* at 765–66; *see also* Michael L. Closen & Robert J. Dzielak, *The History and Influence of the Law Review Institution*, 30 AKRON L. REV. 15, 40 (1996).

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legitimate source of scholarship.⁸⁶ Recently, the number of law reviews and student journals has exploded: in the 1950s, there were seventy-eight; today, there are more than one-thousand, including specialty journals, in addition to general-interest law reviews.⁸⁷ The legacy of law reviews as a forum for male voices continues to shape contemporary law review culture.

B. Function, Purpose, and Structure of Law Reviews

In order to achieve the goal of publishing innovative scholarship in a timely fashion, law reviews have two general functions: editing scholars’ articles and teaching student members to write in law review style.⁸⁸ Students work simultaneously on the editing and writing tasks.⁸⁹ The editing includes verifying the accuracy of footnotes and editing the article text.⁹⁰ This work, which is generally mundane, falls largely on second-year members, who work under the direction of third-year editors.⁹¹ The writing includes researching and developing a “note” or “comment” about a recent court decision or other legal topic. Most law reviews publish some student writings in each issue of their journal.⁹²

Law review accomplishes several broad purposes. First, the journal improves a school’s reputation by attracting articles written by distinguished faculty.⁹³ Second, law reviews have been the birthplace of important legal theories and influential analyses.⁹⁴ Third, the law review selection process prepares future lawyers through intensive writing and editing exercises.⁹⁵ Fourth, law reviews can strengthen student bonds through camaraderie and teamwork.⁹⁶ One author has

86. See Ronald J. Rotunda, *Law Reviews—The Extreme Centrist Position*, 62 IND. L. J. 1, 3–4 (1986).

87. Karen Dybis, *100 Best Law Reviews*, 17 NAT’L JURIST 23, 23 (2008); see also James W. Harper, *Why Student-Run Law Reviews?*, 82 MINN. L. REV. 1261, 1266 (1998) (discussing the proliferation of specialty journals).

88. See Harper, *supra* note 87, at 1272–73, 1275 (explaining the purposes of law reviews); see also MILLER, *supra* note 1, at 204 (providing an in-depth look at how students are selected to be staff writers for law reviews).

89. Harper, *supra* note 87, at 1272–73.

90. See *id.* at 1273.

91. See E. Joshua Rosenkranz, *Law Review’s Empire*, 39 HASTINGS L. J. 859, 901 (1988).

92. See Harper, *supra* note 87, at 1268, 1272–73. A “note” is an analysis of a legal decision or topic; a “comment” is an analysis of a split of decision between or among circuit courts. See *id.* at 1272.

93. See Harper, *supra* note 87, at 1275–77 (explaining that law reviews serve as a place for faculty to publish and to increase the law school’s reputation); see also Joanna L. Grossman, *Confronting Obstacles: Tenure Politics, Rankings, and New Solutions: Feminist Law Journals and the Rankings Conundrum*, 12 COLUM. J. GENDER & L. 522, 525 (2003) (noting that the measure of a school’s “faculty quality” is based in part on “per capita rate of publication” in top-ten journals, and arguing that this disincentivizes faculty from seeking publication in feminist law journals, which are often lower ranked).

94. See generally Fred R. Shapiro, *The Most-Cited Law Review Articles Revisited*, 71 CHI.-KENT. L. REV. 751 (1996) (explaining critical role of law review articles in developing legal theory).

95. Harper, *supra* note 87, at 1272–73.

96. See Rosenkranz, *supra* note 91, at 870–71; see also, e.g., Dybis, *supra* note 87, at 27 (quoting an editor who noted that she joined her law review to “work more closely with her peers”).

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noted that, as opposed to sitting in the classroom united against a “common enemy,” the professor, law review members create a product that bears their names and reflects a common identity.⁹⁷ In addition, a school’s law review is by some accounts an honor society, and students may find themselves bonding over their “elite” status.⁹⁸

Some scholars have argued that these goals are merely aspirational and do not reflect reality.⁹⁹ For instance, one former law review member from the *Georgetown Law Review* argues that law reviews do not teach the “good” writing that enables a student to analyze judicial decisions.¹⁰⁰ Instead, students learn “writing skills” under a series of regimented rules requiring, for instance, a certain format and a specific number of arguments and counterarguments.¹⁰¹

Law reviews exhibit hierarchical structures.¹⁰² One might argue that the rigid structure of law review is yet another example of “maleness,” as it emphasizes individualism and deference over collaboration. At the bottom are the members. These second-year students earned coveted spots on the law review by successfully completing a writing competition, earning excellent grades, or both.¹⁰³

Third-year students may seek positions on the editorial board.¹⁰⁴ Editors manage the staff and publication of the law review¹⁰⁵ based on bylaws and

97. See Rosenkranz, *supra* note 91, at 871.

98. See *id.* at 890; see also GUTTERMAN, *supra* note 8, at 63 (demonstrating elitisms within the law review by recounting one student’s comment to *Syracuse Law Review* Editor-in-Chief, “You are the [-----] editor in chief, you are so much above [2L staff members]. You bring down your office by even talking to them.”).

99. See Rosenkranz, *supra* note 91, at 899–911.

100. See *id.* at 875.

101. See *id.*

102. Closen & Dzielak, *supra* note 85, at 44; see also Rotunda, *supra* note 86, at 11 (explaining how each year, law review editors vow not to become “as overbearing as Attila the Hun” on second-year students).

103. There are generally four models for determining which students spend a year on the “bottom rung of the law review ladder” as members. See Godsey, *supra* note 9, at 75. These models address the process for joining law review. *Id.*

At “write on” schools, the law review staff holds a writing competition at the end of the first year. See Rosenkranz, *supra* note 91, at 894. Students complete a series of editing exercises and write an abbreviated note or comment from a closed universe of cases. See *id.* At “grade on” schools, membership is based solely on first-year grades, and editors invite only the top-performing students to join. See Godsey, *supra* note 9, at 75. Law review staffs that have eliminated grades as a consideration in law review membership, and thus rely solely on the write-on competition, are the most likely to have gender parity among their members. See Hugo Pettinato, *Internal Law Review Report Leaked*, RECORD (Nov. 6, 2003), <http://hlrecord.org/?p=11072> (on file with the *McGeorge Law Review*).

At “hybrid” schools, law review membership is based on a formula combining a student’s first-year grade point average with that student’s performance in a writing competition. See Godsey, *supra* note 9, at 75. A handful of schools also allow students to “publish on,” meaning membership is based on the results of a writing competition during the second year. In the competition, a student writes a publication-length paper and submits it to law review editors for an eligibility determination. Rosenkranz, *supra* note 91, at 897–98.

104. See Closen & Dzielak, *supra* note 85, at 44–47 (breaking down and defining common editorial positions).

105. See *id.*

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possibly a member handbook.¹⁰⁶ The editors adhere to a hierarchy as well. Typically at the bottom are editors whose job it is to check the accuracy of citations by locating the original sources and ensure citations conform to the rules of the legal citation manual, the *Bluebook*.¹⁰⁷ Another group of editors might select the articles for publication, while also working with the authors throughout the editing process. A third group of editors may work directly with the members and guide them through the writing of their notes or comments.¹⁰⁸

The top of the masthead may include executive editors and managing editors that have responsibilities that include final proofreading and coordinating events and processes. The editor-in-chief is responsible for all of the operations, both editorial and otherwise, for the law review.¹⁰⁹

C. Student Diversity on Law Reviews

Membership of student-edited law reviews has been slow to mirror the diversity of law student populations. For instance, although Harvard Law School first admitted women in 1950, the first female president (editor-in-chief) of the *Harvard Law Review*, Susan Estrich, was not elected until 1977.¹¹⁰ In addition, the first black president of the *Harvard Law Review*, Barack Obama, was not elected until 1990.¹¹¹

Law reviews at many schools have failed to attract women in percentages that reflect the number of women in each law-school class. From 1992 to 2000, Harvard Law School experienced a thirteen percent differential between the percentage of women on the *Harvard Law Review* and their representation in the relevant J.D. class.¹¹² Furthermore, law review membership was only thirty-six percent female, on average, in 2001 and 2002.¹¹³ From 1996 to 2003, women at Yale Law School constituted forty-two percent of the membership on *The Yale*

106. The bylaws and handbook can govern everything from how many drafts of her note or comment a student must submit to her editor, to the number of footnotes she must have to the procedure for appeals of editorial decisions. See, e.g., *Cornell Law Review Bylaws*, available at <http://www.lawschool.cornell.edu/research/cornell-law-review/Bylaws.cfm> (last visited Jan. 30, 2012) (on file with the *McGeorge Law Review*); *Indiana Law Review Bylaws*, available at <http://indylaw.indiana.edu/ilr/bylaws.htm> (last visited Jan. 30, 2012) (on file with the *McGeorge Law Review*); *University of Akron Law Review Bylaws*, available at <http://www.uakron.edu/law/lawreview/docs/bylaws.pdf> (last visited Jan. 30, 2012) (on file with the *McGeorge Law Review*).

107. See Closen & Dzielak, *supra* note 85, at 44–47.

108. See *id.*

109. See *id.*

110. Fox Butterfield, *First Black Elected to Head Harvard's Law Review*, N.Y. TIMES (Feb. 6, 1990), <http://www.nytimes.com/1990/02/06/us/first-black-elected-to-head-harvard-s-law-review.html> (on file with the *McGeorge Law Review*).

111. See *id.*

112. See Pettinato, *supra* note 103.

113. See Neufeld, *supra* note 4, at 554.

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Law Journal, which was lower than the percentage of women in the J.D. class.¹¹⁴ Moreover, in only one of those eight years, the percentage of female editors was at least as high as the percentage of female students in the relevant J.D. class.¹¹⁵ From 2001 to 2006, the *Stanford Law Review* had only male editors-in-chief.¹¹⁶ Other law schools have also failed to attract diverse law review staffs;¹¹⁷ in April 2009, a lack of diversity on the *Cardozo Law Review* attracted national attention.¹¹⁸

Just as female students are not participating on law review in numbers equal to those of male students, they are not publishing their own articles in equal numbers, either. One recent study of student note publication at fifty-two general interest law reviews has shown, from 1999 to 2009, women authored, on average, forty percent of student notes, while men published almost sixty percent of the notes.¹¹⁹ With respect to both leadership and publishing, women are not participating equally. The gladiator ethos explains the disparity between these numbers.

VI. THE GLADIATOR ETHOS AND LAW REVIEWS

The gladiator model describes three aspects of law review culture. First, the gladiator model emphasizes competition above collaboration, which manifests itself in the membership selection process and the editorial work.¹²⁰ Like the gladiator's fight, editing and writing is intense and individualistic with the reward of an enhanced reputation upon completion.¹²¹ Second, the gladiator model focuses on rules, rather than relationships, which shows in the day-to-day tasks and the hierarchical structure of law review. This leads those who exhibit greater feelings of empathy and flexibility to feel alienated from the law review

114. See Bashi & Iskander, *supra* note 4, at 424.

115. See *id.*

116. Ann Bartow, *Where Are the Women? Another Post About Gender Disparities at Elite Law Journals*, FEMINIST L. PROFESSORS (Apr. 30, 2009, 6:16 PM), <http://www.feministlawprofessors.com/2009/04/where-are-the-women-another-post-about-gender-disparities-at-elite-law-journals/> (on file with the *McGeorge Law Review*).

117. See Godsey, *supra* note 9, at 90 (noting that some law schools, such as Columbia, Rutgers, George Washington, and Harvard have recognized problems with diversity and undertaken initiatives to combat this issue).

118. On April 27, 2009, the legal blog *Above the Law* reported on issues of alleged gender bias in the makeup of the leadership of the Cardozo Law Review staff. Elie Mystal, *Gender Bias on the Cardozo Law Review?* ABOVE THE L. BLOG (April 27, 2009, 12:03 PM), <http://abovethelaw.com/2009/04/gender-bias-on-the-cardozo-law-review> (on file with the *McGeorge Law Review*). Following an election for law review staff members, a Cardozo student who had run unsuccessfully for the editor-in-chief position expressed concern that not a single member of the executive board was female. *Id.*

119. Jennifer Mullins & Nancy Leong, *An Empirical Examination of Gender and Student Note Publication 1999–2009*, 23 YALE J.L. & FEMINISM (2011).

120. See *id.*

121. See Rosenkranz, *supra* note 91, at 890 (describing the reward of an enhanced reputation).

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institution.¹²² Third, the gladiator model promotes future leaders who conform most closely to the existing structure, which may diminish leadership opportunities for those who do not embrace the gladiator role.¹²³ These three characteristics of the gladiator ethos and their application to law reviews have serious implications for the participation of often-marginalized persons.

A. *Gladiator Ethos Emphasizes Competition Above Collaboration*

The gladiator model accurately characterizes the adversarial structure of the pedagogy in many law schools, where the apparent goal is teaching students to win arguments.¹²⁴ Similarly, the model describes the adversarial structure of the process for membership selection and the role of members on a law review.

Students who compete for membership on the law review must go through the rite of gladiatorial competition. They become members after either battling during their first year for top grades or by enduring a write-on competition that may involve seclusion for a week or more while editing citations and preparing a legal analysis that will be judged by experienced law review editors.¹²⁵ The solitary nature of the membership exercise makes it both a battle and “warrior training” for membership on law review. In addition, students who earn a spot by grading on to the law review likely have already experienced a similar period of self-exile during the course of their studies.

On the law review itself, second-year students vie to be in the good graces of editors, who may recommend certain other students for editorial positions at the end of the second year or vote for them during an editor election.¹²⁶ Students work all year to complete a paper that meets the editors’ strict criteria, which means law review members must frequently defend their writing style and research to their editors, while also revising and returning drafts under tight deadlines.¹²⁷ The high-pressure, competitive atmosphere of law reviews is similar to the high-pressure atmosphere inherent in gladiator culture.

However, the gladiator model is especially problematic for those who do not agree with the model’s definition of “success” as “winning in battle.”¹²⁸ For instance, many women tend to favor cooperation in their professional and personal interactions.¹²⁹ Relying on the “different voice” theory, Professor

122. See Sturm, *supra* note 10, at 142 (describing the importance of relationships at vanquishing the gladiatorial model).

123. See *id.* at 132 (describing the difficulties faced by women who fail to conform to the gladiator model).

124. See *id.*

125. See MILLER, *supra* note 1, at 198–202.

126. See Rosenkranz, *supra* note 91, at 902–03 (describing the experience of second-year students).

127. See *id.*

128. See Sturm, *supra* note 10, at 129.

129. Leslie Bender, Symposium: *From Gender Difference to Feminist Solidarity: Using Carol Gilligan*

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Menkel-Meadow argues that women are more likely to reason from a perspective of collaboration that relies on responsibility, human connection, and care.¹³⁰ The gladiator model focuses on autonomy, not human connection. Some women may decide they are not eager for the battle that awaits them, nor are they prepared to spend two years engaging in a potentially adversarial relationship with their peers. The female students may already get enough of that interaction in the classroom.¹³¹ As a result, the gladiator ethos of the law review may deter women from even competing to join.¹³²

In sum, the gladiator model reflects the competitive nature of the membership process and the competitive nature of the law review members' work. The gladiator model may thus discourage from participation people who do not conform to it. Furthermore, those who naturally prefer to work more collaboratively, including many women, may feel there is no place for them on their school's law review.

B. Gladiator Ethos Emphasizes Rules over Relationships

The gladiator model describes the rule-based structure of law-school pedagogy, teaching students to beat an opponent by skillfully employing the rules of law because the often-emotionless principles of law and economics reign supreme.¹³³ This message is surely off-putting to some women. In his study of student satisfaction at Harvard Law School, attorney Adam Neufeld suggests that many students, especially women, suffer feelings of alienation in law school.¹³⁴ They feel alienated because the culture emphasizes competition, which can be uncomfortable to one unaccustomed to it.¹³⁵ Similarly, in the legal profession, Professor Rhode suggests that women are often "out of the loop" because their superiors do not take the time—or deem it necessary—to develop connecting relationships.¹³⁶ If women feel alienated in law school in general—and perhaps even more so on law review—a culture minimizing empathy neither increases nor attracts more women.

The gladiator model describes the ethos reflected by both highly restrictive rules for law review members and rules within the institution's structure. Both of these elements give first priority to following rules, rather than maintaining

and an Ethic of Care in Law, 15 VT. L. REV. 1, 36–37, 39–42 (1990).

130. See Menkel-Meadow, *Portia Redux*, *supra* note 63, at 78.

131. See Bashi & Iskander, *supra* note 4, at 413.

132. See Sturm, *supra* note 10, at 129 (describing the negative effects of the gladiator model on "women's participation" in law school and the broader legal profession).

133. See Bartlett, *supra* note 54, at 1264.

134. See Neufeld, *supra* note 4, at 571.

135. See Rosato, *supra* note 58, at 47.

136. See Rhode, *Gender and the Profession*, *supra* note 18, at 1007.

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relationships with peers and editors, just as the gladiator focuses on winning fights according to the rules of engagement.

Law review editors must enforce rules against law review members.¹³⁷ Editors will deem successful those students who always meet deadlines and who adhere to the traditional format of law review writing.¹³⁸ Some bylaws, such as one punishing students for turning in paper drafts a minute late, strongly discourage editors from “relaxing the rules” or showing empathy and compassion for a colleague who cannot finish her work on time.¹³⁹ Because they fear deviating from past practice, editors continue, year after year, following the same tired rules.¹⁴⁰ While enforcement of, and adherence to, procedural rules is vital to successful law practice, many editors enforce the law review’s rules with a rigidity that could be considered unnecessary and impractical in the real world.¹⁴¹

Furthermore, the hierarchical structure of law review also reflects a penchant for enforcing rules in lieu of fostering relationships. The structure of the law review feels particularly masculine because the rules make it difficult to transcend editor and member hierarchies. Editors may also reinforce the hierarchical structure through the workload they give to the law review members. Second-year law students experience what one author calls “hell year,” which involves completing “tedious” editing assignments and suffering sanctions when the work is incomplete or incorrect.¹⁴² Hell year is similar to “hell week,” the traditional, but largely illegal,¹⁴³ Greek-system hazing ritual at some U.S. colleges and universities whereby older students force younger students to engage in humiliating tasks. On law review, the tasks may include onerous amounts of editing, accompanied by punishment for failing to focus on the smallest details.¹⁴⁴ This structure pits the second-year students against the third-year students in an adversarial relationship. Instead of working as a team to complete the work, the mentality is “us versus them”; the editors may have the mentality that “we had to suffer, so they should, too.”¹⁴⁵ While some may argue that hell year actually helps students because it ensures the journal publishes top-quality work that has been

137. See Rosenkranz, *supra* note 91, at 909.

138. See *id.*

139. See, e.g., MCGEORGE LAW REVIEW, COMMENT DEPARTMENT STAFF HANDBOOK 11–12 (2012) (on file with the *McGeorge Law Review*).

140. See Rotunda, *supra* note 86, at 11.

141. While filing deadlines are taken seriously in the legal profession, it is sometimes the case that filing a few minutes after a deadline is not punishable: the judge may simply admonish the party from the bench, or write a footnote in an opinion or order, lightly scolding the attorney for failure to timely file. Such flexibility is not often practiced by law review editors, however.

142. See Rosenkranz, *supra* note 91, at 902–05.

143. See *State Anti-Hazing Laws*, STOPHAZING.ORG (last visited Feb. 17, 2013), www.stophazing.org/laws.html (on file with the *McGeorge Law Review*) (providing links to reproductions of forty-four states’ anti-hazing laws).

144. See *id.*

145. GUTTERMAN, *supra* note 8, at 63.

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thoroughly vetted multiple times, this Article suggests a kinder, gentler way to achieve the same result.

The gladiator ethos of enforcing rules at the expense of promoting relationships reflects a masculine value system.¹⁴⁶ Professor Gilligan observed in her early work on social psychology that women are more likely to characterize a moral problem as involving care and responsibility rather than rules.¹⁴⁷ As a related matter, Psychiatry Professor Anna Fels suggests that women are more likely to adopt the socialized feminine role of having a “connection” to others, whereas the socialized masculine role is defined “neither by relationships nor by what men provide for others.”¹⁴⁸ When law review editors prioritize the enforcement of rules, rather than collaborating and building relationships, they send a message that a female ethic of care is inappropriate and unwelcome. A failure to foster connecting relationships is harmful to law reviews because talented editors, writers, and managers may choose not to participate.¹⁴⁹ A pathological focus on rules may repel people who operate with an ethic of care and seek to build relationships with peers. Furthermore, a strong gladiator ethos could have the effect of deterring many qualified law students from seeking—and attaining—leadership roles.

C. Gladiator Ethos Perpetuates Certain “Male” Leadership Characteristics

The gladiator model describes the “ideal leader” who is decisive, aggressive, and steadfast. On law reviews, this model describes the typical leadership characteristics needed for the top leadership positions. The “gladiator-as-ideal-leader” concept helps explain why men are perpetually in positions of power. It also encourages potential leaders to adopt the desired masculine characteristics, even when doing so feels uncomfortable.¹⁵⁰ Not surprisingly, women are underrepresented in top leadership positions on law reviews.¹⁵¹ It is important to promote women in law review leadership, because women can make publishing decisions that reflect distinctive viewpoints, thus sustaining the law review’s goals.

146. See, e.g., Bashi & Iskander, *supra* note 4, at 414.

147. See Christine M. Wiseman, *The Legal Education of Women: From “Treason Against Nature” to Sounding a Different Voice*, 74 MARQ. L. REV. 325, 339 (1991) (quoting Gilligan).

148. See Anna Fels, *Do Women Lack Ambition?*, 82 HARV. BUS. REV. 50 (2004).

149. See, e.g., Julie Creswell, *How Suite It Isn’t: A Dearth of Female Bosses*, N.Y. TIMES, Dec. 17, 2006, § 3, at 1 (explaining how hostile environment drives away talent).

150. See, e.g., Rosato, *supra* note 58, at 47; Sturm, *supra* note 10, at 131 (explaining that women who conform to the gladiator model “face criticism . . . for failing to be adequately feminine, or failing to be aggressive enough . . .”); see also Press Release, UC Davis News Service, Tears on the Job (Mar. 17, 2008), available at http://www.news.ucdavis.edu/search/news_detail.lasso?id=8580 (on file with the *McGeorge Law Review*) (discussing a study showing how women often go through “great pains” to suppress tears at work).

151. See sources cited *supra* note 4.

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The top editor positions serve as the public faces of the law review. In electing or appointing successors, the outgoing staff may look for leadership that reflects their own image, probably voting for students who will exhibit a tough, masculine leadership style. If many members are male, and if others have been taught by their law review (and law school) experience to value decisive, authoritative leadership, women may find it more difficult to succeed as editors, or even to be given the chance.

If women do speak in a different voice, they are not encouraged to use that voice to lead. Journalist Anna Quindlen observes that “men are judged by a male standard of control and strength,” whereas women are judged by that male standard *and* a “stereotypical female standard that assesses everything from bringing people together to projecting approachability.”¹⁵² Professor Fels notes that when women speak as much as men speak in the workplace, or when women seek high-visibility positions, bosses and colleagues “routinely” assail their femininity.¹⁵³ On the other hand, women may face criticism for failing to be aggressive enough or not performing well.¹⁵⁴ Moreover, people who subscribe to the “no-problem problem” theory of feminism have difficulty recognizing the criticisms that await women in leadership roles. They assume that because women are at the table (albeit in small numbers), there is nothing to complain about and that women do not face any special challenges as female leaders.

The gladiator ethos is also troubling because it highlights the “double bind” women face for conforming to the gladiator model and “acting like men,” which leaves them inadequately feminine.¹⁵⁵ Women seeking to avoid criticism for being either “too feminine” or “not feminine enough” may not feel inclined to join law reviews, much less to lead them. What is more, those who choose leadership positions may find themselves forced to adopt uncomfortable leadership characteristics. For example, journalist Ariel Levy notes in her recent book an influx of using “some version of the phrase ‘like a man’” to praise talented and powerful women.¹⁵⁶ In the law review context, a similar appreciation

152. Quindlen, *The Leadership Lid*, *supra* note 75, at 7 (senior schools are no longer effectively teaching these “writing skills,” and therefore, perhaps 86).

153. *See* Fels, *supra* note 148.

154. *See* Sturm, *supra* note 10, at 131.

155. *See* Sturm, *supra* note 10, at 132; *see also* Lisa Belkin, *The Feminine Critique*, N.Y. TIMES, Nov. 1, 2007, § G, at 1; Anna Quindlen, *Still Stuck in Second*, NEWSWEEK, Mar. 17, 2008, at 70 (explaining the double bind for presidential candidate Hillary Rodham Clinton). “Women still have an uneasy relationship with power and the traits necessary to be a leader. There is this internalized fear that if [they] are really powerful, [they] are going to be considered ruthless or pushy or strident—all those epithets that strike right at [their] femininity. [They] are still working at trying to overcome the fear that power and womanliness are mutually exclusive.” Arianna Huffington, *My Journey to the Top*, NEWSWEEK, Oct. 9, 2007, at 48.

156. *See* ARIEL LEVY, *FEMALE CHAUVINIST PIGS: WOMEN AND THE RISE OF RAUNCH CULTURE* 95 (2005). For example, “[a] high school classmate of Susan Sontag’s told her biographers . . . that young ‘Sue’ maintained a ‘masculine kind of independence.’” *Id.*

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for masculine traits might cause women to feel discouraged if they do not wish to emulate a leadership style that they find inauthentic.¹⁵⁷

The gladiator ethos affects the type of leadership positions women choose, should they choose to lead at all. First, the phenomenon of women being less likely to pursue law review leadership positions perpetuates male leadership and a masculine leadership style. Because certain women believe they are neither qualified nor suited to the tasks, those women do not seek leadership positions. When qualified women do not seek the positions, others may operate on the belief that women are unqualified—a self-fulfilling prophecy.¹⁵⁸ Because women may believe they are neither qualified nor suited to the tasks, women do not seek leadership positions. When qualified women do seek the positions, they may receive feedback that they are unqualified.¹⁵⁹ Second, a workplace with few women affects productivity.¹⁶⁰ Professor Vicki Schultz suggests that when women are represented at all “levels of authority, [female employees] are less likely to experience their workplace as hostile or alienating.”¹⁶¹ Furthermore, having workers more engaged in their work benefits everyone.¹⁶² Some scholars argue that women choose “low profile” positions because they can conserve their energy for things outside work (or, perhaps, law school), such as family.¹⁶³ In the law review context, the gladiator ethos may actually force women to choose from an artificially limited number of editorial positions that reflect their “feminine strengths.”

In sum, the gladiator model may deter women from seeking leadership positions, and it may hinder those who try anyway. Those who seek positions and conform to the gladiator model may face criticism for not being “feminine enough.” Those whose actions reflect the “ethic of care” may face criticism for failing to conform, and other women may find themselves alienated from their work because they are channeled into lower-profile leadership positions.

157. See Bashi & Iskander, *supra* note 4, at 414 (noting one student’s observation that her professors seem to “respond positively to authoritative assertions by male students, but [that] she has no desire to mimic them”).

158. See Rhode, *Gender and the Profession*, *supra* note 18, at 1006–07.

159. See *id.*

160. See Adam Bryant, *No Doubt: Women Are Better Managers*, N.Y. TIMES, July 26, 2009, § BU, at 1. Senior Vice President and Chief Brand Officer of the Elle Group, Carol Smith, boldly suggested in a *New York Times* interview that women are “better managers, better advisers, mentors, rational thinkers.” *Id.* She also suggests that environments where men and women work together, equally, are best. *Id.*

161. See Vicki Schultz, *Life’s Work*, 100 COLUM. L. REV. 1881, 1948–49 (2000).

162. See *id.*

163. See Schultz, *supra* note 161, at 1892–95; see also Creswell, *supra* note 149 (explaining that women are often channeled into low-profile positions in workplace).

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VII. RETHINKING THE GLADIATOR ETHOS: SOLUTIONS

The gladiator model highlights some of the shortcomings of law school and law review culture. Many students may feel threatened by the competitive atmosphere, the lack of empathy, and the lack of encouragement that are characteristics of this hierarchical model. Practitioners, including former United States Supreme Court Justice Henry Blackmun, have long recognized the problems of a rigid culture and pedagogy:

Surely there is a way to teach law, strict and demanding though it may be, with some glimpse of its humaneness and its basic good . . . there is room for flexibility and different answers. . . . If I ever learned anything on the bench, it is that.¹⁶⁴

Considering the historic origins of the gladiator model and its pervasiveness in law schools across the country, change for U.S. law reviews will come no more easily than it has to legal education more broadly. However, there are ways to improve in both the short and long-term.

Many students view their membership on law review as a job, yet few derive satisfaction or value from their law review work. Solutions, therefore, ought to focus on creating a work environment that empowers all students.¹⁶⁵ To soften the hold the gladiator model has on legal education and law reviews, editors could consider two types of initiatives. First, they can change the process by which students become law review members and the way in which students engage in the writing and editing on law review. Second, editors can improve the leadership development opportunities for incoming editors.

A. Reconsider the Application Process

To diminish the competitive culture of law reviews, the membership application process should be revised. Instead of relying solely on numerical and objective qualifiers, such as a first-year grade point average or a score on the write-on competition, law review editors should incorporate additional subjective qualifiers. For example, editors could require an application essay similar to a personal statement or cover letter from prospective members. The essay would give students an opportunity to highlight their relevant writing and editing experience and elaborate on their background and perspectives they can bring to the enterprise. Considering application essays in addition to other criteria would preserve the integrity of the law review, while providing an extra basis for evaluating the skills and experiences someone would add to the law review staff.

164. LINDA GREENHOUSE, BECOMING JUSTICE BLACKMUN: HARRY BLACKMUN’S SUPREME COURT JOURNEY 13 (2005).

165. See Schultz, *supra* note 161, at 1949.

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Some may argue that changing the application process—which could yield more female members—simply props up a broken system in which women still might not participate as editors. Others could fear that changing the system would somehow reduce the “prestige” and “value” of the law review credential.¹⁶⁶ However, if student editors wish to uphold the value of top their publication, they will need diversity of law review membership, and they will have to change the admissions criteria for membership.¹⁶⁷

B. Re-Emphasize the Goal of Collaborative Learning

Professor Clifford Zimmerman suggests a return to collaborative learning in U.S. law schools, aiming his suggestions in particular at how professors teach legal writing.¹⁶⁸ He defines “collaborative learning” as a process of “learning from peers, based on relatively complex learning tasks.”¹⁶⁹ He explains that collaborative learning works well because students have conversations to develop their own ideas, without the teacher serving as the focus of the classroom.¹⁷⁰ Group learning diminishes classroom hierarchy.¹⁷¹

Professor Zimmerman’s argument for implementing a collaborative learning model in a legal writing classroom also applies to law reviews. Law review members and editors learn by doing, and faculty members are rarely involved in day-to-day operations.¹⁷² Greater emphasis on conversations about writing and editing could help diminish the competitiveness associated with the gladiator model. For instance, student editors and members could collaborate on the substance of the legal scholarship, whether writing their own or editing others’ work. An emphasis on collective problem-solving would ensure that formal rules and processes were only part of the culture, instead of its entire focus.¹⁷³ A more integrated approach would also provide a forum for students to share their excitement and creativity about crafting innovative arguments, thus promoting a form of synergy not often found in law schools. Accordingly, the collaborative-learning approach would be a useful tool for including those who otherwise might feel alienated from law review processes and structures.

166. See Godsey, *supra* note 9, at 88; Rosenkranz, *supra* note 91, at 890–91.

167. See Godsey, *supra* note 9, at 88; Rosenkranz, *supra* note 91, at 890–91.

168. See Zimmerman, *supra* note 34, at 996–98.

169. See *id.* (internal quotation marks omitted) (quoting Melanie L. Schneider, *Collaborative Learning: A Concept in Search of a Definition*, 3 ISSUES IN WRITING 26, 32 (1990)).

170. See *id.*

171. See *id.* at 997–98.

172. See Harper, *supra* note 87, at 1271.

173. See Sturm, *supra* note 10, at 142–43. Professor Sturm herself has suggested law schools “shift toward team-oriented productivity . . . [s]tudents self-select their partners in learning, and thus often miss the opportunity to work closely with people they perceive as different. This problem has been identified as a major source of exclusion and marginalization of women from centers of power, social support, and professional networking.” *Id.* at 142.

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A collaborative approach also creates space to recognize alternative leadership styles. While some may argue that an ethic of care is at odds with editing articles in conformity with strict rules, there must be flexibility in the editing process. An anecdote from Barack Obama’s election as president of the *Harvard Law Review* illustrates the value of collaboration. Obama was elected president of the *Harvard Law Review* in 1990 because, instead of simply managing students, he believed he could “heal the review’s partisan divisions.”¹⁷⁴ Obama developed a leadership style based on “consensus, instead of listening to his own voice.”¹⁷⁵ Consensus-building—forming networks and relationships—might be a particularly feminine trait. But a man succeeded by using a non-gladiator-like leadership style. Accordingly, law review staff members would be well-served examining the leadership styles they encourage.

C. Introduce Mentoring Programs

Mentoring programs may also combat the prevailing gladiator ethos. Professor Bartow says that women need to develop solidarity, stick up for one another, and create more feelings of inclusion.¹⁷⁶ The value of mentoring programs, particularly for women in law school, cannot be overestimated.¹⁷⁷ During a 2006 symposium at Harvard Law School, several law-school deans noted the importance of programs in which students mentor other students. They viewed such mentoring as particularly important to fostering the long-term institutional success of student groups because it perpetuates institutional knowledge.¹⁷⁸ The Dean of Duke Law School, Katharine Bartlett, also suggested, somewhat hopefully, that student mentoring might one day become a popular extracurricular activity.¹⁷⁹

174. See Jodi Kantor, *In Law School, Obama Found Political Voice*, N.Y. TIMES (Jan. 28, 2007), <http://www.nytimes.com/2007/01/28/us/politics/28obama.html> (on file with the *McGeorge Law Review*).

175. *Id.*

176. See Bartow, *Some Dumb Girl Syndrome*, *supra* note 84, at 264.

177. See Edward Rubin et al., *A Conversation Among Deans from “Results: Legal Education, Institutional Change, and a Decade of Gender Studies”*, 29 HARV. J.L. & GENDER 465, 481 (2006).

178. See *id.* at 479–81.

179. See *id.* Note, though, that there can be problems with female mentoring, particularly where the mentors are the work supervisors of the women they mentor. A 2008 ABA-sponsored study found that of the fifty-eight percent of women who reported that gender was important in considering supervisors, “the majority reported frustration that female supervisors were more demanding of women than men.” Susan A. Berson, *Making Herstory: U.S. Circuit Judge Encourages Next Steps Toward Equality*, A.B.A. J., Mar. 2010, at 28. As one female federal appellate judge recently remarked, “I would hope that those who engaged in the ‘I had to do it, so you have to do it too’ attitude can look back today and see that even though we had to struggle and work so hard for progress, it’s just wrong to impose that on others.” *Id.* (quoting Tenth Circuit Court of Appeals Judge Deanell Reece Tacha, who herself benefited from mentoring while she was in law school). Thus, although somewhat problematic, mentoring can play a significant role in the success of women both during and after law school. See *id.*

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On law review, mentoring might take many forms. First, students could mentor one another, as Deans Knight and Bartlett urge. Third-year students could create formal or informal mentoring relationships within the law review organization. Student editors could invite female faculty to speak about their experiences on law review and to reinforce the need for women to pursue leadership roles. Research has shown that a “scarcity of women faculty members can cause a sense of alienation among female law students”; connections between female faculty and students might increase law review participation.¹⁸⁰ Finally, students could increase their alumni contacts by seeking mentorship relationships with female law review alumni. These networks would also alleviate law students’ feelings of isolation and exclusion.¹⁸¹ Such mentoring programs would increase the number of women who have the preparation and desire to assume leadership positions on law reviews.¹⁸²

D. Encourage Gender Parity for Leadership Positions

Law reviews could also consider taking race and gender into account when making decisions about whom to promote to leadership roles. Professor Fels found that women in leadership roles tend to underestimate their abilities.¹⁸³ Moreover, she found that “[t]he personal and societal recognition [that women] receive for their accomplishments is quantitatively poorer [and] qualitatively more ambivalent.”¹⁸⁴ Thus, to promote leadership within a law review, editors, alumni, and faculty could—and should—give female staff members more training and more praise for their efforts.

For example, in the mid-1990s, professors and alumni attacked members of the *Yale Law Journal* for being elitist and unrepresentative of the broader student body.¹⁸⁵ In 1995, the Journal implemented a program to recruit more women and people of color.¹⁸⁶ Initial data showed some enhancement of diversity among those who competed to join the law review.¹⁸⁷ Although fewer women competed to become members, they were accepted on the law review at a higher rate than

180. See Bartow, *Still Not Behaving Like Gentlemen*, *supra* note 4, at 844.

181. See *id.*; Neufeld, *supra* note 4, at 571.

182. Of course, one challenge is that mentoring is not part of the corporate and legal culture, and many women perceive that other women are not engaged in mentoring activities and so do not engage in mentoring themselves. See O’Connor, *supra* note 41, at 483.

183. See Fels, *supra* note 148, at 7.

184. See *id.*

185. See Bashi & Iskander, *supra* note 4, at 425 & n.122.

186. *Id.*

187. See *id.*

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were men.¹⁸⁸ Other law journals with similar diversity goals have followed suit, reserving on their yearly rosters spaces for students of color and women.¹⁸⁹

Law reviews can undertake similar initiatives to promote leadership on their respective editorial boards. Journal editors could reserve a certain number of spaces for women at each editorial level.¹⁹⁰ Furthermore, a program ensuring gender parity for law review members is consistent with the purpose of law reviews: providing learning experiences for students through vehicles for diverse scholarly expression. According to one author, “journals must realize their responsibilities to distribute education in a nondiscriminatory manner and to provide the legal community with a medium for exchange of ideas and expression equally accessible to all.”¹⁹¹ By mandating leadership opportunities for women, U.S. law reviews could be closer to realizing their responsibility to publish diverse viewpoints for their readership.¹⁹²

With respect to leadership, the gladiator ethos is particularly harmful because it perpetuates a highly masculine leadership style.¹⁹³ Dispensing with this ethos will only enrich the quality of the journal because its staff will be more diverse and, in turn, likely bring a wider variety of perspectives into print.

VIII. CONCLUSION

Law reviews are important institutions for law schools and their students. Although law reviews began as male-oriented publications and continue to exhibit masculine modes of operation, they would benefit from increased diversity. Professor Sturm’s explanation of the gladiator model provides even more evidence of the challenges that women face in law school and on law reviews.¹⁹⁴ The model applies to law reviews because law review editors tend to foster a culture that encourages competition over collaboration and emphasizes following rules over building relationships. Unfortunately, these aspects of law review culture mean that women who speak with a different voice may speak softly or not at all. Women who seek leadership positions on law reviews may feel they must assume a masculine leadership style in order to serve in a high-profile leadership position. Plus, editors may channel those women who do not exhibit male characteristics into lower-level and lower-profile editing positions.¹⁹⁵

188. *See id.* at 425 n.121.

189. *See* Godsey, *supra* note 9, at 86 n.109 (noting that the affirmative action programs at Columbia and Rutgers).

190. For example, if forty percent of the law review staff were women, forty percent of the editor positions at each level would be reserved for women.

191. *See* Godsey, *supra* note 9, at 18.

192. *See id.*

193. *See generally* Sturm, *supra* note 10.

194. *See generally id.*

195. *See* Creswell, *supra* note 149.

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The gladiator ethos thus ultimately makes leadership more difficult for women to achieve.

Fortunately, solutions exist, but a single method is insufficient to generate change. By changing the experience of law review membership and enhancing leadership opportunities for editors, U.S. law reviews can replace antagonism with teamwork. In fact, law reviews are a perfect forum to show that, when it comes to gladiators in law school, the pen is definitely mightier than the sword.