I. Introduction

The Opposite Image of Justice and Care

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Reminiscence and Legal Ethics
Portia Reddix: Another Look at Gender

P: 93-56
Companion:

In natural terms, legal practice:

In: Legal Ethics and Legal Practice
referred to as the ‘logic of the ladder’ because of its vertical hierarchy of values. This male mode of reasoning was based on abstracted, universalistic principles applied to problematic situations to create an ‘ethic of justice’. Opposed to male moral reasoning was the female ‘ethic of care’, based on the structure of the ‘web’. This female ethic was grounded in a relational, connected, contextual form of reasoning which focused on people, as well as the substance of a problem.

Both Carol Gilligan and I used the character of Portia from Shakespeare’s *The Merchant of Venice* to illustrate the oppositional ethics that exist in any problem of justice or moral reasoning. Both of us inscribed in our reading of Portia — disguised as a male jurist and variously interpreted to be a lawyer, judge, legal envoy, or law clerk — a lawyer who appealed to the equitable, contextual, merciful sides of law, rather than to the draconian certainty of rules and universal principles.

A great deal has happened since 1985, and I welcome this opportunity to re-examine the arguments that I and others have made in our claims of a feminist ethic based on an ethic of care. In this article, I shall first review the initial arguments and claims of those of us who used the structure and findings of Gilligan’s work to create a claim of an ‘ethic of care’ based on a women’s law-making process, differentiated from the more conventional and accepted male norm of law-making. Secondly, I shall briefly review the theoretical, empirical, and methodological critiques of this work that emerged in the years following publication, as well as debate about these claims. Thirdly, I shall report, briefly, on some of the emerging empirical tests of these claims. Fourthly, I want to re-examine the role that the metaphors and images of the character of Portia play in this debate. My own re-reading of Portia’s law-making role illuminates the complexity of the issue of what it means to engage in a ‘woman’s law-making process’.

1 *Different Voices*, above n. 3, at 62-65. 6 Ibid. 7 Ibid.

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Gender, Feminism, and Ethics

II. Lawyering in a Different Voice: An Ethic of Care, Connection, Context, and Relationships

Carol Gilligan’s work as a psychologist focusing on moral dilemmas was fuelled in part by a recognition that most of the critical work in developmental psychology, was based on studies of male behaviour. Gilligan postulated that the conclusions reached by the leading developmental psychologists might not be responsive to the patterns of development of girls and women. In particular, Gilligan considered how women decide whether or not to have an abortion, how women respond to Kolberg’s hypotheticals, and so on.

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11 I use the phrase ‘law-maker’ here to mean an exclusion from the dominant culture or domination by others. These are slippery terms e.g., in *The Merchant of Venice* Shylock, the Jew, is the subordinated person and Portia, a woman, is part of the dominant culture, especially when she acts as a male jurist. Subordination or domination can, but does not have to lead to an ‘oppositional’ approach to what the dominant culture values. Thus, another question linked to the present inquiry is whether those who need to be ‘cared for’ (the excluded, opressed, dominated) need to articulate a morality to give them what they need or to achieve recognition of what they do for others. Most of the ‘caring’ in the world is done without pay by women, or for little pay by people of colour and the lowest-wage earners in a given society. Toronto, above n. 10, at 112-115.
Cancer, Prevention, and Ethics
The current legal climate continues to confront the cursive question underlying the right to bear arms. It poses a significant challenge to the Second Amendment, which guarantees the right to keep and bear arms. The question of whether the government can regulate or restrict firearms has been a matter of ongoing debate. The Supreme Court has made several decisions on this issue, most recently in District of Columbia v. Heller (2008), which held that the Second Amendment applies to the federal government and the states. In United States v. Virginia (1996), the Court struck down a Virginia law that prohibited women from holding elected office, thus extending the right to women as well. The Court's decisions have been challenged and upheld, with some states adopting stronger gun control laws, while others have sought to challenge these restrictions.

In recent years, there has been increased scrutiny of the Second Amendment's application in the context of mass shootings and gun violence. The 2012 Newtown, Connecticut, shooting, which killed 26 people, including 20 children, reignited the debate over gun regulations. The National Rifle Association (NRA), a powerful gun rights group, has been a key player in this debate, arguing that the Second Amendment protects an individual right to bear arms. Meanwhile, advocates of stricter gun control laws have sought to limit access to firearms, particularly assault weapons and high-capacity magazines.

The current legal climate highlights the enduring debate over the balance between individual rights and public safety. As the country grapples with these issues, the Supreme Court's interpretations of the Second Amendment will continue to shape the landscape of gun law and policy.
A.1 Pre-actualisation

Before there were any significant contributions to the field of cognition, there were several studies that explored the cognitive processes involved in reading and understanding text. These studies laid the foundation for the cognitive model of reading that is widely accepted today. The model posits that reading is a complex process that involves several stages, each of which requires the activation of different cognitive resources.

The first stage of reading is the pre-actualisation stage, during which the reader forms an initial understanding of the text based on their prior knowledge and experiences. This stage involves the reader's mental representation of the text, which is based on their expectations and prior knowledge. The reader's pre-actualisation state is influenced by their previous reading experience, cultural background, and language proficiency.

The second stage of reading is the actualisation stage, during which the reader activates their cognitive resources to understand and interpret the text. This stage involves the reader's active engagement with the text, including the use of various cognitive strategies such as visual scanning, text analysis, and meaning construction.

The third stage of reading is the post-actualisation stage, during which the reader reflects on and integrates the information they have read. This stage involves the reader's evaluation of the text, which is based on their understanding of the information presented and their own prior knowledge and experiences.

Overall, the cognitive model of reading highlights the importance of the reader's prior knowledge and experiences, as well as the active engagement of cognitive resources, in the process of reading and understanding text.
asked a group of attorneys in one city to analyze their most recent negotiation, while in another city they interviewed attorneys about their views on ethical and professional responsibility issues. There was little to no gender difference in who was considered a caring or justice-oriented negotiator, although high ratings in both care and justice seemed to be required for a negotiator to be rated as a highly ‘effective’ negotiator. Although men and women reported different orientations to ethics problems, these problems were framed in hypothetical, rather than real terms, and thus it is impossible to separate the empirical reality of actual behavior from self-reported descriptions.

Critics from within the law have suggested that associating critiques of the adversary system and the legal profession more generally with gender is neither accurate nor likely to help transform or reform legal ethics. Instead, ethical dilemmas should be seen as situational and contextual, calling for a mixture of justice and care to meet each situation. Further, both at the theoretical level and at the empirical level, with the advent of more studies on lawyers, some suggest that women are just as likely to act from rights-justice and adversarial stances as men are likely to act from a position of care.

Although I still think that gender has something to do with one’s moral orientation and the law, before I return to the question of what women lawyers’ legal ethics might be, let us consider how the character of Portia in The Merchant of Venice illuminates both the complexities of the rule and morality of law and the ambiguities of gender in legal role-playing.

III. Does Portia Speak in a Different Voice?

The play The Merchant of Venice places discussions of ethics, morality and right-doing at its center. Complicated for modern readers by the

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Gender, Feminism, and Ethics

The play still deals with important modern moral and legal ethical dilemmas — contracts, commercial bonds, fidelity, marriage, friendship, loyalty, justice, the spirit versus the letter of the law, legal remedies, and choice. Portia has become an evocative figure primarily because of the ‘mercy speech’ which she delivers in the trial scene in Act IV, and I shall focus upon her role in that scene. Nonetheless, the deeper meaning of Portia’s character must also be derived from her behaviour in other scenes of the play.

During the trial scene of The Merchant of Venice, Portia, disguised as a male jurist, comes to ‘save’ the fate of her lover Bassanio’s friend, Antonio, against the demands of enforcement of the bond of Shylock the Jew. The recompense is a ‘pound of flesh’ for failure to honour a debt. Over the years, many literary critics and legal commentators have read this scene as central to one of the major themes of the play, that ‘mercy should season justice’. Portia is seen as the symbol of mercy and Shylock the symbol of ‘justice, judgement and Law’. The source of much of this commentary is Portia’s first main speech in the scene where she sets the stage by asking Shylock to consider the virtues of mercy:

The quality of mercy is not strain’d.
It droppeth as the gentle rain from heaven
Upon the place beneath, it is twice blest:
It blesseth him that gives, and him that takes.

For a recent application of Portia’s complex statement and action of mercy as applied to criminal sentencing see E. L. Miller, The Virtue of Mercy in Criminal Sentencing, Den Haag L Rev 24 (1994), 288 (arguing for the application of philosophical notions of mercy as justice in criminal sentencing).

See A. Benston, 'Portia, the Law, and the Tripartite Structure of The Merchant of Venice' in T. Wheeler (ed.), The Merchant of Venice: Critical Essays (1991), 153-65 (analysing The Merchant of Venice as a series of dichotomies, including mercy and law, Girman and Jew, love and friendship, providence and free will).


I have limited my discussion of Portia to the famous trial scene. For a more complete treatment of Portia, including an examination of her speeches and actions throughout the rest of the play, see J. M. Cohen, Feminism and Adapative Hermeneutics: The Paradox of Portia As A Means of Introduction, Tulsa L J 25 (1990), 677-793 (discussing Portia’s refined role as58 women become).

Shakespeare, above n 48, at Act IV, Sc 1

See, e.g., R. Brown, Introduction to William Shakespeare, The Merchant of Venice', above n 8, at n. 9, 11 (discussing the tendency of critics to analyse The Merchant of Venice as a presentation of justice versus mercy, and arguing that this conflict is not the ‘governing idea’ of the play). See also, E. J. Tocque, The Letter of the Law in Merchant of Venice', Shakespeare Survey, 29, 93-101. In stereotypical religious terms, Shylock represents the value of forgiveness exemplified by the Talmud, and Portia represents the value of forgiveness exemplified by the New Testament. In fact, 59 other religious interpretations can be found in the texts and teachings of both religious traditions.
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of particular individuals because of their social characteristics becomes evident in a way in which regular actors in the system may be totally unaware. Thus, public attention to issues of gender and racial differential treatment, through such efforts as court-sponsored Task Force Reports, serves to illuminate in a public way what is going on in private, and, in turn, may result in pressures on the profession to ‘clean up its act’ if it wishes to improve its already tarnished reputation.

Finally, attention to gender issues and quality of life issues with which women are more likely to be concerned, may cause the profession as a whole to re-evaluate the demand of its ‘greedy institutions’ which seem to require so much devotion to work. Should a lawyer’s ‘ethics’ or morality be judged by how he treats others, including employees? Is the demand for brutally hard working hours in some legal employment itself an issue of ethical concern? Interestingly, in some instances the development of parental or healthcare-giving leave has occurred because of the activism of some male attorneys who also seek to spend more time with their families and who seek to humanize their commitment to work. In my own research into law-firm policies I have uncovered instances of middle-aged men who have become innovators on issues of leave, either because their daughters have become lawyers and consequently understand more fully the impediments of the ‘glass ceiling’ as it affects mothers or because of their own needs to spend time with families, often second families which they began in their more mellow middle years. For some, the aggravating wear and tear of adversarial legal practice leads to midlife evaluation and changes in what is desired in legal practice. The key to understanding this phenomenon is to realize that innovation may be sparked by women raising issues or making demands, but the effects of these innovations may be pursued from surprising sources (‘merciful men’ like the Duke in The Merchant of Venice). It also suggests that innovation may come from self-interest, as well as a moral commitment to the underlying values of the common good of changing the profession.

Thus, broadly defined gender ethics—leading our lives as lawyers, making decisions about our clients, our opponents, ourselves and our families, searching to be ‘good lawyers’ as well as ‘good people’—in my view is
With the advent of new technologies, the traditional roles of the profession are being redefined. The era of data-driven decision-making requires professionals to adapt to the changing landscape. This involves not only mastering the technical aspects but also understanding the ethical implications of their work. The ability to communicate effectively and to lead teams has become an essential skill in today's workplace. Additionally, the importance of teamwork and collaboration has increased, as projects often rely on diverse skills and perspectives. 

In the context of law, the role of the legal profession is evolving. Lawyers are no longer solely focused on litigation; they are also involved in transactional work, regulatory compliance, and corporate counseling. The expectations of clients have changed, and there is a growing demand for legal services that are not only outcome-focused but also client-centric. 

The legal profession has traditionally been characterized by a strong emphasis on formality and protocol. However, with the rise of technology, the need for flexibility and agility has become apparent. Professionals must be能够 adapt to new tools and platforms to remain effective in their roles. 

Overall, the future of the legal profession looks promising, with opportunities for growth and innovation. The key to success will be the ability to embrace change and to continuously improve one's skills and knowledge.