Aristotle's Ethics and Legal Rhetoric

An Analysis of Language Beliefs and the Law

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ARISTOTLE'S ETHICS AND LEGAL RHETORIC

For Josh
who said he wanted a copy of my first book
even if he didn't read it

And for my parents

Acknowledgments

I wish I could say without drama that my son gave birth to me. This statement is true in a simple way whose expression eludes me. Both by choice and by the necessity of raising an incredibly smart, joyful, and inquisitive child I became the person who wrote—sometimes painfully, often slowly, and occasionally passionately—this book. That child is now an adult, but I have not forgotten either his precocious references to Aristotle as 'that Air-head guy' or his tipping me off, just a few years later, to the rhetoric match in *Rosencrantz and Guildenstern are Dead*. Because of him I know Björk and Nappy Roots; because he has faith in me and in this book I finally finished it. I am constantly inspired by his intelligence, his wit, and his *joie de vivre*.

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Notes

Citations to Aristotle's *Nicomachean Ethics* are to the Rackham translation unless otherwise noted.

For translations of ancient Greek terms I have used the seventh edition of the *Intermediate Greek Lexicon* by Liddell and Scott.

Contents

Chapter 1

Rhetoric, Law, Ethics, Feminism

> Our proper course with this subject as with others will be to present the various views about it, and then, after first reviewing the difficulties they involve, finally to establish all or, if not all, the greater part and the most important of the opinions generally held with respect to these states of mind; since if the discrepancies can be solved, and a residuum of correct opinion left standing, the true view will have been sufficiently established.
>
> Aristotle
> *Nicomachean Ethics*, Book VII

I still remember the day I first heard the words 'reasonable' and 'woman' together in a sentence. It was 1991 and, though I had recently resigned my position as an employee benefits paralegal at a large corporate law firm in Cincinnati, I had taken on the job of assembling a newsletter for its labor law department. The decision in *Ellison v. Brady* had just been published and the front page headline of the newsletter read 'Court Upholds Reasonable Woman Standard for Sexual Harassment Cases.'

Should I confess that I laughed? After twelve years of immersion in tax law and of invoking the 'reasonable man' as the standard for fiduciaries of pension plan trust funds, I found the combination of 'woman' with 'reason' odd. But it was also intriguing, and if only because I could easily imagine both the hilarity and the consternation in the halls of my old law firm at this turn of events, I found myself reading not only *Ellison v. Brady* but every sexual harassment case it cited, and the cases they cited, and Catherine A. MacKinnon's *Sexual Harassment of Working Women* and, eventually, everything I could find on feminist jurisprudence and the 'Reasonable Woman' herself. It made for an interesting and chaotic graduate school year, the first in my PhD program. Of such serendipitous and dissonant moments are scholarly careers born, or such is my fond belief.

It was only upon leaving the 'practice' of law (for paralegals manifestly do not practice law, or don't admit to it) that I found the luxury I needed to think theoretically about what I had been doing during those years. It is one of the arguments of this book that both activities, both practice and theory, are knowledge-making activities that are valuable for what they can contribute to our understanding of legal and ethical problems. But this book also argues for a third way of knowing, the productive, that mediates between those two and calls into question not only the gap we tend to believe exists between them but the 'bridge' we attempt to build as we conceive of practice as the simple enactment of theory—

wrongly, as Stanley Fish is fond of pointing out (*There's No Such Thing as Free Speech* 347-8). This third way of knowing is described, as are theory and practice, in great detail in Aristotle's *Nicomachean Ethics*; Aristotle called it *poiesis* and the method it employed—what he called a 'habit of mind'—*techné*, or 'art.' The art the ancient Greeks used to practice law was called rhetoric and it is precisely here, in the conjunction of law and rhetoric that my (para) professional and academic careers mirror, that I focus my attention in this book.

If rhetoric has had a long and troubled history—and it has—its relationship with law has been even more troubled. From their early intimate association, where to practice law meant to employ rhetoric, law and rhetoric are now barely on speaking terms. When, why, and how the rupture in the law-rhetoric relationship came about is a matter of dispute and interpretation ranging from the conclusion of legal scholars Linda Levine and Kurt M. Saunders, that it was prompted by Peter Ramus's excision of logic from rhetoric (110) to the position expressed by Gerald Wetlaufer and seconded by Austin Sarat and Thomas R. Kearns, that law's 'rhetoricity' has become a source of a fair amount of twentieth- (and now twenty-first-) century professional anxiety (Sarat and Kearns 1). Certainly the law-rhetoric rupture is associated with the rise of science in the seventeenth century, more than two thousand years after the 'invention' of both law and rhetoric in Athens. But science could not have replaced rhetoric in law's affections if the relationship were not already troubled, and indeed it was. From its early pre-eminence both in Athens and later in Rome rhetoric had slipped, and slipped badly. Indispensable at a time when democracy was born and grew up, both for the making of laws and for their adjudication in litigious societies, rhetoric became dangerous and potentially subversive as empires began to take the place of democracies. Rhetoric, it appears, fell before Rome, fell with the head of Cicero, its greatest rhetorician. In retrospect, the implications for rhetoric could not have been clearer if Cicero's tongue had been cut out, nailed to a pike, and paraded about town—as, of course, it was.

Janet M. Atwill's study of the fate of rhetoric in the liberal arts argues that rhetoric had already undergone a gradual transformation whose beginnings are apparent in Aristotle and begin to become obvious in Quintilian, a century after Cicero's death. This transformation of rhetoric, 'from an art of social and political intervention into the curricular content of a humanist education' meant that rhetoric would become institutionalized as a school subject (*Rhetoric Reclaimed* 32) and taught continuously throughout the medieval period and the Renaissance—it would be difficult, in fact, to find a century during which rhetoric was not an essential school subject prior to the twentieth. Rather than disappear after Rome, rhetoric moved away from politics and into other spheres, including (due to the influence of Augustine) that of the early Catholic Church, where it was transformed into the arts of preaching and of letter writing (Bizzell and Herzberg 377). It survived, then, primarily as the study of eloquence, or of literary 'style,' and primarily at the pre-university level as an essential member of the *trivium* along with grammar and logic. It remained associated with law through the canonical letters that promulgated church law, and was taught to aspiring church and secular lawyers at the first university established at Bologna in the medieval period (Clark 678). For

this period of its history, however, rhetoric remained primarily the occupation of schoolboys and only rarely made it to the universities.

Here again law and rhetoric are linked, for though civil law fit easily into the curriculum of universities on the European continent, the English common law tradition from which our own legal system is descended had problems achieving the kind of stature required for admission to the British university. That, in fact, became one important reason for law's fascination with science and grew out of the educational motivations behind Sir William Blackstone's promulgation of 'legal science' in his eighteenth-century *Commentaries on the Laws of England* (Currie 348, Lemmings 226). Christopher Columbus Langdell, persuaded by the *Commentaries* and by his own instruction at Harvard's law school, also used science as a lever to get legal instruction consistently out of apprenticeships and law offices and into the universities in the late nineteenth and early twentieth centuries. It was an ingenious combination of persuasion and necessity that led Langdell to claim, first, that law was a science; secondly, that it was a specifically empirical science and, thirdly, that the data to be observed by this empirical science were contained in judicial cases—and thus in 'the ultimate sources of all legal knowledge,' the printed books that only a university could provide (quoted in Harno 58-9).

In case there were any lingering doubts about law's theoretical and thus 'scientifical' status (to parrot Blackstone) Langdell maintained that the purpose of law school was not to teach the basics of law practice—not to teach law students to churn out legal products—but instead to teach a process, a method of inquiry and a way of thinking, 'like a lawyer.' Through what came to be known as the Langdellian or case-study method, law students were to infer from their readings of judicial opinions the basic premises, or Blackstonian 'principles,' of legal science. This turn away from product in favor of process allowed the case method to accomplish several interesting feats in one fell swoop. First, it made legal study plausibly 'scientific' by focusing on empirical data through an arguably inductive method. Second, legal study became respectably theoretical, thereby rejecting the memorization of legal rules and pleading forms in favor of a search for a system of underlying legal principles. Third, that theoretical nature in turn rendered law worthy of university study as an undertaking that was, fourth and completing the circle, explicitly and unabashedly impractical. Through this apparently master stroke Langdell and his case method succeeded in relatively short order, 'definitely and firmly implant[ing] the teaching of law in the universities' (Harno 59).

Residence in the university did not, obviously, settle the question of law's nature or even of how it might best be taught. Langdell and his method were both controversial, the method because its claim to 'science' was highly questionable by the standards of the time (and even more so by today's) and the man because of a rather unusual character that led to perceptions such as that of his contemporary Jerome Frank, that Langdell was a bizarre individual with an 'obsessive and almost exclusive interest in books' (quoted in Chase 330). Substantial and sometimes scathing criticism both in his time and ours has made of Langdell a caricature, says educational scholar Bruce A. Kimball (302), who notes that only recently has

scholarship taken a close look at primary sources to counteract the now conventional wisdom that Langdell himself could be given little credit for developing the pedagogical method that bears his name (for one account of this conventional wisdom see Chase 332). But Langdellian case method remains a factor to be dealt with in both legal education and legal scholarship; Kimball notes that 'hundreds, if not thousands, of publications have discussed him and his work, in no small part because Langdell is identified with the modern paradigm of legal education' (329). Scholarship that advocates movement 'beyond the case method' or 'beyond Langdell,' for example (Moskovitz; Torres and Harwood) affirms that Langdell was 'arguably the most influential figure in the history of legal education in the United States,' the figure, in fact, who 'shaped the modern law school' (Kimball 277). The method was not an unequivocal triumph, of course; alternatives to the Langdellian Harvard model were proposed throughout the twentieth century and continue to influence the law school curriculum today. Clinical legal education, for example, which Richard J. Wilson claims is 'one of the most significant and successful pedagogical developments since Langdell's case method' (421), grew out of the psychoanalytical approach that Frank proposed in the decade of the 1930s to replace Langdell's 'narrow professional' model (McManis 598). Still other models were proposed at Columbia and Yale to accommodate critiques put forward by legal realism (Currie 536, Reed 360-2). These 'functional' models survive in courses based on what is sometimes called 'law and' jurisprudence—or, by its critics, 'law and whatever.'

Among these last are, of course, the movements to pair law with literature, with economics, and with feminism. I have chosen to investigate work by scholars associated with these movements in my own work because the conflict between 'legal art' and 'legal science' presented by the literary and economic perspectives, respectively, beings into high relief the long absence of rhetoric from legal studies—while feminist critiques of both perspectives invite, if only implicitly, renewed interest in its presence. My place in this debate is complicated by at least two factors, however; first by my position as an outsider (or at the very best as a para-insider) and second by my variant definitions of the key terms involved. In the struggle between art and science I take the part of art, but of an art that is specifically non-literary and geared not toward the interpretation of text but toward its production—an art that is rhetorical in a classical, Aristotelian sense. But even though I side with art, I have considerable interest in the legal science offered by the Law and Economics movement, the formulation of which bears an uncanny resemblance to science in the classical sense, in which 'science' is understood as a discursive inquiry into a discursive culture. Again, my definition is Aristotelian. Ultimately, these definitions depart from both 'literature' and 'economics' in their current senses, for neither modern concept is thinkable in the classical terms I employ. Nevertheless, the literary and economic perspectives on legal thought are essential to my project because of the questions they raise about the nature of law and of legal analysis, and because the answers they suggest (and feminist responses to those answers) have significant implications not only for our understanding of law but for our understanding of rhetoric as well.

Because of rhetoric's longstanding interest in the nature and functions of language, I have chosen to demonstrate that latter claim through an examination of prevailing, characteristic approaches to the role of language in economic, literary, and feminist analyses of the theory and practice of law. Those characteristic approaches are illustrated, I will claim, by the work of major figures in each movement—Richard Posner, James Boyd White, and Robin West, respectively. In these figures rests an enormous influence on the choice of significant issues in the fields of economic, literary, and feminist legal analysis, as each is alternately lauded, criticized, cited, repudiated, and elaborated upon—extensively. However, I choose these figures not in order to provide a comprehensive analysis of each movement, which is not my goal. Instead, I see in the work of Posner, White, and West beliefs about language that are characteristic of the disciplines they bring to bear on legal scholarship. While these beliefs are not diametrically opposed, they do offer widely variant responses to the limitations and possibilities presented to legal theory and practice by the alternately alarming and liberating capacities of law's language. The market-based theory espoused by Posner holds language to a standard of certainty and clarity that attempts to make of it a mere tool, albeit one that requires significant honing; that view of language is contested by the literary and rhetorically-based theory of White, which recognizes the ambiguity of language without relinquishing belief in our ability to become more conscious users of it and, thereby, to exercise some control over its consequences.

To the analysis of Posner and White I bring to bear the feminist perspectives on law offered not only by West but also by classical scholar Martha C. Nussbaum. Within legal studies the feminist response to both Law and Economics and Law and Literature has been mixed, determined in large part by the language theory that grounds the work of various scholars. In Nussbaum's work we find a moderate feminism that, recognizing with Aristotle the contribution language makes to ethical reasoning, sees in both economic and literary approaches to legal analysis the potential for important ethical insights (*Poetic Justice* 82). In constitutional law scholar West's work we find a far more radical feminism; however, where Nussbaum's language theory openly acknowledges and even embraces the role that language could play in constructing Aristotle's theories of knowledge—and attributes to him that same perspective—West mistrusts or even fears the propensity of language to lead to consequences unintended by its speakers. Recognizing what White also admits, that 'not everything can be said in this language' that is law (*Heracles' Bow* 241), West urges scholarship to go beyond—or behind—the verbal (*Caring for Justice* 192).

I thus focus my attention not only on the contributions each approach to legal analysis may make to a rhetorical understanding of legal thought and language, but also to its limitations, and on reservations grounded in the feminist apprehension—in both senses of that term—of the language theory inherent in each movement. What feminism has apprehended, in other words—that legal language (in the more radical formulations, that language itself) is inherently 'male'—also creates apprehension regarding the implications for women of both the economic and literary approaches to law. My goal is to extend the response of feminist legal

scholarship as I offer a specifically rhetorical slant on language generally and on legal language in particular, a perspective that considers not only how women have been shaped by legal discourse but how women and men may shape the discourse themselves. While I hope that one effect of such analysis may be to ease the apprehension regarding language that is common in feminist legal scholarship, I expect that it will also complicate the undue optimism of some rhetorical scholarship through its recognition that words literally, visibly, and immediately 'matter' in law.

Through my feminist, rhetorical perspective I hope to explain, contest, or replace not only the responses to the issues that literature and economics identify in legal studies, but the invention, identification, and framing of the issues themselves. At the deepest level these issues center on the certainty of law, the meaning and effects of legal texts, and the potential of those texts and of law itself to serve the demands of justice. Justice is also at issue, not only in terms of how it may best be served (or whether it can be served) by law but also in terms of its definition, indeed of its very relevance to the theories and practices of law and legal method. The core argument of this book on that issue, and on which all other of its arguments rest, is simply this: because law must work with and through language—White has said that law literally is a language (*Heracles' Bow* 78)—the various beliefs about justice and law's relationship to it that are maintained by the literary, economic, and feminist movements are evidenced and founded in—indeed, sometimes founder in—their characteristic beliefs about the nature of language and its relationships to knowledge, truth, and reality.

This is an argument to which I return in each of the chapters that follow, and that is synthesized and fully argued in the last. But before providing a preview of that argument and the chapters through which it develops, it is time to take a step back from this work's basic argument to the values that inform the method through which I support it. Why, one might ask, would a scholar with feminist sympathies rely on Aristotle as a theoretical basis? As Cynthia A. Freeland points out in the introduction to *Feminist Interpretations of Aristotle*, the feminist literature on Aristotle has generally been negative, with feminists finding 'much to disparage and little to salvage' from his work (1). Indeed, recent feminist rhetorical work has turned to the Sophists as an alternative to Aristotle, and for compelling reasons. Susan C. Jarratt provides a comprehensive and persuasive analysis of those reasons, including the parallels between the interests (often considered 'faults') of the Sophists and characteristics traditionally linked to the female. For Plato, she notes, 'the sophists signified opinion as opposed to Truth, the materiality of the body...vs. soul, practical knowledge vs. science, the temporal vs. the eternal.... This cluster of terms,' she says, is 'coincident on many counts with the cultural stereotype of the "feminine" operating in the West for centuries' ('The First Sophists and Feminism' 29). One can hardly argue with this analysis, and I have no intentions to do so.

However, I also have no intention to argue one alternative thesis, that 'Aristotle was a feminist,' as Linda R. Hirschman provocatively declares at the outset of 'The Book of "A"' (971). Like Nussbaum, who responds to Hirschman's thesis in

'Aristotle, Feminism and Needs for Functioning' I do agree that Aristotle's method can support feminist method (Hirschman 972). Where Hirschman sees parallels between his discursive method in the *Nicomachean Ethics* and feminist consciousness-raising (977) Nussbaum sees an 'allegedly conservative ethical methodology' that in fact is compatible with feminist goals. In actuality, she says, it 'prompts a sweeping and highly critical scrutiny of all existing regimes and their schemes of distribution' ('Aristotle, Feminism, and Needs for Functioning' 1021), an assessment that inspires Nussbaum's own interests in extending feminist research to the needs of women (and men) in countries where necessities such as food and shelter are lacking or unevenly distributed.

Both Nussbaum and Hirschman, in slightly different ways and to different purposes, note Aristotle's interest in the life of a community and the relationship of individuals to that community. Hirschman argues that Aristotle's interest in the social body is compatible with the feminist understanding of the personal as political (986) and contends that his 'ideal of the good life for citizens may be the best source of substantive answers about politics and the political community...which feminism, like any normative theory, must ultimately produce' (972). Nussbaum extends that argument with a deeper understanding of its complexities and contradictions but ultimately supports Hirschman's conclusion. What Aristotle understood, Nussbaum says, is that each human being 'is, and is necessarily, a "this" and "one in number."' (1023). Further, he saw both political and ethical consequences of this view; his 'fundamental respect for choice' (1027) both allows him to account realistically for human functioning and flourishing, and to counter the potential for postmodern ethical relativism (1024) with a particularism that does not neglect the role of community in shaping an individual life.

Despite the misogyny that Hirschman and Nussbaum acknowledge in Aristotle's corpus, both conclude that, to quote Nussbaum, 'contemporary feminism does indeed have a great deal to learn from Aristotle' (1019). Here even Posner, who also responded to Hirschman, agrees. Doubtful of the 'feminist' claim, he maintains that Aristotle's thought nevertheless 'is not a seamless web so that if you pull out one thread the whole thing unravels.' One could, in other words, throw out his misogynistic biology 'without jeopardizing what he has to say about reasoning in the face of uncertainty' ('Ms. Aristotle' 1017). Nussbaum concurs not only with this sentiment—'we may proceed to appropriate other elements of his thought,' she says, 'without fear that they are logically interdependent with his political and biological misogyny' (1021)—she also makes overt Posner's more implicit reference to Aristotle's *Rhetoric*. It is 'above all' in this work about reasoning in the face of uncertainty, she says, that Aristotle offers 'a subtle defense and justification of many emotions, as playing a crucial role in the rational and virtuous response to many of life's events' (1022). An Aristotelian consciousness of such circumstances lends contingency, says Nussbaum, its 'ethical relevance' (1025). Carol Poster questions the assumed primacy of Aristotle's *Rhetoric* both historically and today, pointing out that his recognition of the emotions and the private sphere as valid materials and locations for rhetorical

performance are still grounded in his beliefs in the superior worth of logical appeals in the public sphere (338-9). Poster concludes on this basis that 'feminist rhetoric can stand on its own' but, while I sympathize with that position, I must disagree with her assumption that it can do so 'without authoritative male antecedents' (344). Feminist rhetoric cannot and does not operate outside its contexts, and must acknowledge the tradition out of which it grows even as it struggles to depart from it. Thus feminists cannot ignore the answers Aristotle developed through his relentless pursuit of 'the woman question' (Hirschman 979-80), even if we don't like them. Indeed, many non-feminist scholars don't like those answers either. But unlike Jasper Neel, who contends that with Aristotle's thought we inevitably import intonations of slavery, sexism, and elitism (14-26), Hirschman, Nussbaum, Posner—and I—agree that Aristotelian method does not make Aristotle's own conclusions inevitable.

I will return to my reliance on Aristotle in this overtly feminist work in order to extend that argument. But first, a few words of explanation as to why I rely on Aristotle's ethical system for the structure of a rhetorical work. After all, centuries of scholarship—beginning most notably with Plato's *Gorgias*—have strictly opposed rhetoric to ethics. This, in fact, is Posner's position on the question; noting that when Aristotle begins to discuss rhetorical performances we move into an 'amoral' world, he concludes that the rhetorical function of invention 'is just the sort of thing that troubles people about rhetoric' (*Overcoming Law* 512). In economic terms, he explains, rhetoric comes into play as a function of 'information costs,' so that even if it is truly amoral, neither a good nor a bad thing, it is certainly 'an indispensable thing' when more certain knowledge is unavailable (524). Unfortunately, as Posner explains, rhetoric's ethical valence is entirely dependent upon that of those who wield it; though it may be used to 'make truth sound like truth' it can also make falsehood sound like truth, or vice-versa (529). Thus Posner echoes Plato more truly than Aristotle, particularly the charge in the *Gorgias* that rhetoric leads not to truth but to belief that itself may be true or false (454 d-e).

While Posner's manner of discussing the issue is unique, the issue itself clearly is not. Aristotle himself may be seen as responding to Plato in the very passage of the *Rhetoric* where he considers the question of the relationship of rhetoric to truth and justice. Socrates summarily dismisses the claim advanced by Gorgias, that as its function in the law courts rhetoric took as its concern matters of 'right and wrong' (*Gorgias* 454 a-b). But Aristotle maintains that 'rhetoric is useful because the true and the just are naturally superior to their opposites' (*Rhetoric* I.1.12). Precisely what this passage implies is a subject of debate; William M. A. Grimaldi maintains that in this passage Aristotle clearly connects rhetoric with truth by showing that 'it is through the instrumentality of the art that truth and justice are able to realize themselves in the decisions of men' (173). In making his own argument, however, Grimaldi must provide an alternative translation of the passage that completes Aristotle's statement about the relationship of rhetoric to truth and justice, a passage that reads in the Rhys translation 'so that if the decisions of judges are not what they ought to be, the defeat must be due to the speakers

themselves'—or, in the Freese translation, 'they must owe their defeat to their own advocates.' Both translations suggest that rhetoric is, indeed, a neutral tool that may be used well or badly.

Both Atwill and Barbara Warnick have taken issue with Grimaldi's re-translation of this passage and the argument it therefore advances, for similar reasons. Grimaldi can only make his argument for the intimate connection of rhetoric with truth by linking Aristotle's method to subjects that, Warnick says, are 'quite different from those Aristotle intended,' based on those he used as examples in his own text (300). Atwill agrees that it is Grimaldi's desire to make of rhetoric a much closer cousin of philosophy than Aristotle intended that informs what she sees as a flawed argument. She also questions his desire to similarly link rhetoric with ethics ('Instituting the Art of Rhetoric' 106); contending that Aristotle himself saw rhetoric and ethics as distinct, she claims that 'there is good reason for rescuing rhetoric' from the imperative of ethics, to aim at Aristotle's 'good life' (*Rhetoric Reclaimed* 163). Here Atwill provocatively disagrees with a great deal of contemporary scholarship on rhetoric that quite consciously intends to rescue rhetoric for ethics. And despite my agreement with that latter scholarship, among which prominently figure various feminist perspectives on rhetoric, I must also agree with Atwill's assessment that Aristotle's 'greatest contribution to rhetoric may have been his willingness to allow' its 'two failures'—to deny its identity with either philosophy or ethics and thus allow rhetoric an identity of its own (164). But before I explain what may appear to be a triple paradox—my use of Aristotle's ethical thought to agree with contradictory positions regarding the place of rhetoric within it—let me turn to the various arguments advanced, against Atwill's, for the inherently ethical nature of rhetoric. To do so I provide in the next section a short historical and disciplinary survey of the rhetorical methods and definitions upon which I rely. Maintaining that any methodology inevitably (if implicitly) expresses an ethic, I recognize that the feminist perspective informing my work encourages a definition of rhetoric that itself leads to my methodological choices. Though Aristotle's thought is often seen as inimical to feminist interests, I conclude with a definition of rhetoric that, drawing upon Aristotle's *Nicomachean Ethics*, resolves some of the contradictions not only between Aristotle and feminism, but between feminism and rhetoric itself.

Rhetorical Criticism and Analysis: Toward Productive Feminism

In 1973 feminist communication scholar Karlyn Kohrs Campbell chose as her label for the rhetoric of women's liberation, as it was then more likely to be called, the oxymoron. She could do so, however, only because of the prevailing definition of rhetoric at that time, a definition that had held sway for centuries without absorbing the influence of alternative voices. That definition becomes evident as she explains precisely why the rhetoric used by women in the 1960s and 1970s was, as she puts it, 'anti-rhetorical' (78). It is, she says, 'a genre without a rhetor, a rhetoric in search of an audience, that transforms traditional argumentation into