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# FROM ARACHNE TO CHARLOTTE: AN IMAGINATIVE REVISITING OF GILLIGAN'S *IN A DIFFERENT VOICE*

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## INTRODUCTION

### I. LAWYERING IN A DIFFERENT VOICE

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## ABSTRACT

Almost twenty-five years after its gentle narrative first captured the imagination of its readers, Carol Gilligan's *In a Different Voice*<sup>1</sup> remains one of the most influential feminist works of all time. Its articulation of different ways of understanding moral conflict and self gave a voice to women who felt excluded or silenced by the monophonic and abstracted hierarchy of traditional moral reasoning and psychological theory.<sup>2</sup> To some critics, however, the voice Gilligan singles out is not only incoherent but also severely flawed. Its omnipresence in conversations about difference threatens to tempt participants toward the dangers of essentialism. As critics and supporters alike contemplate the fate of Arachne, Gilligan's webs of care and connection are increasingly seen as archaic places of entrapment and even death. Love it or hate it, however, the haunting omnipotence of its narrative ensures that it continues to have operative effects. Indifference is not an option; evasion is futile. It is perhaps time to revisit its taken-for-granted familiarity and the habitual dismissals of its insights and look again at the possibilities offered by a different voice.

This article seeks to utilize the aching familiarity and impending doom that pervades and threatens to stifle conversations ignited by attempts of feminist legal scholars to articulate a different voice in law. As these efforts to identify the woman lawyer's different voice fall silent, it seems that, at least in terms of everyday practice, a different voice is more mythical than real. Neither a eulogy nor an

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\* Lecturer in law, Durham University, United Kingdom. Thank you to colleagues who have taken the time to comment on this article in its various guises, many of whom are, like Charlotte, not only great writers but great friends too. The usual caveats apply.

1. CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (Harvard University Press 1993) (1982).

2. Mary Sykes Wylie, *The Untold Story: Carol Gilligan on Recapturing the Lost Voice of Pleasure*, 26 *PSYCHOTHERAPY NETWORKER* 46, 47-48 (2002).

epitaph, the article utilizes E. B. White's *Charlotte's Web*,<sup>3</sup> to offer an alternative understanding of Gilligan's different voice as a fictional device or myth. The article suggests that *In a Different Voice* retains an ongoing promise to law (and other academic disciplines), which lies not in its difference *per se* but rather in its ability to render contingent particular, but dominant, forms of reasoning and decision-making.

## INTRODUCTION

It is difficult to overstate the impact of Carol Gilligan's *In a Different Voice*.<sup>4</sup> Almost twenty-five years after the "elegant sensitivity"<sup>5</sup> of its narrative first captured the imagination of its readers, it has been described as one of the most influential feminist works of all time.<sup>6</sup> Its gentle articulation of different ways of understanding moral conflict and self gave a voice to women who felt excluded or silenced by the monophonic and abstracted hierarchy of traditional moral reasoning and psychological theory.<sup>7</sup> In so doing, it struck "an emotionally-resonant chord in a whole generation . . . who recognized themselves in its pages — their own vague and undefined sense of not being heard, of learning to put on their own 'pretend' voices."<sup>8</sup> It has since sold over 750,000 copies worldwide and has been translated into seventeen languages.<sup>9</sup> Its distinctive voice can be heard in the scholarship of a vast array of academic disciplines, including computer studies, health care, political science, environmental management, and law, as well as in pop-psychology bestsellers exploring apparent differences between men and women.<sup>10</sup> For many, this is one "little book" that lives up to its publisher's moniker: it "started a revolution."<sup>11</sup>

To many other commentators, however, the voice Gilligan articulates is not just unintelligible, but also dangerously misguided.

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3. E.B. WHITE, *CHARLOTTE'S WEB* (Penguin Books 1963)(1952).

4. See GILLIGAN, *supra* note 1.

5. Catherine MacKinnon, in Isabel Marcus, et al., *Feminist Discourse, Moral Values, and the Law — A Conversation*, 34 BUFF. L. REV. 11, 73 (1985).

6. Wylie, *supra* note 2, at 48.

7. See *id.*

8. *Id.*

9. *Id.*

10. See generally JOHN GRAY, *MEN ARE FROM MARS, WOMEN ARE FROM VENUS: A PRACTICAL GUIDE FOR IMPROVING COMMUNICATION AND GETTING WHAT YOU WANT IN YOUR RELATIONSHIPS* (1997); Alison Adam, *Computer Ethics in a Different Voice*, 11 INFO. AND ORG. 231 (2001); M. C. Cooper, *Gilligan's Different Voice: A Perspective for Nursing*, 5 J. PROF. NURSING 10 (1989); Rita Mae Kelly, et al., *Female Public Officials: A Different Voice*, 515 ANNALS 77 (1991); Bruce T. Lauber, et al., *Gender and Ethical Judgments about Suburban Deer Management*, 14 SOC'Y & NAT. RES. 571 (2001).

11. Royce Carlton Incorporated, <http://www.roycecarlton.com/speakers/gilligan.html> (last visited Mar. 24, 2007).

Its sinister presence stalks conversations about difference, luring participants into the quagmire of essentialism and exclusion. As feminists dice with the fate of Arachne, Gilligan's webs of care and connection are increasingly seen as outdated places of entrapment and even death; her narrative and style emblematic of "the kind of feminism . . . [that is] out of synch with what today's tough-minded, presumably long-since-liberated women want to read."<sup>12</sup> Its revolutionary insights are dismissed as passé and subjected to routine condemnation by "armchair-feminists" and others keen "to avoid examining too closely the question of [their] own 'feminine' identities"<sup>13</sup> and distance themselves from its essential threat in favor of more cutting-edge companions. There appears to be no middle ground. The very ubiquity and simplicity of the idea of a different voice ensures that indifference is not an option. Avoidance is futile. A choice must be made: either to embrace its potential for liberation or to decry its narrative as an essentializing myth.

Like most either/or choices, however, while perhaps initially attractive, the love it or hate it critique of *In a Different Voice* is at best somewhat simplistic and at worst brutally reductive. There is clearly more to both the book itself and the continuing reactions to it than these alternatives suggest. Its outmoded image belies the extent to which it continues to have operative effects in the context of debates about difference and diversity, both in the law and beyond. Moreover, there is a real danger that we know the story so well that we do not really listen to it any more.<sup>14</sup> As Aesop warned, "familiarity breeds contempt,"<sup>15</sup> which could lead us to take the myth at face value and allow the parody to usurp reality. It is perhaps time to revisit the taken-for-granted familiarity of both its insights and detractors and reexamine Gilligan's *In a Different Voice*.<sup>16</sup>

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12. Wylie, *supra* note 2, at 49.

13. Mary Joe Frug, *Progressive Feminist Legal Scholarship: Can We Claim "A Different Voice"?*, 15 HARV. WOMEN'S L. J. 37, 50 (1992).

14. We may capture a number of communities here including, but not necessarily limited to, women, feminists, lawyers, academics, and any combination therein. Although the article seeks in both its content and style to invoke and explore a sense of relationship and history, in so doing it risks not only over- and under- inclusiveness but also gives the "constitutive we" the appearance of a coherence it does not possess. See Kim Lane Scheppele, *Foreword: Telling Stories*, 87 MICH. L. REV. 2073, 2077-2085 (1989).

15. AESOP, *The Fox and the Lion*, in AESOP'S FABLES 43 (Jack Zipes trans. & ed., 1992).

16. It is this feeling of hackneyed familiarity and weary resignation — the belief that Gilligan has "been done" and that, as a result, further comment is not only unnecessary, but may be even unscholarly — that this paper seeks to address and, ultimately, to subvert. This article is grounded in the premise that as long as *In a Different Voice* maintains its omnipresent status on student reading lists and in academic footnotes, conversations about Gilligan are not only here to stay but remain essential to the development of interdisciplinary feminist thought.

Taking the application of Gilligan's "little book" as its starting point and backdrop — a portal, if you like, through which to explore the wider debate — this article seeks to utilize the aching familiarity and impending doom that pervades and threatens to stifle conversations ignited by attempts of feminist legal scholars to articulate a different voice as a means of exploring the ongoing potential of Gilligan's seminal work, both within law and beyond. Harnessing its "elephant in the room"-like presence within feminist legal scholarship, the article contends that as efforts to identify the woman lawyer's different voice fall silent, it seems that, at least in terms of everyday legal practice, a different voice is more mythical than real. In response to and taking its lead from Gilligan's use of literature and stories in *The Birth of Pleasure*,<sup>17</sup> this article offers through an exploration of E.B. White's *Charlotte's Web*<sup>18</sup> an alternative understanding of Gilligan's different voice as fiction or myth. This article suggests that the ongoing promise to the law (and other academic disciplines) of a different voice lies not in its difference *per se*, but rather in its ability to render contingent particular, but dominant, forms of legal reasoning and decision-making and to open windows onto previously unimaginable ways forward.

### I. LAWYERING IN A DIFFERENT VOICE

The story of *In a Different Voice* is perhaps so familiar that it needs no introduction.<sup>19</sup> Over the years it has "become part of the process that it describes — the ongoing historical process of changing the voice of the world by bringing women's voices into the open, thus starting a new conversation."<sup>20</sup> Like a fairy tale or myth, told by one

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17. CAROL GILLIGAN, *THE BIRTH OF PLEASURE* (2002).

18. E.B. WHITE, *supra* note 3. Perhaps like Gilligan's *In a Different Voice*, the story of *Charlotte's Web* needs no introduction. Described by E.B. White as "a story of friendship and salvation on a farm," it is a tale of the relationship between a piglet called Wilbur and Charlotte, a spider who lives in his barn. Letter from E.B. White to Readers, *available at* <http://www.teachervision.fen.com/authors/letters-and-journals/1734.html> (last visited Mar. 24, 2007). Since its publication in 1952, it has been a regular fixture on primary school reading lists, and in December 2006 the story moved to the big screen in a film version directed by Gary Winick and starring Julia Roberts as the voice of Charlotte. *Charlotte's Web Movie*, Official Site, <http://www.charlotteswebmovie.com/> (last visited Mar. 24, 2007).

19. The use of the word *story* is deliberate. It encompasses both the narrative or text of *In a Different Voice* itself and the stories therein. *See generally* Jessica Benjamin, *In a Different Voice: Psychological Theory and Women's Development*, 9 *SIGNS* 297 (1989); *see also* Richard Simon, *Interview with Carol Gilligan*, *PSYCHOTHERAPY NETWORKER*, Nov.-Dec. 2002, at 50, 51-52 (noting the progress of Gilligan's "little book" from minor secondary course text to academic publishing sensation).

20. GILLIGAN, *supra* note 1, at xxvii.

generation to the next, its narrative and its almost uncanny ability to engender a simultaneous sense of (un)easy familiarity and alienation provokes deep-seated and often conflicting responses among its readers. From the outset, its story has been intertwined with tales of legal personalities — lawyers, judges, claimants — and the law itself.<sup>21</sup> Its progression from idealistic fairy tale to dangerous myth is reflected in, and told here through, the stories of feminist legal scholarship.

The law and legal system make perhaps their most obvious appearance in Gilligan's interviews with women who, for one reason or another, were considering an abortion in the aftermath of the United States Supreme Court's limited legalization of the procedure in *Roe v. Wade*.<sup>22</sup> Despite deliberate attempts to avoid any explicit assumptions as to the morality of the process itself and its impact on the women's decision-making, Gilligan found that moral language, words like good, bad, right, wrong, should, ought, "spontaneously appeared in [the] women's narratives about the decisions that they were actually making."<sup>23</sup> As she began to map the construction of morality implied by this language, it became clear that the women's responses were grounded in a particular understanding of the choice they were about to make — a different voice — which was distinct from that of the Supreme Court.<sup>24</sup> Rather than understanding their decision as an adversarial or hierarchical rights-based fight between themselves as potential mothers and the fetus, the women's dilemma arose out of their feelings of connection and responsibility toward the fetus, "the conflict between compassion and autonomy, between virtue and power — which the feminine voice struggles to resolve in its effort to reclaim the self and to solve the moral problem in such a way that no one is hurt."<sup>25</sup> The women considered the issues of (im)morality and (ir)responsibility of abortion in the context of their inability to maintain and deepen their feelings of connection with care or responsibility;

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21. See, e.g., Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39, 40, 44 (1985); Joan M. Shaughnessy, *Gilligan's Travels*, 7 LAW AND INEQ. 1, 13 (1989).

22. GILLIGAN, *supra* note 1, at 3, 64-105; *Roe v. Wade*, 410 U.S. 113, 162-63 (1973). During the course of the abortion decision study, twenty-nine women (referred to the study by pregnancy counseling services and abortion clinics) between the ages of fifteen and thirty-three, with differing ethnic and social backgrounds, marital statuses, and with/without children, were interviewed about their decision. See Carol Gilligan, *Hearing the Difference: Theorizing Connection*, HYPATIA, Spring 1995, at 120, 121. No effort was made to select a representative sample of the clinic/pregnancy counseling service client composition. *Id.* A year later, twenty-one of the women were re-interviewed. GILLIGAN, *supra* note 1 at 3.

23. Carol Gilligan, in Isabel Marcus et al., *supra* note 5, at 37-38.

24. Wylie, *supra* note 2, at 52.

25. GILLIGAN, *supra* note 1, at 71.

they viewed their decisions as neither "right" nor "good," but rather, as the "lesser of two evils," the "better" thing to do.<sup>26</sup> Within this framework, the "masculine" assumptions of detachment, hierarchy, and principle articulated in the "rights" or "justice" approach of the Supreme Court, at best misunderstood and at worst distorted the situation the women saw themselves as facing. As a result, in order to engage with and negotiate not only the legal but also the medical and social terrain, the women had to deny their feelings of connection, care, and responsibility and adopt an unfamiliar voice, "to act as though they did not know things that they felt they knew, and that they did not in a sense understand issues of connection which could not be represented within the adversarial-rights model which pitted one life against the other."<sup>27</sup> Put another way, their understanding of their own reality, their focus on care, concern, and conflicting responsibilities, was necessarily reframed to reflect the Court's priorities: hierarchy, rights, and principle. Unable to speak or to be heard in their own voices, they were forced to adopt new ones; their difference effectively silenced.

Feminist legal scholars were quick to identify with the promise of *In a Different Voice* and to embrace the transformative possibilities of a different *legal* voice as a means of challenging the predominance of traditional accounts of legal reasoning and lawyering.<sup>28</sup> Drawing in particular on Gilligan's conversations with perhaps her most memorable and discussed research subjects, Amy and Jake, they sought to explore the impact that the recognition of difference might have on the personalities and structures of the legal system and academia.

As participants in her rights and responsibilities study,<sup>29</sup> Gilligan presented Amy and Jake with a dilemma devised by Lawrence Kohlberg to measure moral development in adolescence: Heinz's wife is dying and he cannot afford to buy the drug that will save her — should he steal the drug?<sup>30</sup> In their responses "[b]oth children . . . recognize the need for agreement but see it as mediated in different ways — [Jake] impersonally through systems of logic and law, [Amy] personally through communication in relationship."<sup>31</sup> Jake sees the situation to be "sort of like a math problem with humans,"<sup>32</sup> a logical conflict between life and property. As "a human life is worth more

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26. Gilligan, in Isabel Marcus et al., *supra* note 5, at 38.

27. *Id.* at 32.

28. See, e.g., Gilligan, in Isabel Marcus et al., *supra* note 5.

29. GILLIGAN, *supra* note 1, at 3, 24-63.

30. *Id.* at 26.

31. *Id.* at 29.

32. *Id.* at 26.

than money," Heinz should steal the drug, despite the fact that to do so is to break the law.<sup>33</sup> He abstracts and redefines the moral problem, "[t]ransposing a hierarchy of power into a hierarchy of values, he defuses a potentially explosive conflict between people by casting it as an impersonal conflict of claims."<sup>34</sup>

Amy, on the other hand, hears in Heinz's story a narrative of fractured relationships "that must be mended with its own thread."<sup>35</sup> Unlike Jake, she understands the dilemma in terms of *how*, as opposed to *whether*, Heinz should act: "should Heinz *steal* the drug?"<sup>36</sup> Within her world of connection and care, she takes it as a given that Heinz will act.<sup>37</sup> She seeks a solution to the dilemma that maintains and reinforces the "web of relationships" and responsibilities between the parties involved.<sup>38</sup> In order to do so, she does what all "good" law students know never to do — she fights the hypothetical.<sup>39</sup> She asks questions: why doesn't Heinz get a loan or explore the potential of a compromise or agreement with the pharmacist?<sup>40</sup> She considers Heinz's responsibility to his wife: what if he gets caught and goes to jail, who will support her then?<sup>41</sup> She debates the role of the pharmacist, "believing that the world should just share things more and then people wouldn't have to steal."<sup>42</sup>

Put simply, Amy and Jake, like the United States Supreme Court and the women in Gilligan's abortion study, hear different stories: Jake hears Heinz's dilemma as one of conflicting claims, hierarchy, and rights, whereas Amy listens to a tale of connection, relationship and responsibility.<sup>43</sup> Their differing understandings effectively transform Heinz's dilemma into two distinct stories, each requiring the application of different understandings of moral reasoning.<sup>44</sup> Amy, with her focus as much on procedure, or *how* the dispute is resolved, as on substance, "seeks to keep the people engaged — she holds the needs of the parties and their relationships constant and hopes to satisfy them all."<sup>45</sup> In opposition, Jake spots the legal issues . . . balances the

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33. *Id.*

34. *Id.* at 32.

35. *Id.* at 31.

36. *Id.*

37. *Id.*

38. *Id.* at 32.

39. *Id.*

40. *Id.* at 28-29.

41. *Id.* at 28.

42. *Id.* at 29.

43. *Id.*

44. *Id.*

45. *Id.*



rights and reaches a decision — just like a lawyer should.<sup>46</sup> In response, Carrie Menkel-Meadow asserts that the law and legal system with its adversarial and hierarchical nature, clear rules, winners, and losers “represent[s] an embodiment of Jake’s voice, the male voice.”<sup>47</sup> So understood, like Kohlberg, the law risks failing to listen to Amy.<sup>48</sup> In a world where human interaction is understood as atomistic and competitive<sup>49</sup> and where the behavior and success of the individual are measured against allegedly abstract principles of justice, fairness, neutrality, and reasonableness,<sup>50</sup> the so-called “feminine” traits of care and connection, articulated in Gilligan’s narrative by Amy,<sup>51</sup> are simultaneously designated and devalued. To be successful, the woman lawyer is encouraged to deny her caring and affectionate characteristics (if indeed she has them) and adopt the masculine tactics of hierarchy, competition, and emotional detachment: “Be like us, but not totally; join our game, play by our rules . . . but not on our team, and not on their [own] team.”<sup>52</sup> In fact, commentators assert that if women want to compete on equal terms with men, they must actually “play longer and harder” than their male peers.<sup>53</sup> Like Amy and the women in the abortion study, the woman lawyer must become bilingual, able to distinguish between what she thinks and what she *really* thinks.<sup>54</sup>

The processes of legal education are, for many, the juncture at which this happens, where one way of knowing the world is replaced by another.<sup>55</sup>

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46. Carrie Menkel-Meadow, in Isabel Marcus, et al., *supra* note 5, at 54.

47. *Id.* at 53. Clearly, Carrie Menkel-Meadow is not suggesting here that the law and the legal system are necessarily male, rather that they are associated with and derived from traits commonly and often empirically, but not exclusively or universally, identified with men. *Id.* at 56; see also Dana Crowley Jack & Rand Jack, *Women Lawyers: Archetype and Alternatives*, in MAPPING THE MORAL DOMAIN 263, 263-88 (Carol Gilligan et al. eds., 1988); K.C. Worden, *Overshooting the Target: A Feminist Deconstruction of Legal Education*, 34 AM. U. L. REV. 1141, 1142-45 (1985).

48. GILLIGAN, *supra* note 1, at 27-32.

49. Jack & Jack, *supra* note 47, at 265.

50. GILLIGAN, *supra* note 1, at 27.

51. *Id.* at 30.

52. Worden, *supra* note 47, at 1143, 1149.

53. Jack & Jack, *supra* note 47, at 267.

54. GILLIGAN, *supra* note 1, at 40-41.

55. This process of “eclipsing the self” by both male and female students is well documented in the literature on legal education. See PIERRE SCHLAG, *THE ENCHANTMENT OF REASON* 126-140 (1998). See generally DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY* 32 J. LEGAL EDUC. 591 (1982). Interestingly, both Pierre Schlag and Duncan Kennedy are silent on the gender implications of this process. At least in his adjudicative role, the legal self is recognizably male, which means that this process is inevitably particularly and peculiarly disorientating and alienating for women. See MARGARET THORNTON, *DISSONANCE AND DISTRUST: WOMEN IN THE LEGAL PROFESSION*

I felt it happening in law school. I honestly felt it happening. I know people thought I was crazy, but I can remember first-year law school — I have this feeling when I was being forced to change my set and I can feel it. It's hard to describe but I felt it. And I remember saying to my friends, "They're fucking with your brain. Can't you feel it?"<sup>56</sup>

In the groves of the legal academy, Shelia McIntyre suggests, women learn how "to speak male as a second language . . . fluently,"<sup>57</sup> to become expert philologists as well as lawyers. The killer combination of abstract legal reasoning and the "what-goes-without-saying" of the law school experience<sup>58</sup> work together to ensure that the female would-be lawyer plays by Jake's rules and renounces her previous "knee-jerk, passionate reactions"<sup>59</sup> in order to think "like a lawyer" and adopt "the monolithic, confident voice of the 'insiders' who see themselves as the norm and who have (often unconsciously) little tolerance for . . . diversity and difference."<sup>60</sup> Clearly, the potential for disassociation and disorientation in this process of extreme linguistics is overwhelming:

its voice, tone, style is often defended as "the way lawyers speak" . . . to the extent that this is the way lawyers speak, we must conclude that we cannot be lawyers — or that we cannot be ourselves.<sup>61</sup>

According to such a perspective, the woman lawyer is faced with an empty choice: her self or the law.<sup>62</sup> Torn between the prospects of mutilation or alienation, in order to survive in Law's Empire<sup>63</sup> the woman lawyer, like Shakespeare's Portia,<sup>64</sup> must adopt the necessary

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75-79, 268-71 (1996); Worden, *supra* note 47, at 1146; Edward Rubin, et al. *A Conversation Among Deans From 'Results: Legal Education, Institutional Change, and a Decade of Gender Studies' Harvard Journal of Law and Gender Conference*, March 2006, 29 HARV. J. L. & GENDER 465, 467 (2006). It is equally arguable, however, that within the legal world men who fail to conform to the "masculine" norm are also disadvantaged and as such become "other." Richard Collier, "Nutty Professors", "Men in Suits" and "New Entrepreneurs": *Corporeality, Subjectivity and Change in the Law School and Legal Practice*, 7 SOC. & LEGAL STUD. 27, 43 (1998)).

56. Jane, attorney, in Jack & Jack, *supra* note 47, at 271.

57. Shelia McIntyre, *quoted in* Worden, *supra* note 47, at 1145.

58. *Id.*

59. KENNEDY, *supra* note 55, at 7.

60. Jack & Jack, *supra* note 47, at 268.

61. *Id.*

62. Erika Rackley, *Representations of the (Woman) Judge: Hercules, the Little Mermaid, and the Vain and Naked Emperor*, 22 LEGAL STUD. 602, 612 (2002).

63. RONALD DWORKIN, *LAW'S EMPIRE* (Hart Publishing 1998) (1986).

64. *See generally* Jane M. Cohen, *Feminism and Adaptive Heroism: The Paradigm of*

strategic identity.<sup>65</sup> She must choose her tactics well, so as to play her role unnoticed within the legal game. Increasingly, however, feminist legal scholars began to wonder: what if she didn't? What would happen if Amy refused to play by Jake's rules? Could the woman lawyer re-write the rules?

In her consideration of Amy's "Portia-like dissatisfaction" with the male adversarial voice, Carrie Menkel-Meadow suggests that the introduction of a different voice in law could lead to a radically different legal system, incorporating a diverse array of understandings and perspectives.<sup>66</sup> Amy's rejection of Jake's hierarchical ordering of claims and refusal to "play by the adversarial rules" is seen to promote communication, relationship, and negotiation over the adjudication of winners, rights, and principles.<sup>67</sup> So understood, her focus on procedure as much as on the development of alternative substantive solutions might work to ensure that the processes of legal decision-making give greater recognition, emphasis, and legitimization to negotiation and mediation as methods of dispute resolution.<sup>68</sup> Advocacy might come to resemble something more like a "conversation" grounded in a relationship of trust and mutual respect, as opposed to persuasive intimidation, dramatics, and power.<sup>69</sup> The recognition and acceptance that "the adversary system of justice impedes not only 'the supposed search for truth,' but also the expression of concern for the person on the other side,"<sup>70</sup> might enable the courtroom battle to be replaced with a more caring, inclusive ethic. This ethic might encourage an understanding of the opposing side, not as an end to be defeated at any cost, but rather as someone to be "cared for, thought about and dealt with,"<sup>71</sup> enabling the lawyer to break free from the constraints of his or her legal role, to "lean across the adversarial

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*Portia as a Means of Introduction*, 25 TULSA L.J. 657 (1990); Erika Rackley, *Reassessing Portia: The Iconic Potential of Shakespeare's Woman Lawyer*, 11 FEMINIST LEGAL STUD. 25 (2003); Ian Ward, *When Mercy Seasons Justice: Shakespeare's Woman Lawyer*, in LEGAL FEMINISMS: THEORY AND PRACTICE 63 (Clare McGlynn ed., 1998).

65. Jack & Jack, *supra* note 47, at 266; see also DANA CROWLEY JACK & RAND JACK, MORAL VISION AND PROFESSIONAL DECISIONS: THE CHANGING VALUES OF WOMEN AND MEN LAWYERS 133 (1989); THORNTON, *supra* note 55, at 106-29.

66. Menkel-Meadow, *supra* note 21, at 42-43; see also Carrie Menkel-Meadow, *Portia Redux: Another Look at Gender, Feminism, and Legal Ethics*, 2 VA. J. SOC. POL'Y & L. 75, 86-87 (1994).

67. Menkel-Meadow, *supra* note 21, at 51; see also Naomi Cahn, *Styles of Lawyering*, 43 HASTINGS L. J. 1039, 1048 (1992).

68. Cahn, *supra* note 67, at 1048.

69. Menkel-Meadow, *supra* note 21, at 54.

70. Hilary, lawyer, in GILLIGAN, *supra* note 1, at 135.

71. Carrie Menkel-Meadow, *The Comparative Sociology of Women Lawyers: The "Feminization" of the Legal Profession*, 24 OSGOODE HALL L. J. 897, 915 (1986).

table and help her client's opponent."<sup>72</sup> Alongside this increased awareness and understanding of the other party's perspectives and interests, Naomi Cahn suggests that the incorporation of a different voice in the law might also encourage greater recognition of the "relational context in which the client's problem arises" and an acknowledgment of the importance of listening to, understanding, and empathizing with the totality of his or her experience.<sup>73</sup> The lawyer might eschew mutation and compartmentalization in favor of reshaping her legal role,<sup>74</sup> infusing it with care as she "bleed[s] for"<sup>75</sup> and "stand[s] in the emotional as well as the legal shoes of [her] clients."<sup>76</sup>

Put simply, if Amy were to re-write the rules of the legal game, the practice and study of law might favor and prioritize cooperation over competition, relationships over rules, nurturing over detachment, dialogue over argument, mediation over confrontation, and connection over separation. It might become less aggressive, hierarchical, and confrontational, focusing less on the creation of abstract disputes and binary results — on winning or losing — and more on real issues, context, and relationships. Law's Empire<sup>77</sup> might become a much nicer place to work in and/or visit, a place where people might begin to live happily ever after.

So viewed, feminist legal scholars saw Gilligan's *In a Different Voice*, particularly Amy's story, as "disrupt[ing] the apprehensible world in order to open spaces for dreaming alternatives,"<sup>78</sup> just like a fairy tale. These scholars recognized the challenge Gilligan set forth, which required readers to understand "that each time we let in a new excluded group, that each time we listen to a new way of knowing, we learn more about the limits of our current way of seeing."<sup>79</sup> Allowing for different ways of seeing, listening, and lawyering to radically expand one's horizons troubles conventional understandings and assumptions about law, justice, and adjudication. This paradigm shift not only alters the rules of the game, but it also re-imagines the context in which it takes place, engendering a transformative as opposed to an "androgynous" or "separate-but-equal" approach to moral decision-making in which the values and priorities of each voice are

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72. Menkel-Meadow, in Isabel Marcus et. al., *supra* note 5, at 79.

73. Cahn, *supra* note at 47, at 1049.

74. Jack & Jack, *supra* note 47, at 283.

75. *Id.* at 282.

76. *Id.* at 283.

77. DWORKIN, *supra* note 63.

78. MARINA WARNER, FROM THE BEAST TO THE BLONDE: ON FAIRY TALES AND THEIR TELLERS xx (1995).

79. Carrie Menkel-Meadow, *Excluded Voices: New Voices in the Legal Profession Making New Voices in the Law*, 42 U. MIAMI L. REV. 29, 52 (1987).

fused together.<sup>80</sup> Gilligan notes: "The inclusion of two voices in moral discourse, in thinking about conflicts, and in making choices, transforms the discourse. It is no longer either simply about justice or simply about caring; rather, it is about bringing them together to transform the domain."<sup>81</sup> Within this framework, many feminist legal scholars embraced the idea of a different voice as revealing the possibility of previously unimaginable adjudicative landscapes that are neither fully Amy's nor Jake's, neither exclusively male nor essentially female, but rather an imaginative hybrid that listens to and identifies with polytonic voices going beyond gender in order to offer increased opportunities for the delivery of justice.<sup>82</sup>

## II. CAUGHT IN DIFFERENCE, FEARING THE FATE OF ARACHNE

The difficulty is that, despite Gilligan's arguments to the contrary,<sup>83</sup> the different voice has come to be seen by many as having an inevitably feminine intonation. Consequently, conversations as to the potential of a different voice in the legal field have become intrinsically linked with debates about the particular contribution of women lawyers, academics, and judges.<sup>84</sup> This connection is perhaps

80. Gilligan, *in* Isabel Marcus et al., *supra* note 5, at 45.

81. *Id.*

82. Cahn, *supra* note 67, at 1068-69; *see also* Ann Shalleck, *The Feminist Transformation of Lawyering: A Response to Naomi Cahn*, 43 HASTINGS L. J. 1071, 1072 (1992).

83. Gilligan's title, *In a Different Voice*, is both deliberate and accurate: "the contrasts between male and female voices are presented here to highlight a distinction between two modes of thought and to focus a problem of interpretation rather than to represent a generalization about either sex." GILLIGAN, *supra* note 1, at 2; *cf.* Catherine G. Greeno & Eleanor E. Maccoby, *How Different is the "Different Voice"?*, 11 SIGNS 310, 310 (1986). Put another way, Gilligan's focus is on the dissonance between women's voices and psychological theory, as opposed to any essential differences between women and men. She does not seek to suggest that Amy's voice is somehow "better" than Jake's. Nor that all women do — or even should — speak and reason like Amy or that all men are like Jake. Carol Gilligan, *Reply*, 11 SIGNS 324, 327 (1986).

84. *See generally* WOMEN IN THE WORLD'S LEGAL PROFESSIONS (Ulrike Schultz & Gisela Shaw eds., 2003). For a discussion of the role of gender constructs within the United States legal system, *see generally* Sue Davis, *Do Women Judges Speak "In a Different Voice?"* Carol Gilligan, *Feminist Legal Theory, and The Ninth Circuit*, 8 WIS. WOMEN'S L. J. 143 (1992-1993); Herma Hill Kay & Geraldine Sparrow, *Workshop on Judging: Does Gender Make a Difference?*, 16 WIS. WOMEN'S L. J. 1 (2001); Michael E. Solimine & Susan E. Wheatly, *Rethinking Feminist Judging*, 70 IND. L. J. 891 (1995); and Kathryn Mickel Werdegard, *Why A Woman on the Bench?*, 16 WIS. WOMEN'S L. J. 31 (2001). For international commentary on gender and the law, *see* CLARE MCGLYNN, *THE WOMAN LAWYER: MAKING THE DIFFERENCE* (1998) (United Kingdom); THORNTON, *supra* note 57 (Australia); Kate Maleson, *Justifying Gender Equality on the Bench: Why Difference Won't Do*, 11 FEMINIST LEGAL STUD. 1 (2003) (United Kingdom); and Margaret Ann Wilkinson et al., *Testing Theory and Debunking Stereotypes: Lawyers' Views on the Practice of Law*, 18 CAN. J.L. & JURISPRUDENCE 165 (2005).

unsurprising. After all, if all or even most women lawyers and judges did speak as Amy, that is with something akin to Gilligan's different voice in the face of attempts to suppress it, then an increase in the number of women judges, lawyers, and academics would surely have a significant impact on the adjudicative process. Thus, despite the lack of any convincing causal link or necessary connection, for many commentators Amy's and the woman lawyer's voice are essentially synonymous. Attempts to identify the different voice are, nevertheless, highly controversial. Like most red herrings, while the idea of a distinctive female voice is intuitively tempting or even obvious,<sup>85</sup> and maybe even strategically useful, ultimately it can be counter-productive.<sup>86</sup> Not only is a different voice in law difficult to find in the first place, but we might not like it if, or when, we find it.

Cynthia Fuchs Epstein has suggested that researchers tend to find what they are looking for, be it difference or similarity, with variation in legal behavior most likely within rather than across, gender.<sup>87</sup> Alternatively, it may be that women, when they depart from traditional adversarial lawyering, are simply assumed or perceived to be adopting peculiarly feminine, as opposed to appropriately different, styles of lawyering. Put another way, what is seen as unremarkable in a man is viewed as "different," or feminine, in a woman:

Not all male lawyers resort to the stereotypical aggressive, hard-ball, 'male' style of lawyering. Many are soft-spoken and conciliatory in negotiations. They may be more skilled at listening than at arguing. But when men display these varieties in lawyering styles, it is regarded as just that — a difference in style. When women depart from the stereotypical style of aggressive lawyering, it is more likely to be regarded as a gender difference and a basis for questioning competence.<sup>88</sup>

Increasingly many commentators are considering the possibility of the existence of a different voice within the law, the ability of a woman to speak both as a woman and as a lawyer, is both "dangerous and unanswerable."<sup>89</sup> When the lawyer in question becomes a judge, the stakes are even higher.<sup>90</sup> Sandra Berns notes that "to wish for a

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85. Jilda M. Aliotta, *Justice O'Connor and the Equal Protection Clause: A Feminine Voice?*, 78 JUDICATURE 232, 232 (1995).

86. Malleson, *supra* note 84, at 2.

87. See CYNTHIA FUCHS EPSTEIN, *DECEPTIVE DISTINCTIONS* 39-40 (1990).

88. ABA COMMISSION ON WOMEN IN THE PROFESSION, *REPORT TO THE HOUSE OF DELEGATES* (1988), *reprinted in* Cahn, *supra* note 67, at 1046.

89. Sandra Day O'Connor, *Portia's Progress*, 66 N.Y.U. L. REV. 1546, 1557 (1991).

90. See generally Erika Rackley, *Judicial Diversity, the Woman Judge and Fairy Tale Endings*, 21 LEGAL STUDIES 74 (2007). For additional commentary on women judges see

voice for otherness in adjudication represents a move in a profoundly dangerous game."<sup>91</sup> Furthermore, "to speak as a judge is to speak in a way which cannot be bracketed . . . One cannot speak as a woman (judge) or even as (woman) judge. Judge must stand alone if judgment is to carry weight."<sup>92</sup> In addition, more often than not the woman judge's insistence of her decision-making uniformity and univocality is so strong that even if she did speak with a different voice, the legal scholar is unlikely to be able to find it.<sup>93</sup> Like other unwelcome intruders, it is unlikely to leave explicit evidence of its presence; the adjudicative process ensures that the "stigmata" of difference is obliterated.<sup>94</sup> Moreover, anyone who dares suggest a necessary correlation between Gilligan's different voice and that of "women" stands accused of invoking an essential conception of "womanhood," which is inevitably contentious and increasingly difficult to sustain. In this way, feminist legal scholarship seeking to introduce Amy-like qualities into the law and the legal profession and/or system runs into the same hurdle as Gilligan: gender essentialism.

According to anti-essentialist critics of Gilligan, the idea of a different voice, often misarticulated as *the* different voice, is an essentializing myth with problematic connotations for those women who do not identify with its features.<sup>95</sup> Thus, while it remains pertinent to somehow capture the essence of the feminine, in actuality this encapsulation excludes the polytonality of women's voices. This singular

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also Susan Behuniak-Long's criticism of Sandra Day O'Connor's promulgation of a feminine jurisprudence at the expense of feminist concerns (Susan Behuniak-Long, *Justice Sandra Day O'Connor and the Power of Maternal Thinking*, 54 REV. POL. 417, 419 (1992)); the ongoing challenges to female members of the Canadian judiciary by the conservative campaign group REAL (Realistic, Equal, Active, for Life) Women of Canada (REAL Women of Canada, <http://www.realwomenca.com/> (last visited Mar. 24, 2007)); and reactions in the British media to the pioneering appointment of Brenda Hale to the appellate division of the House of Lords in January 2004 (Melanie Phillips, *I Deplore His Actions But Actually His Cause is Just*, DAILY MAIL, Nov. 5, 2003).

91. SANDRA BERNs, *TO SPEAK AS A JUDGE — DIFFERENCE, VOICE AND POWER* 33 (1999).

92. Sandra Berns and Paula Baron, *Bloody Bones: A Legal Ghost Story and Entertainment in Two Voices — To Speak as a Judge*, 2 AUSTL. FEMINIST L.J. 125, 127 (1994).

93. BERNs, *supra* note 91. See generally Aliotta, *supra* note 85; Elizabeth Halka, *Madam Justice Bertha Wilson: A "Different Voice" in the Supreme Court of Canada*, 35 ALTA L. REV. 242 (1996); Erika Rackley, *Difference in the House of Lords*, 15 SOC. & LEGAL STUD. 163-85 (2006); Suzanna Sherry, *Civic Virtue and the Feminine Voice in Constitutional Adjudication*, 72 VA L. REV. 543 (1986).

94. BERNs, *supra* note 91, at 203.

95. See, e.g., BELL HOOKs, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* 161 (2d ed. 1983) (describing the "white female racism" that prevented black women from participating in the nineteenth century women's rights movement); Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S L.J. 191, 191 (1989-1990) (noting the incompleteness of feminist legal theory because it does not include the lesbian perspective); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 584 (1990).

description articulates a monotonic female voice, which irrevocably flattens the plurality of female voices, silencing some while privileging others. This critique stems in part from feminist unease with the ability of women-centered approaches to strategically identify "woman."<sup>96</sup> The belief that any attempt to assume or discover the shared experience of women—a woman's, or feminine, point of view—encounters the same difficulties as the male-dominated claims to universality it purports to challenge.<sup>97</sup> In other words, any effort to invoke women's experience—to speak for all women—risks perpetuating the exclusion and marginalization of women who fall outside these assertions. In fact, "women-centredness is potentially as oppressive as the male-dominated discourses it seeks to displace in presupposing a female experience which is unitary rather than variegated—informed and shaped by a range of social, cultural and cognitive factors (race, class, sexuality, and so on)."<sup>98</sup>

Furthermore, commentators see *In a Different Voice* as privileging a voice that is "romantica[lly] oversimplifi[ed]"<sup>99</sup> and, as such, alienating to those women who fail to identify with its "highly romanticized"<sup>100</sup> intonation.<sup>101</sup> Consequently, despite clear indications as to Gilligan's "progressive" purpose seeking to "challenge" rather than conserve or "validate" gender difference by "strategically deploy[ing it] to unsettle existing inequities between the sexes,"<sup>102</sup> some feminist scholars reject the idea of a different voice in law as not merely inappropriately normative, prescriptive, and reductive, but also as facilitative of an inverted hierarchy in which Amy's voice is prioritized over and deemed superior to Jake's voice.<sup>103</sup> Its transformative insights are seen to indicate a reductive and polarized duality or dichotomy, which ultimately threatens to limit the development and restrict the potential of a multi-faceted understanding of law, legal reasoning, and adjudication.<sup>104</sup> All in all, it seems a different voice is not

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96. Joanne Conaghan, *Reassessing the Feminist Theoretical Project in Law*, 27 J. LAW & SOC'Y 351, 366-68 (2000).

97. *Id.*

98. *Id.* at 367.

99. Linda Kerber et al., *On In a Different Voice: An Interdisciplinary Forum*, 11 SIGNS 304, 309 (1986).

100. Judy Auerbach et al., *On Gilligan's 'In a Different Voice'* 11 FEMINIST STUDIES 149, 156 (1985).

101. CATHERINE MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987); Greeno & Maccoby, *supra* note 83, at 310.

102. Frug, *supra* note 13, at 52-53.

103. See Kerber, *supra* note 99.

104. See, e.g., Auerbach, *supra* note 100; Greeno & Maccoby, *supra* note 85; Kerber, *supra* note 99.



enough.<sup>105</sup> Indeed, ultimately it is perhaps little more than a "set-up" by which women are "shafted."<sup>106</sup>

As a result of these complex and often contradictory voices, feminist scholars seem destined to dice with the fate of Arachne.<sup>107</sup> These commentators are caught by the aesthetic appeal of Gilligan's imagery, which "expresses the contradiction in our yearning for something that both connects us to each other and traps us."<sup>108</sup> Mary Joe Frug notes: "The modifying words 'of connection' euphemistically transform the sticky, trapping character of a spider's web into a more agreeable landing place."<sup>109</sup> A fairy tale ending in which Jake and Amy live happily ever after in Law's Empire seems unlikely; the innovative fairy tale is now a debilitating and restricting myth. Moreover, "like all myths, on closer examination [it is] seen to be something of a sham,"<sup>110</sup> hence our ability to dismiss it.

Nevertheless, while a different voice in law (understood as one that is peculiarly feminine in intonation), is not real, that is it may only exist as a creature of our collective (or Gilligan's) imagination, its status as a myth does not prevent it from having operative effects. This is perhaps because as lawyers, like Dickens' Mr. Micawber, we have already excluded ourselves from "the imaginary domain."<sup>111</sup> In *David Copperfield*, Mr. Micawber states: "My dear Mr. Copperfield . . . To a man possessed of the higher imaginative powers, the objection to legal studies is the amount of detail which they involve . . . the mind is not at liberty to soar to any exalted form of expression."<sup>112</sup> In our rush to distance ourselves from its unfashionable essentialist qualities and avoid the fate of Arachne, feminist legal scholars (and others) risk becoming bewitched by what they seek to escape.<sup>113</sup>

105. Martha Minow, in Judy Greenberg et al., *Contradiction and Revision: Progressive Feminist Legal Scholars Respond to Mary Joe Frug*, 15 HARV. WOMEN'S L. J. 65, 77 (1992).

106. MacKinnon, *supra* note 5, at 74.

107. OVID, *METAMORPHOSES* 177-83 (Allen Mandelbaum trans., reprint ed. Harvest Books 1995) (C.E. 8). Arachne was a Lydian maiden with a remarkable talent for weaving. *Id.* at 177. According to Greek mythology, Athena, the goddess of weaving, challenged her to a competition. *Id.* at 177-78. When Athena found Arachne's work, which explicitly and somewhat presumptuously challenged the authority of the gods, to be faultless, she not only destroyed it but made Arachne feel such overwhelming guilt for her actions that she attempts to hang herself with the threads of her tapestry. *Id.* at 182-83. In effect, Arachne is killed by her own web. Perhaps surprised by this reaction, Athena took pity on her and turned Arachne into a spider. *Id.* at 183.

108. Liz Schneider, in Greenberg et al., *supra* note 105, at 72.

109. Frug, *supra* note 13, at 59.

110. Ward, *supra* note 64, at 66.

111. DRUCILLA CORNELL, *THE IMAGINARY DOMAIN: ABORTION, PORNOGRAPHY & SEXUAL HARASSMENT* 80-81 (1995).

112. CHARLES DICKENS, *DAVID COPPERFIELD* 521 (Penguin Books, 1996) (1850).

113. See *supra* notes 13, 107-10 and accompanying text.

Caught in a theoretical cul-de-sac, they come to believe and alternately disbelieve the myth; they accept while not fully accepting its story at face value.<sup>114</sup> As feminist legal scholars seek to balance myth and reality, they engage in "ritualistic denunciations . . . [and] teasing, know-it-all dismissals"<sup>115</sup> triggered at the merest whiff of allegations of essentialism. These rejections of a female voice are not only strategically misplaced, in that they are directed at a story which may or may not and, more importantly, need not be true, but they also operate to effectively paralyze future conversations, preventing more detailed explorations as to where the idea of a different voice might take us.<sup>116</sup> So viewed, it is time perhaps to look beyond the tempting parodies of "crude Gilliganism"<sup>117</sup> in order to reexamine the promise of *In a Different Voice*. In so doing, scholars should allow for the possibility that Arachne's web of "death" and self-obliteration might alternatively be understood as one of care, life, and self-giving.<sup>118</sup> One, perhaps, like Charlotte's web.

### III. ESSENTIALLY CHARLOTTE

E. B. White's *Charlotte's Web* is well established in the canon of children's literature.<sup>119</sup> It tells the story of a little girl called Fern, her pig Wilbur, and Charlotte, a spider.<sup>120</sup> It begins with Fern dramatically saving the runt of a litter of piglets, Wilbur, from "the most terrible case of injustice"<sup>121</sup> she had ever encountered:

"Do away with it?" shrieked Fern. "You mean *kill* it? Just because it is smaller than the others?" . . .

"Fern" [her father] said gently, "you will have to learn to control yourself."

"Control myself?" yelled Fern. "This is a matter of life and death, and you talk about *controlling* myself."<sup>122</sup>

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114. *Id.*

115. Frug, *supra* note 13, at 50.

116. *Id.*

117. *Id.*

118. Schneider, in Greenberg et al., *supra* note 105, at 69-72.

119. On the specific use of children's literature in legal scholarship, see IAN WARD, *LAW AND LITERATURE: POSSIBILITIES AND PERSPECTIVES* ch. 5 (1995); John Morrison, *Stories for Good Children in TALL STORIES: READING LAW AND LITERATURE* 113, 113 (John Morrison & Christine Bell eds., 1996); William P. MacNeil, 'Kidlit' as 'Law-and-Lit': *Harry Potter and the Scales of Justice*, 14 CARDOZO STUD. L. & LIT 545, 546 (2002).

120. E. B. WHITE, *supra* note 3, at 8.

121. *Id.* at 3.

122. *Id.* at 1-2.

Fern looks after and feeds Wilbur until he is big enough to sell to her Uncle Homer down the road.<sup>123</sup> Although lonely at first without Fern, eventually Wilbur makes some good friends, including Charlotte, who lives in the doorway of his barn.<sup>124</sup> The threat of the farmer's axe, however, is never far away, and it soon it becomes clear that Uncle Homer wants to turn Wilbur into smoked bacon and ham:<sup>125</sup>

Wilbur burst into tears, "I don't *want* to die," screamed Wilbur, throwing himself to the ground.

"You shall not die," said Charlotte, briskly.

"What? Really?" cried Wilbur. "Who is going to save me?"

"I am," said Charlotte.<sup>126</sup>

And she did.<sup>127</sup>

A few days later when one of the farm workers goes to feed Wilbur, he notices one of Charlotte's webs glistening with tiny drops of water.<sup>128</sup> He can hardly believe his eyes for in its middle, neatly woven in capital letters, are the words "SOME PIG."<sup>129</sup> He calls Uncle Homer to the barn, who concludes that it must be a miracle and that Wilbur must, without doubt, be a very special pig indeed.<sup>130</sup> Not everyone agreed with Uncle Homer's conclusion:

"Well," said [Uncle Homer's wife], "it seems to me you're a little off. It seems to me we have no ordinary *spider*."

"Oh, no" said [Uncle Homer] "It's the pig that's unusual. It says so, right there in the middle of the web."<sup>131</sup>

Over the next few weeks, Charlotte continued to leave the farmer messages, making Wilbur a very famous and, incidentally, a prize-winning pig.<sup>132</sup> And, of course, such a pig is very unlikely to become

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123. *Id.* at 12.

124. *Id.* at 32-41.

125. *Id.* at 49.

126. *Id.* at 51.

127. *Id.* at 51.

128. *Id.* at 77.

129. *Id.*

130. *Id.* at 78-82.

131. *Id.* at 80-81.

132. *Id.* at 92-199.

either smoked bacon or ham.<sup>133</sup> At the end of the tale, Charlotte dies knowing she kept her promise.<sup>134</sup> Wilbur is safe having become "some pig,"<sup>135</sup> indeed, "radiant,"<sup>136</sup> "terrific,"<sup>137</sup> and "humble"<sup>138</sup> just as she had predicted in her webs. Before Charlotte dies, she speaks one last time to Wilbur:

"Good bye!" she whispered. Then she summoned all her strength and waved one of her front legs at him. She never moved again. Next day, as the Ferris wheel was being taken apart . . . Charlotte died. The Fair Grounds were soon deserted. The sheds and buildings were empty and forlorn . . . Nobody, of the hundreds of people that had visited the Fair, knew that a grey spider had played the most important part of all. No one was with her when she died.<sup>139</sup>

So, what does Charlotte's story add to understandings Gilligan's *In a Different Voice*? Like Gilligan, Charlotte understands care as a proactive and empowering activity, a process rather than an end "grounded [not] in universal, abstract principles but in the daily experiences and moral problems of real people in their everyday lives."<sup>140</sup> To this end, her miraculous webs explicitly articulate her concern for Wilbur. While Fern's justice-focused intervention at the start of the story is only able to ensure a temporary stay of execution, Charlotte's webs effectively engineer for Wilbur a complete reprieve from the farmer's axe. Her messages of care, flowing from her feelings of connection to Wilbur, are literally life-saving.<sup>141</sup> Her actions reflect the delicate balance required between caring for others and caring for self, between recognizing the danger of self-annihilation and allowing for an understanding of care tempered by integrity in a conception of "selflessness rooted not in a genuinely empathic regard for the other, but rather in a harmful and injurious lack of regard for oneself: a sense of self-loathing, a lack of self-esteem or self-respect."<sup>142</sup>

Moreover, Charlotte's ethic of care is truly transformative. Her recognition of her responsibility toward her friend not only reinforces the relationships between the animals but ensures that they work

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133. *Id.* at 92-119.

134. *Id.* at 163-71.

135. *Id.* at 77.

136. *Id.* at 114.

137. *Id.* at 94.

138. *Id.* at 141.

139. *Id.* at 171.

140. Joan C. Tronto, *Beyond Gender Difference to a Theory of Care*, 12 *SIGNS* 644, 648 (1987).

141. E.B. WHITE, *supra* note 3, at 3, 85.

142. ROBIN WEST, *CARING FOR JUSTICE* 79 (1997).

together to secure Wilbur's survival and ultimately also that of Charlotte's children and grandchildren.<sup>143</sup> Her understanding of self as "embedded" in relations encourages Wilbur, and even Templeton, the self-centered, smart-talking rat,<sup>144</sup> to temper their instinctive individualism and locate their friendships within the context of an ongoing web of connections and care.<sup>145</sup> It requires them to attempt, however difficult, to understand themselves as connected, interdependent, and indistinct with interests stemming beyond their bounded selves and one-to-one relationships. These ties are at once immediate and intergenerational. In *Charlotte's Web*, Wilbur misses Charlotte, but he understands that her sacrifice saved his life and future generations of her offspring:

Wilbur often thought of Charlotte. A few strands of her old web still hung in the doorway. Every day Wilbur would stand and look at the torn, empty web, and a lump would come to his throat. . . . Wilbur never forgot Charlotte. Although he loved her children and grandchildren dearly, none of the new spiders ever quite took her place in his heart.<sup>146</sup>

Truly no ordinary spider, Charlotte departs from the "bloodsucking" and "cruel" reputation of her family,<sup>147</sup> transforming her webs of death into statements of care to maintain the connections and relationships that are important to her.<sup>148</sup> She is in a class of her own. After all, as E. B. White concludes, "it is not often that someone comes along who is a true friend and a good writer. Charlotte was both."<sup>149</sup>

The story of the friendship between Charlotte and Wilbur, like Gilligan's *In a Different Voice*, can be seen to offer a glimpse into an alternative reality where connection, care, empathy, and responsibility might exist alongside separation, rights, and justice; where relationships might be understood in terms of webs as opposed to ladders; where justice is caring and care is just and where the defiled and excluded are valorised and able to sing.<sup>150</sup> Like the women in Gilligan's abortion study, Charlotte's understanding of self eschews the abstracted individualism of the law and legal system. Moreover, her subsequent success, notably the fact that she saves Wilbur, evidences

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143. E.B. WHITE, *supra* note 3, at 163-71.

144. *Id.* at 171, 183.

145. Jennifer Nedelsky, *Reconceiving Autonomy: Sources, Thoughts and Possibilities*, 1 YALE J. L. & FEMINISM 7, 10 (1989).

146. E.B. WHITE, *supra* note 3, at 172-73, 184.

147. *Id.* at 39-40.

148. *Id.* at 114-15.

149. *Id.* at 184.

150. WEST, *supra* note 142, at 24.

the power and strategic importance of difference in attempts to re-imagine the adjudicative process.<sup>151</sup> As such, the story of *Charlotte's Web* provides an imaginative illustration of the ongoing promise of a different voice, restoring the transformative potential of Gilligan's narrative from the taint of its essentialist associations. E.B. White's novel introduces the possibilities of interwoven ethics of justice and care free from restrictive invocations of gender categories. By including "normal aspect[s] of human existence,"<sup>152</sup> judges would be able to inform political change and initiate the transformation of our conceptions of law, justice, politics, and morality.<sup>153</sup>

With this interpretation in mind, the purpose of this article is not simply one of comparison or quirky juxtaposition. Rather, its goal is to locate conversations about difference and Gilligan firmly within the imaginary domain, that is to establish the imagination as an important site of discursive/political struggle that can be harnessed for ideological purposes by offering Charlotte's story as an alternative to that of Arachne, a catalyst to provoke thought and extend debate. In other words, this article contends that the responses to Gilligan and, in particular, her articulation of a different voice by feminist scholars are as much derived from the imagination as they are from what is conventionally considered as rational thought. Reactions to *In a Different Voice*, whether positive or negative, are as much instinctive as reasoned. Furthermore, as Catherine MacKinnon suggests, perhaps what scholars hate the most about Gilligan's work is that it is true;<sup>154</sup> its instinctive familiarity and unnerving accuracy is attractively subversive and frustratingly paralyzing in equal measure.<sup>155</sup> As a result, feminist legal scholars, and others, are caught in difference, at once desperate to eschew the uncritical and old-fashioned feminism of *In a Different Voice*, and at the same time being forced to engage with it to start new conversations.<sup>156</sup> Put bluntly, however much we dislike it, its mythical status and credentials ensure that it continues to demand our attention. This may not, however, be a bad thing.

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151. See Erika Rackley, *When Hercules Met the Happy Prince: Re-imagining the Judge*, 12 TEX. WESLEYAN L. REV. 213, 223-24 (2005) for a discussion of judges utilizing unbiased empathy to make more holistic decisions.

152. See generally SELMA SEVENHUIJSEN, *CITIZENSHIP AND THE ETHICS OF CARE: FEMINIST CONSIDERATIONS ON JUSTICE, MORALITY AND POLITICS* (L. Savage trans., 1998); Cressida J. Heyes, *Anti-Essentialism in Practice: Carol Gilligan and Feminist Philosophy*, *HYPATIA*, Summer 1997, at 142.

153. Tronto, *supra* note 140, at 648; see also JANE TRONTO, *MORAL BOUNDARIES: A POLITICAL ARGUMENT FOR AN ETHIC OF CARE* 150-70 (1993).

154. MacKinnon, *supra* note 5, at 73-74.

155. *Id.*

156. *Id.*

## SPIDERS, MYTHS, AND GILLIGAN: CONCLUDING THOUGHTS

Typically, to say something is a myth or mythical is more often than not a prelude to its dismissal as a sensible or rational idea: a myth is most immediately understood as untrue. Richard Cavendish argues that "[o]ne of the disadvantages of the old-fashioned derogatory use of the word myth, to mean a foolish story or a false idea is the implication that myths are trivial. The reality is the reverse."<sup>157</sup> In fact, while the story of a myth is "generally agreed to be fiction," it nevertheless is a "fiction which is full of meaning," an "imaginative tradition" revealing "truths of a different or deeper kind;"<sup>158</sup> hence their appeal and longevity. As such, the transformative potential of Gilligan's narrative does not lie in its reality, in the widespread acceptance of its findings or its literal, historic or even scientific "truth," but rather in its unreality, where its story takes us, and in its ability "[to] illuminate aspects of our human condition" that we might otherwise overlook or downplay.<sup>159</sup> The purpose or power of a myth extends beyond and is largely independent from its story, which may or may not be true. In other words, understood as fiction or myth, the promise of a different voice lies in exactly that: its promise.<sup>160</sup> Its potential lies in its "poetic" rather than "literal" truth,<sup>161</sup> its story exploring the possibility of where a different voice might take us. The promise of the narrative of *In a Different Voice* lies not in the truth of its story, in the ability to identify and/or articulate a definitive, different, and, presumably, female voice (as some feminist and other legal commentators had imagined), but rather in the extent to which it renders contingent particular, but dominant, forms of moral and/or legal reasoning. In this way, the idea of a different voice acts as a catalyst for disruption; silencing monotony and destabilizing taken-for-granted assumptions. In operating to subvert the prejudice, bias, and hierarchy of traditional adjudicative approaches and moral reasoning, it uncovers and illuminates new ways of seeing, speaking, and even lawyering. Its story, while generally agreed to be a contrivance that no one wholly believes, brings with it the possibility for feminist scholars not only

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157. MYTHOLOGY: AN ILLUSTRATED ENCYCLOPEDIA OF THE PRINCIPAL MYTHS AND RELIGIONS OF THE WORLD 8 (Richard Cavendish ed., 1992). Although a myth is traditionally understood as a story, it can also be understood as a tradition, "which exerts a powerful influence on attitudes to life, but whose literal accuracy there is reason to doubt," for example, the traditional Christian picture of hell. *Id.* at 9.

158. *Id.*

159. MICHAEL GRANT, MYTHS OF THE GREEKS AND ROMANS xviii (Meridian 1995) (1962).

160. Maria Drakopoulou, *The Ethic of Care, Female Subjectivity and Feminist Legal Scholarship*, 8 FEM. L.S. 199, 204 (2000).

161. MYTHOLOGY, *supra* note 157, at 8.

to evade the crisis of subjectivity and the fate of Arachne, but also to explore concrete insights into the realities of morality, politics, law, and justice and thereby the opportunity to begin to imagine the previously unimaginable, to begin to ask: "but, what if . . .?"

Within this framework, despite its unfashionable philogyny and albeit unintentional essentializing tendencies, Gilligan's idea of a different voice continues to deliver, although not necessarily in the way feminist and other commentators might have imagined. As relevant and provocative today as it was twenty-five years ago, the narrative of *In a Different Voice* continues to capture and constrain the imaginations of new generations of women. Its tale of recognition, disillusion, and rehabilitation, explored here alongside attempts to identify a different voice in the law, remains a fundamental part of any conversation that includes women and/or difference. As a result, to many scholars this insidious presence within feminist legal scholarship has become a Hydra-like menace, which threatens to entrap unfolding stories within theoretical culs-de-sac or to block their progress. Its haunting and haunted narrative pulls conversations toward the folly of essential difference and the siren call of the elusive "feminine" voice.

Nevertheless, like Wilbur, Gilligan's idea of a different voice is, in fact, humble, radiant, and even, perhaps, terrific. Its stories, like the eponymous heroine of *Charlotte's Web*, spin webs of proactive care and empowered responsibility, encouraging us to consider where a different voice might take us. It urges us to embrace its transformative possibilities, to look away from difference and focus instead on what difference is different to. So viewed, what the stories of Charlotte's webs and Gilligan's different voice reveal is the importance of where you look. After all, as the farmer's wife pointed out, it was Charlotte — not Wilbur — who was extraordinary.<sup>162</sup> Put bluntly, Wilbur was only "some pig" because Charlotte's web said so. Had Charlotte kept quiet or, alternately, had her writing talent been recognized, the story would have turned out very differently, especially for Wilbur. In short, for Charlotte's plan to work she had to be seen as a very common, very ordinary, grey spider. Similarly, the ongoing promise and importance of Gilligan's little book does not rest on our ability to articulate or define, let alone believe in, the "difference" of a different voice. Like all myths, the reality of its story is neither here nor there. In fact, for Charlotte's or indeed any "trick"<sup>163</sup> to be truly effective, what the idea of a different voice requires is strategic displacement, for us to look in the 'wrong' direction. Perhaps, then, Sandra Berns is right: "the whole

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162. E.B. WHITE, *supra* note 3, at 80.

163. *Id.* at 85.



idea of a different voice [is] part of the problem" seducing women away from what is really going on, that is "how all those men came to believe that they were speaking . . . in some universal and objective sense when they were simply speaking as men."<sup>164</sup> In other words, what is important is not our ability to hear or even speak in a different voice, but rather the extent to which the possibility of difference reveals and amplifies the deafening silence underpinning traditional understandings of, for example, reason, law, justice, imagination, and so on. Recognizing that difference may exist throws light onto paths as yet unexplored; opening, and then stepping back from, a window on to new adventures. Where we go from here is the beginning of another story.

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164. BERNs, *supra* note 91, at 13.