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# The Influence of Legal Education on Moral Reasoning

Sandra Janoff\*

## INTRODUCTION

Male educators developed traditional legal education for male students. Law school student populations, however, are no longer exclusively, or even predominantly, male. Today, 42.5% of law students are women.<sup>1</sup> While feminist scholars call for the inclusion of a woman's perspective in rethinking legal education,<sup>2</sup> very few studies have, to date, explored legal educa-

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\* Psychologist. Ph.D., Temple University. I thank Dean Robert Reinstein of the Temple University School of Law for supporting this research and Professor Robert Bartow for structuring the data collection—no easy task. I thank the Temple School of Law faculty and staff for graciously providing information and access to students, and for shedding light on the law school experience for an outsider. I especially thank Professor Jane Baron for providing a route into feminist jurisprudential literature, and Professor Peter Severeid for giving me an important historical and cultural perspective on law. I thank my dissertation chair, Dr. Susan Wheelan, for her scholarly guidance and support throughout this research. I am indebted to Professors Marina Angel and Richard Greenstein for their sustained interest, commitment, and work on this research. In addition, I want to thank Richard Greenstein for the many fulfilling and fruitful discussions about legal thinking, feminist jurisprudence, and developmental psychology. Thank you to Annie Rogers and Dana Jack for their help and to Carol Gilligan for her invaluable contribution. A special thank you goes to my wonderful family and friends. Finally, to the students of the Class of 1992 of Temple Law School, especially those who were interviewed and gave their time, thoughts, and feelings willingly and generously, I offer deepest thanks and wish you all well.

1. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES: FALL, 1990, LAW SCHOOLS AND BAR ADMISSION REQUIREMENTS 66 (1990) [hereinafter REVIEW OF LEGAL EDUCATION]. Of the 127,261 students in law schools across the nation in the 1990-91 academic year, 54,097, or 42.5%, were women. *Id.* This is a slight decrease from the 1989-90 academic year, the year of this study, in which 42.7% of all law students were women. *Id.* At Temple University School of Law, the population for this study, 46.8% of the students were women. Data on file with the Temple University School of Law Office of Academic Affairs, Development, & Planning.

2. See generally 38 J. LEGAL EDUC. 1-183 (1988) (issue dedicated to "Women in Legal Education—Pedagogy, Law, Theory, and Practice"). In particular, for a listing of representative feminist writings, see Carrie Menkel-

tion from the perspective of female law students.<sup>3</sup> This Article presents the results of a study that included the experiences of women in its investigation of the impact of legal education on moral reasoning.

The study first examined the moral reasoning of students about to enter law school, then reexamined their reasoning at the end of their first year of law school. The study was designed to explore whether legal education changes students' moral perspective, and if so, whether it affects the perspectives of men and women differently. The study demonstrated that the first year of law school has an insignificant effect on men's moral reasoning but a substantial impact on women's moral reasoning.

The study began with the fundamental assumption that there are two different, equally valid, moral decision-making perspectives.<sup>4</sup> One perspective, rights-oriented moral reasoning, focuses on justice, rights, and equality issues. Rights-oriented thinkers view people as separate entities entitled to fair

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Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education* or "The Fem-Crits Go to Law School," 38 J. LEGAL EDUC. 61, 63 n.10 (1988).

3. A few studies have, however, reported on women's experiences in law school; see Marina Angel, *Women in Legal Education: What It's Like to be Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 TEMP. L.Q. 799 (1988) (reporting results of five-school study of female law professors); James R. Elkins, *Rites de Passage: Law Students "Telling their Lives,"* 35 J. LEGAL EDUC. 27 (1985) (excerpting law students' journals); James C. Foster, *Antigones in the Bar: Women Lawyers as Reluctant Adversaries*, 10 LEGAL STUD. F. 287 (1986) (presenting the results of interviews with female law students which indicate that the legal system's adversarial approach conflicts with many women's care-oriented approach to moral reasoning); Georgina W. LaRussa, *Portia's Decision: Women's Motives for Studying Law and Their Later Career Satisfaction as Attorneys*, 1 PSYCHOL. OF WOMEN Q. 350 (1977) (finding that female attorneys reporting career satisfaction were motivated to study law by realistic expectations of practical benefits from a legal career, were confident that fulfillment could be found through work in law, and were interested in the theoretical aspects of legal study); Janet Taber et al., *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209 (1988) (reporting on a study of experiences in law school and in legal careers of male and female students and graduates of Stanford Law School); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988) (documenting alienation experienced by 20 female students at Yale Law School); see also SCOTT TUROW, *ONE L: AN INSIDE ACCOUNT OF LIFE IN THE FIRST YEAR AT HARVARD LAW SCHOOL* (1977) (biographical account of first year of law school).

4. Philosopher Carol Gilligan first advanced this thesis. See *infra* text accompanying notes 47-54. See generally CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982) (advancing this thesis).

treatment and believe that conditions that promote inequality create fundamental injustice.

The other perspective, care-oriented moral reasoning, focuses on care, interdependence, and response to need. Those who adopt this perspective see people as interconnected and believe that people should avoid hurting others. Problems, for care ethicists, emerge under conditions that promote potential fractures in relationships.

The notion that there are two orientations available to people when they face moral choices challenges most scholars' understanding of moral reasoning. Traditional moral development theory describes an individual's moral development as a linear progression toward an increased use of objective principles of justice. On this theory, care-oriented reasoning typifies an intermediate stage of reasoning short of mature moral decision making.

Lawrence Kohlberg first posited this view in 1958, basing it on studies conducted solely with male subjects.<sup>5</sup> Critics subsequently charged that the fact that women scored lower than men on Kohlberg's test indicated that his theory and methodology were biased.<sup>6</sup> Philosopher Carol Gilligan, for example, contends that a theory based on an exclusively male study will subordinate the traditionally feminine values of connectedness, care, and circumstance to the traditionally masculine values of rationality, individuality, objectivity, and hierarchy.<sup>7</sup> This criticism is supported by research demonstrating that women are more likely to use the care perspective, while men are more likely to use the justice, or rights, perspective in moral decision

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5. Lawrence Kohlberg, *The Development of Modes of Moral Thinking and Choice in the Years 10 to 16* (1958) (unpublished Ph.D. dissertation, University of Chicago).

6. The authors of two studies, for example, criticized Kohlberg's test because it implied that men's moral reasoning was more advanced than women's. Kay Bussey & Betty Maughan, *Gender Differences in Moral Reasoning*, 42 J. PERSONALITY & SOC. PSYCHOL. 701, 701, 704 (1982) (finding that women tend to be at stage three and men at stage four, but that men's level of moral reasoning dropped to stage three when judged by a hypothetical involving a female protagonist); Constance B. Holstein, *Irreversible, Stepwise Sequence in the Development of Moral Judgment: A Longitudinal Study of Males and Females*, 47 CHILD DEV. 51, 59 (1976) (finding that women tend to reason at stage three and men at stage four).

7. In her book, *IN A DIFFERENT VOICE*, *supra* note 4, Gilligan broke with traditional methodology by asking women about real-life struggles as opposed to hypothetical dilemmas. Moreover, she viewed women as enmeshed in a web of issues, rather than deciding in the abstract between right and wrong.

making.<sup>8</sup>

Concurrently, a change has taken place in the legal profession. The legal profession historically has been white, upper-middle class, and male-dominated, but within the past ten years the profession's demographics have changed considerably. Women made up only 8% of law school students in the 1970s; thus, the swell to today's 42.5% has been dramatic.<sup>9</sup> Moreover, today 18.1% of the legal work force is composed of women, up from 4.7% in the 1970s.<sup>10</sup> This increase in the number of female lawyers is not altogether surprising, as it reflects the shifts in family and work-role definitions that have taken place in the past twenty years.<sup>11</sup> Yet, to date, few studies of what it means to be a lawyer—to act or think like a lawyer—have reflected the experience of women.<sup>12</sup>

This study broadened the range of previous investigation into the areas of both moral and legal reasoning by including the voices of women. This Article presents the study in four parts. Part I introduces the scholarship that supports this research with respect to moral reasoning theory, the role of the lawyer and legal reasoning, the first year of legal education, and women as law students. Part II presents the questions that guided this research and describes the study's methodology, including the population and sample, the sources of data collection, and the analysis procedures. Part III presents the study's results, interprets the results, and discusses the implications of those results for legal education. Part IV recommends topics for future research.

## I. BACKGROUND

### A. THEORIES OF MORAL REASONING

Sigmund Freud offered the first comprehensive theory of moral development.<sup>13</sup> He also established the practice, followed by later developmentalists, of using male experience as

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8. See *infra* notes 47-60 and accompanying text; MAPPING THE MORAL DOMAIN: A CONTRIBUTION OF WOMEN'S THINKING TO PSYCHOLOGICAL THEORY AND EDUCATION (Carol Gilligan et al. eds., 1988).

9. REVIEW OF LEGAL EDUCATION, *supra* note 1, at 66.

10. *Id.*

11. See MARILYN FRENCH, BEYOND POWER: ON WOMEN, MEN, AND MORALS 458-69 (1985).

12. See *supra* note 3 (listing studies reporting on the perspectives and experiences of women in law school).

13. See THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD (James Strachey trans., ed., 1966).

the norm for human behavior. Freud's oedipal conflict, the male child's emotional upheaval in early childhood, illustrated his theory that repression of forbidden desires leads to an internalized understanding of right and wrong.<sup>14</sup> Instead of exploring the difference between male and female children's experiences, Freud interpreted female children's developmental differences as developmental failures. Freud claimed that women "show less sense of justice than men, . . . are less ready to submit to the great exigencies of life, . . . [and] are more often influenced in their judgments by feelings of affection or hostility."<sup>15</sup> Subsequent theorists, including Jean Piaget and Kohlberg, also have tended to view women's moral characters as less fully developed than men's.

Piaget's observations of young children playing with marbles led him to link moral growth with the development of cognitive processes. He observed that boys, more often than girls, made and followed rules as they played.<sup>16</sup> When conflicts arose, boys made objective decisions based on fairness.<sup>17</sup> In contrast, he noted, girls were "less concerned with legal elaborations. A rule is good so long as the game repays it."<sup>18</sup>

Piaget assumed that the ideal morality was based on equality and reciprocity. Piaget's observations thus supported Freud's conclusion that girls' moral development was less complete:

The most superficial observation is sufficient to show that in the main the legal sense is far less developed in little girls than in boys. We did not succeed in finding a single collective game played by girls in which there were as many rules and, above all, as fine and consistent an organization and codification of these rules as in the game of marbles described above.<sup>19</sup>

Kohlberg's theory of moral development expanded Piaget's scheme and explained the organized growth of moral reason-

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14. Freud claimed that boys have the opportunity to resolve their oedipal conflicts completely through psychological separation from their mothers and gender-identification with their fathers. SIGMUND FREUD, NEW INTRODUCTORY LECTURES ON PSYCHOANALYSIS 114 (James Strachey trans., ed., 1964). On the other hand, Freud maintained, girls do not completely resolve their corresponding conflicts. The forbidden wish that precipitates girls' conflicts, their "penis envy," he held, is never fully repressed, just weakened. *Id.*

15. 19 THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD 257-58 (James Strachey trans., ed., 1966).

16. JEAN PIAGET, THE MORAL JUDGMENT OF THE CHILD 13-108 (Marjorie Gabain trans., 1965).

17. *Id.* at 29-76.

18. *Id.* at 83.

19. *Id.* at 77.

ing.<sup>20</sup> Collecting empirical data over a fifteen-year period from eighty-four boys, Kohlberg hypothesized a six-stage model of moral development.<sup>21</sup> Moral growth, according to Kohlberg, consists of progress through a sequence of stages. Progress from one stage to the next results from learning how to resolve moral dilemmas. Moreover, he explained, "stages define . . . total ways of thinking, not attitudes toward particular situations."<sup>22</sup> The moral concern at each stage—a person's view of what is right—shifts as the maturing individual develops a different view of self in relation to others. Kohlberg founded his stage theory on the assumption that moral development shifts toward an integrated sense of universal justice.<sup>23</sup>

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20. See LAWRENCE KOHLBERG, *THE PHILOSOPHY OF MORAL DEVELOPMENT: MORAL STAGES AND THE IDEA OF JUSTICE* (1981).

21. Kohlberg's original dissertation study collected responses to hypothetical moral dilemmas from eighty-four 10-, 12-, and 16-year-old boys. Kohlberg, *supra* note 5. Kohlberg validated his original hypotheses in a longitudinal study of the sample. Lawrence Kohlberg, *Stage and Sequence: The Cognitive-Developmental Approach to Socialization*, in *HANDBOOK OF SOCIALIZATION THEORY AND RESEARCH* 347 (David A. Goslin ed., 1969). Kohlberg's theory has undergone revision over the years in response to criticism. See, e.g., Charles Levine et al., *The Current Formulation of Kohlberg's Theory and a Response to Critics*, 28 *HUM. DEV.* 94, 97 (1985).

22. KOHLBERG, *supra* note 20, at 120.

23. Kohlberg defined six stages grouped into three levels. *Id.* at 17-20. The "preconventional level" comprises the first two stages. At stage one, "the punishment and obedience orientation," moral behavior is motivated by fear of punishment. Behaviors that are punished are bad and are to be avoided, while behaviors that are rewarded are good, without regard to value. At stage two, "the instrumental relativist orientation," moral development is motivated by fairness, reciprocity, and equal sharing. "I'll scratch your back if you scratch mine" characterizes this stage, and a rule is seen as fair if it treats everyone equally. Right action has more to do with getting what one needs than with avoiding punishment. *Id.*

The second level is the "conventional level" and comprises stages three and four. At stage three, "the interpersonal concordance or 'good boy-nice girl' orientation," moral behavior is motivated by a desire to maintain group membership—that is, to help, please, or get approval from others. Being "right" at this level consists of being "nice," being concerned about other people and their feelings, and being motivated to follow rules and expectations. At stage four, "society maintaining orientation," moral behavior is motivated by law and order. "Right behavior" means following the rules and respecting authority, regardless of whether it will garner approval from others. While a stage three reasoner will follow rules to get approval, a stage four reasoner will do so to maintain social order. In both the preconventional and the conventional level modes of thinking, the specific rules themselves are external and imposed. A third-level, or post-conventional reasoner, on the other hand, values the principles apart from individual or group authority. *Id.*

The third level is the "postconventional or principled level" and comprises stages five and six. At stage five, "the social contract orientation," moral behavior is motivated by the values and legal contracts of a society, not just its

Kohlberg's view of justice as the central moral concern was based on the Platonic view of the nature of virtue. Kohlberg believed that "virtue is ultimately one, not many, and it is always the same ideal form regardless of climate or culture . . . . The name of this ideal form is justice."<sup>24</sup> Kohlberg's theory of moral development has been the basis for an enormous amount of educational and psychological research.<sup>25</sup> Critics attacked Kohlberg's theory from the start,<sup>26</sup> but most scholars have accepted his theory as the explanation of the moral development of all people, male and female.

In the 1970s, women began to challenge traditional interpretations of female experience. Female scholars searched for their own understanding of women's history,<sup>27</sup> and feminist psychologists explored alternative views of female development.<sup>28</sup> The women's movement also gained political influence.<sup>29</sup> While the women's movement initially insisted on the fundamental similarity and equality of women and men,<sup>30</sup> its

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concrete rules and laws. At this stage, rules and rights become moral principles which are objectively fair and just. At stage six, "the universal ethical principle orientation," justice is seen as a universal principle governing all judgments and behavior. At this stage, right is defined by one's conscience and by principles that are universal, rather than in relation to persons, events, or institutions. "At heart, these are universal principles of justice, of the reciprocity and equality of human rights, and of respect for the dignity of human beings as individuals." *Id.*

Recently, Kohlberg admitted that there was no empirical validation for stage six. Levine, *supra* note 21, at 97.

24. KOHLBERG, *supra* note 20, at 30.

25. See, e.g., ROBERT SELMAN, *THE GROWTH OF INTERPERSONAL UNDERSTANDING* (1980). Selman has taken Kohlberg's concept of role-taking as a critical element in ego development and conducted a series of interrelated studies to explore the developmental character of social perspectives. See also ELEANOR E. MACCOBY & CAROL N. JACKLIN, *THE PSYCHOLOGY OF SEX DIFFERENCES* 114-15 (1974) (reporting that 40 studies of sex differences in moral development accept Kohlberg's notion of rule-following and justice-seeking as high-level moral reasoning).

26. See, e.g., Bussey & Maughan, *supra* note 6, at 704-05 (criticizing Kohlberg's test on grounds of gender bias); Holstein, *supra* note 6, at 59-60 (same); cf. L. Kohlberg & R. Kramer, *Continuities and Discontinuities in Childhood and Adult Moral Development*, 12 HUM. DEV. 93, 109 (1969) (noting that Kohlberg's early work shows unexpected regressions threatening the notion of invariance).

27. See, e.g., FRENCH, *supra* note 11; *LIBERATING WOMEN'S HISTORY* (Bernice A. Carroll ed., 1976); *RETRIEVING WOMEN'S HISTORY* (S. Jay Kleinberg ed., 1988).

28. See *infra* notes 31-61 and accompanying text.

29. See, e.g., BARBARA S. DECKARD, *THE WOMEN'S MOVEMENT* 359-68 (3d ed. 1983).

30. See e.g., BETTY FRIEDAN, *THE FEMININE MYSTIQUE* (1963).



focus soon shifted to examining gender differences that spring from our male-dominant social structure.

Psychologists Dorothy Dinnerstein and Nancy Chodorow, among others, challenged the traditional blueprint of the American family with their assessments of the sociological and psychological effects of reserving for women the primary responsibility for child care and education.<sup>31</sup> Dinnerstein's unique insight was that our social structure is built on the assumption that the female is the primary care-taker of infants and young children.<sup>32</sup> Early "mothering" by women influences learned sex-role differences and reinforces "asymmetrical sexual privilege."<sup>33</sup> Dinnerstein explained that male privilege is maintained because most babies grow into adults who assume women are mainly in charge of children and men are mainly in charge of "world making," or the exercise of power.<sup>34</sup>

Chodorow further developed the theme that placing women in the mothering role influences female-male relationships. Her significant contribution to feminist psychology was to explain female ego development and to move away from Freud's negative description.<sup>35</sup> Whereas Freud's masculine bias held that girls do not fully repress their conflicts between sexual identity and aggression and therefore have weaker ego boundaries, Chodorow explained that girls, mothered by women, experience preoedipal relationships which are less ego-threatening than those experienced by boys.<sup>36</sup> Because women develop their gender identities within an ongoing, same-sex relationship, girls do not have to curtail their primary love.<sup>37</sup> Male gender identity, on the other hand, requires an emotional separation from the mother and identification with the father.<sup>38</sup> As a result, Chodorow postulated, the basic feminine sense of self is a sense of connectedness, whereas the basic masculine sense of self is a sense of separateness.<sup>39</sup>

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31. NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING* 3 (1978); DOROTHY DINNERSTEIN, *THE MERMAID AND THE MINOTAUR* 4 (1976). Other works by feminist psychologists include FRENCH, *supra* note 11; JEAN B. MILLER, *TOWARD A NEW PSYCHOLOGY OF WOMEN* (1976); NEL NODDINGS, *CARING* (1984); Sara Ruddick, *Maternal Thinking*, 6 *FEMINIST STUD.* 342 (1980).

32. DINNERSTEIN, *supra* note 31, at 28-32.

33. *Id.* at 76.

34. *Id.* at 82, 85-86.

35. CHODOROW, *supra* note 31, at 167.

36. *Id.*

37. *Id.* at 166.

38. *Id.* at 166-67.

39. *Id.* at 169.

Gilligan's 1982 book, *In A Different Voice*,<sup>40</sup> challenged Kohlberg's scheme of moral development and broke through the boundaries of the traditionally accepted research assumptions.<sup>41</sup> Gilligan did not argue that Kohlberg's rights-oriented reasoning scheme was wrong. Rather, she attacked his failure to consider that, because girls' early mother-child relationship is different than boys', they develop a different set of values.<sup>42</sup> Her model expanded Kohlberg's position by integrating a perspective that emerged from her studies of female moral development.<sup>43</sup>

Gilligan believed that moral problem solving could best be understood by studying real, not hypothetical, moral dilemmas.<sup>44</sup> The Supreme Court's legalization of abortion<sup>45</sup> provided the opportunity; she looked for the relationship between judgment and action by studying twenty-nine pregnant women in the midst of a decision to continue or abort a pregnancy. Instead of asking questions that implied principled considerations (the Kohlbergian methodology), Gilligan opened the interviews with a simple directive.<sup>46</sup> She encouraged the women to reveal their thoughts about their pregnancy. As the women spoke, Gilligan noted that the women used a decision process different from Kohlberg's rights-oriented reasoning scheme.<sup>47</sup> She termed this construction of morality "a different voice."<sup>48</sup>

Gilligan's study of women uncovered a fundamental difference between women's and men's perceptions of themselves and their world. Women view themselves in terms of their connectedness to others. Care and responsibility to others is therefore central to their moral thought. Previous researchers had aligned women with a relational view of themselves and morality. Gilligan, however, was the first to suggest that this construction was a unique view of social reality not embedded in a

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40. GILLIGAN, *supra* note 4.

41. *Id.* at 18.

42. *Id.* at 18-19.

43. *Id.* at 19.

44. *Id.* at 3.

45. *Roe v. Wade*, 410 U.S. 113 (1973).

46. Ellen DuBois et al., *The 1984 James McCormick Mitchell Lecture: Feminist Discourse, Moral Values, and the Law—A Conversation*, 34 BUFFALO L. REV. 11, 37 (1985) (remarks of Carol Gilligan) (explaining that, while the women used the language of morality—e.g., "should," "ought," "right," and "wrong"—their logic was not one of rules and principles).

47. *Id.*

48. *Id.* at 38.

hierarchic scheme.<sup>49</sup> Based on the results of this and two other studies,<sup>50</sup> she hypothesized two distinct modes of moral judgment—rights<sup>51</sup> and care—and two modes of describing self in relation to others—separate/objective and connected/interdependent.<sup>52</sup>

Nona Lyons tested Gilligan's conclusions and identified the two characteristic modes of self-description and moral decision making. In the first mode, "morality of rights," the self is seen as separate. The relationship is based on reciprocity, that is, on considering others as you would want to be considered, as in the golden rule. The assumption is that others are the same as the self.<sup>53</sup> In the second mode, "morality of response and care," the self is seen as connected. The relationship is based on interdependence and concern for another's well-being. Consideration of others is contextual and may not promote equality. Responsiveness means seeing the world through another's eyes. The assumption, in this mode, is that others are different from oneself.<sup>54</sup>

Recent research by D. Kay Johnston,<sup>55</sup> Carol Gilligan, and Jane Attanucci<sup>56</sup> demonstrates that care and rights thinking are not mutually exclusive moral perspectives. The research indicates that each orientation has its own psychological logic and understanding of relationships, and that each addresses different moral concerns.<sup>57</sup> Moreover, these studies found that although a person occasionally uses both rights and care perspectives, one orientation tends to predominate.<sup>58</sup> The way people construct a moral problem—the way they perceive

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49. Carol Gilligan, *In a Different Voice: Women's Conceptions of Self and of Morality*, 47 HARV. EDUC. REV. 481 (1977).

50. The studies were: the College Student Study, involving 25 young adult women and men; the Abortion Decision Study, involving 29 women ages 15 to 33; and the Rights and Responsibility Study, involving eight men and eight women at nine points across the life cycle. See GILLIGAN, *supra* note 4, at 2-3.

51. Kohlberg's schema is referred to as the morality of justice. Carol Gilligan & Jane Attanucci, *Two Moral Obligations*, in MAPPING THE MORAL DOMAIN, *supra* note 8, at 73, 84-85. Because of the complex notion of justice in the legal context, this Article uses the term "rights."

52. GILLIGAN, *supra* note 4, at 35-38.

53. Nona P. Lyons, *Two Perspectives: On Self, Relationships, and Morality*, in MAPPING THE MORAL DOMAIN, *supra* note 8, at 21, 22.

54. *Id.* at 33-35.

55. D. Kay Johnston, *Adolescents' Solutions to Dilemmas in Fables: Two Moral Orientations—Two Problem Solving Strategies*, in MAPPING THE MORAL DOMAIN, *supra* note 8, at 49.

56. Gilligan & Attanucci, *supra* note 51, at 73.

57. MAPPING THE MORAL DOMAIN, *supra* note 8, at xix-xxiii.

58. *Id.* at xix.

relationships, relevant issues, and context—determines their response.<sup>59</sup> Gilligan has further noted that people tend to silence one voice when making or justifying decisions.<sup>60</sup>

Gilligan's theory of moral reasoning challenges a myopic line of moral development theory that ignores fundamental differences in perception. Moral maturity, she asserts, means addressing both rights concerns and care concerns—that is, looking through both lenses and speaking both languages.<sup>61</sup>

## B. THE ROLE OF THE LAWYER AND LEGAL REASONING

American law, the American legal system, and American law schools—in a broad sense, the subjects of the study—are traditionally rights-oriented. The earmarks of Kohlbergian analysis permeate the American legal system. American law views individuals as separate and autonomous. The judicial system analyzes legal disputes as problems of conflicting claims.<sup>62</sup> Judges interpret preexistent, objective rules and impose them impartially.<sup>63</sup> Legal reasoning also is hierarchical, in that it is formal, objective, and relies on precedent.

American legal reasoning assumes that there are overarching legal principles. The facts of a case form the minor premise of a syllogism; the applicable legal principle constitutes the major premise. The American legal system is also hierarchical; trial court decisions are subject to at least two levels of appellate review.

The lawyer's role within the legal structure is to represent the client—to further the client's values, power, wishes, intentions, and judgments. The principles of partisanship and neutrality are fundamental elements in the lawyer-client relationship. Partisanship requires that the lawyer advocate the client's interests, while neutrality requires that the lawyer suspend moral or ethical judgment of the client's position. As a result, lawyers may assume professional loyalty to concerns that they find personally objectionable.<sup>64</sup>

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59. See generally A GUIDE TO READING NARRATIVES OF CONFLICT AND CHOICE FOR SELF AND MORAL VOICE (Lyn M. Brown ed., 1988) [hereinafter GUIDE] (presenting a framework for interpreting the logic of care and rights perspectives in reported real-life dilemmas).

60. MAPPING THE MORAL DOMAIN, *supra* note 8, at xix.

61. *Id.* at xx.

62. See RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 184-205 (1978).

63. RAND JACK & DANA C. JACK, MORAL VISIONS AND PROFESSIONAL DECISIONS: THE CHANGING VALUES OF WOMEN AND MEN LAWYERS 20 (1988).

64. *Id.* at 27-33.

The legal system's adversarial nature also reflects its rights-oriented perspective. Lawyers protect their clients' individual autonomy through their commitment to win their clients' fights. Competition, therefore, is essential to good lawyering. Traditional legal scholars maintain that these structural elements and role responsibilities are necessary for a fair and just judicial process.<sup>65</sup>

### C. LEGAL EDUCATION—THE FIRST YEAR

This study considered what happens when individuals who view the world from a relational-care perspective undertake professional training that is defined from a justice-rights perspective. The study hypothesized that the first year of legal training alters students' moral decision-making processes.<sup>66</sup>

American law schools generally offer a standard, mandatory, first-year curriculum that teaches concepts fundamental to legal thinking and practice. James Elkins describes the first year of law school as a powerful, transformative rite of passage.<sup>67</sup> He reports that students quickly come to mistrust their perceptions of themselves, of lawyers, and of themselves as lawyers.<sup>68</sup> Elkins's studies reveal that students are often stopped in their tracks by questions about what they are doing, how the law works, what it "actually" means to practice law, and how the practice of law will affect their lives.<sup>69</sup> The first year is "at once more and less in reality than it promised to be."<sup>70</sup>

According to John Bonsignore's impassioned description of law school, within the first few months there is a "vigorous institutional effort to cut the individual loose from all . . . psycho-

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65. *Id.* at 31-32.

66. A number of commentators have noted the extraordinary psychological impact of law school on students. *E.g.*, TUROW, *supra* note 3; John J. Bonsignore, *Law School: Caught in the Paradigmatic Squeeze*, in JOHN J. BONSIGNORE ET AL., *BEFORE THE LAW* 257 (1984); James R. Elkins, *The Quest for Meaning: Narrative Accounts of Legal Education*, 38 J. LEGAL EDUC. 577 (1988) [hereinafter *Quest for Meaning*]; James R. Elkins, *Reflections on the Religion Called Legal Education*, 37 J. LEGAL EDUC. 522 (1987); Elkins, *supra* note 3; Foster, *supra* note 3; James C. Foster, *The "Cooling Out" of Law Students*, 3 LAW & POLICY Q. 243 (1981); Menkel-Meadow, *supra* note 2; Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 93 (1968); Weiss & Melling, *supra* note 3.

67. Elkins, *supra* note 3, at 28.

68. *Id.* at 40.

69. *Quest for Meaning*, *supra* note 66, at 578.

70. *Id.*

social anchoring points.”<sup>71</sup> Law school, he says, epitomizes a clash of competing cultures.<sup>72</sup> Law school education creates a contest of wills between a student’s “home world” values—i.e., personal morality—and institutional values—i.e., professional morality.<sup>73</sup> Moreover, students who formerly experienced academic success, self-confidence, freedom of action, and self-expression are rendered defenseless when strategies for success no longer work.<sup>74</sup> Bonsignore argues that “[t]he manifest aim in all early law school communication is to avoid common understandings through dialogue and to make the student into a fool whose past academic life and ways of thought are not only unhelpful in doing law, but are positively in the way.”<sup>75</sup>

Not only do students become dissatisfied with themselves and with what they bring from their “home world,” but they also experience an increasing need to succeed in the new system. As students come to depend on the teachers, school, and the system, they become more likely to accept the institution’s demands and values.

#### D. WOMEN AS LAW STUDENTS

There has, to date, been little research on female law students’ experiences. Studies of women’s experiences in law school have considered women’s reasons for going to law school, women’s participation in classroom activities, and women’s feelings about being advocates in an adversarial legal process.

Two studies have sought to understand women’s reasons for choosing law as a career. Georgina LaRussa interviewed forty women and identified eight categories into which their reasons for attending law school could be grouped.<sup>76</sup> Between twenty and forty percent of the women cited the opportunity for self-enhancement, stimulation, and self-fulfillment; the desire to be identified as a member of a profession; a theoretical interest; and the desire to achieve tangible results.<sup>77</sup> Two of the motives for going to law school were cited by more than fifty percent of the women: the material or practical advantage

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71. Bonsignore, *supra* note 66, at 259.

72. *Id.* at 258.

73. *Id.*

74. *Id.*

75. Bonsignore calls this the mortification process. *Id.* at 259.

76. LaRussa, *supra* note 3, at 351-53.

77. *Id.* at 353-55.

of a law career and the desire to serve society and help others.<sup>78</sup> A study by the Gender and Law Project (undertaken by Stanford University law and psychology students) found results consistent with LaRussa's conclusion.<sup>79</sup> The study also found that significantly more women than men indicated a strong desire to serve society.<sup>80</sup>

A study conducted at Yale Law School examined why women choose to remain silent in the classroom more often than men.<sup>81</sup> Catherine Weiss and Louise Melling formed a first-year women's support group and collected data through extensive interviews with twenty of its members.<sup>82</sup> Women identified alienation from self, community, the classroom, and the content of legal education as the primary reasons for their silence.<sup>83</sup> Weiss and Melling concluded that the disproportionate feeling of alienation among women was due to gender discrimination.<sup>84</sup> The women reported that they felt ignored or mistreated by some professors.<sup>85</sup> In addition, women who remained silent said that they objected to classroom aggression and polarized win/lose arguments.<sup>86</sup>

The Yale study's subjects criticized the content of legal education and complained that legal education is suspended in a midlevel realm of discourse and dissociated from a subjective or contextual perspective.<sup>87</sup> The students maintained that the law school curriculum was "too theoretical" and indifferent to real-world issues,<sup>88</sup> yet "not theoretical enough" and lacking in adequate "inquiry into the social, historical, political, or economic underpinnings of the cases."<sup>89</sup> In addition, the students felt that acontextual legal thinking, embodied in a language that shuns the word "I," disaffirms the idea that people construct or challenge truth.<sup>90</sup>

The Yale study's subjects suggested that law schools alter their curriculum to include women and address their exper-

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78. *Id.*

79. Taber et al., *supra* note 3, at 1219.

80. *Id.*

81. Weiss & Melling, *supra* note 3, at 1332-45.

82. *Id.* at 1310.

83. *Id.* at 1299 (introducing the "four faces of alienation").

84. *Id.* at 1302.

85. *Id.* at 1334-43.

86. *Id.* at 1339.

87. *Id.* at 1346.

88. *Id.*

89. *Id.* at 1347.

90. *Id.* at 1346.

iences.<sup>91</sup> These women advocated closer connections between students, between students and teachers, and between students and the people and subjects they study.<sup>92</sup>

James Foster also explored how women feel about being advocates in an adversarial legal process.<sup>93</sup> Foster interviewed fourteen female law students.<sup>94</sup> He concluded that women in the legal profession are "reluctant adversaries" who must choose between risking professional rejection by "articulating nonadversarial values" and silencing their "women's voice" in joining the process.<sup>95</sup>

Foster identified three strategies women use to survive law school. The women with whom Foster spoke either joined in as "[one] of the boys," rejected adversariness entirely, or decided to "[g]rimace and bear it."<sup>96</sup>

Foster identified problems inherent in each choice. Women who adopted the first strategy had to remain silent.<sup>97</sup> The second strategy, which Foster claims is the route taken by "feminists of one stripe or another," was used by women who wanted to succeed by redefining success.<sup>98</sup> These women risked being stigmatized "first as women trying to play a man's game; then as outsiders who want to change the game's rules; and finally as people who repudiate being stigmatized."<sup>99</sup> The majority of women chose the third strategy.<sup>100</sup> These women sought to work within the law school system, resigning themselves to the adversary game.<sup>101</sup> They did not give up their need to make meaningful human connections, yet they were not blind to the fact that "[b]eing a lawyer requires that you just choose your battle ground."<sup>102</sup>

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91. *Id.* at 1356-58.

92. *Id.* at 1356.

93. Foster, *supra* note 3.

94. *Id.* at 288.

95. *Id.* at 306.

96. *Id.* at 290.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* at 290-91.

102. *Id.* at 288-91. The coping strategies used by these female students were consistent with those that Jack and Jack report were used by the female lawyers they interviewed. See *infra* text accompanying notes 173-78. Jack and Jack's is the only research study to date that asked female and male lawyers about their struggle with professional dilemmas and listened for both the care and rights responses. Foster demonstrates that females begin the adaptation process in law school. Foster, *supra* note 3, at 288. Both studies, Foster's and



In the novel *One L*, Scott Turow described a female colleague, Gina, as "feisty, outspoken, and glitteringly bright," and quoted her frustration: "They're turning me into someone else . . . [i]t's someone I don't *want* to be."<sup>103</sup> Marina Angel, in her candid account of participating in the first wave of female law students at Columbia Law School, explained the basis for her decision to drop out.<sup>104</sup> She recounted that she was "[n]ot dropping out of law, but dropping out of law school in order to regain my perspective, and to see if I could fit my values and goals into a system that seemed to be in conflict with them."<sup>105</sup>

As these studies and anecdotes show, women, as interlopers in a male-dominated profession, either accept the structure and adapt, thereby risking eternal silence or schizophrenia, or reject the structure and disconnect, risking isolation and uncertainty.

## II. THE STUDY: QUESTIONS AND METHODOLOGY

### A. STUDY OBJECTIVES

The study was designed to achieve four distinct objectives. The first was to contribute to the theoretical understanding of moral development. The second objective was to explore with an adult population Gilligan's assumptions about moral perspective. The third was to evaluate the effects of bias in favor of rights-oriented analysis in legal training. The final objective was to enable scholars to understand better the legal profession and the system that society has developed to resolve its ethical and moral conflicts.

In particular, the study was designed to investigate the use of care and rights orientation by law students, to determine whether either orientation is aligned with gender, to determine whether students' orientations change after one year of law school, and finally, to determine whether the changes in orientation after the first year of law school correlate with gender.

The following questions guided the study's focus:

(1) Is there a significant difference in the care orientation of women and men at the beginning of their first year of law school?

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Jack and Jack's, demonstrate that this adaptation is not without cost. *Id.* at 288-90; JACK & JACK, *supra* note 63, at 137-49.

103. TUROW, *supra* note 3, at 90.

104. Angel, *supra* note 3, at 815-16.

105. *Id.*

(2) Is there a significant difference in the rights orientation of women and men at the beginning of their first year of law school?

(3) Is there a significant change in the care orientation of students from the beginning to the end of the first year of law school?

(4) Is there a significant change in the rights orientation of students from the beginning to the end of the first year of law school?

(5) Is there a significant difference between the care orientation of women and men at the end of their first year of law school?

(6) Is there a significant difference between the rights orientation of women and men at the end of their first year of law school?

The study examined law students at the beginning and the end of their first year of law school. The following subsections describe the study's population, sample, sources of data collection, and sampling procedures; the administration of the data sources; the methods of interpreting and scoring the data; and the means of data analysis.

#### B. POPULATION

The study's population was the 417-member class of 1992 at Temple University School of Law. Of the first-year students, 46.8% were female and 53.2% were male.<sup>106</sup> Temple University is a publicly funded, urban university. Its population is diverse in economic status, life-stage, and career background. Temple Law School's population reflects the diversity found in the University's student body.

#### C. SAMPLE

The subjects for the Washington University Sentence Completion Test consisted of a random sample of 200 students selected from the first-year class.<sup>107</sup> The subjects for the Real-

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106. Data on file with the Temple University School of Law Office of Academic Affairs, Development, & Planning. Temple's ratio of women to men was higher than the national figure; of the 43,825 students that entered law school across the nation in 1989, 18,722, or 42.7%, were women, and 25,103, or 57.3%, were men. REVIEW OF LEGAL EDUCATION, *supra* note 1, at 66.

107. Gender and class section were held constant so that the sentence completion test sample consisted of 20 women and 20 men randomly selected from each of the five teaching sections into which the first-year class was divided.

Life Moral Conflict and Choice interviews were fifteen women and fifteen men, also randomly selected from the first-year class.<sup>108</sup>

### 1. Sentence Completion Test Sample

There was no significant difference between the Sentence Completion Test sample and Temple Law School's population in gender and ethnic composition.<sup>109</sup> The subjects' gender was controlled; fifty percent were female and fifty percent were male. Their ethnicity, however, was not.<sup>110</sup>

In addition to asking the subjects of the Sentence Completion Test and the Interview about their gender and ethnicity, this researcher also asked about the subjects' age, marital status, and number of children. The 200 subjects for the Sentence Completion Test appeared highly representative of the Temple Law School population. The majority of students were entering professional school within a few years of their undergraduate

Class section was held constant in order to eliminate the potentially confounding influence of the fact that each section had different professors. There were four sections of day students and one section in the evening school. The sections were fairly evenly distributed according to gender. Students were assigned to class section arbitrarily; therefore, section by section examination of the research variables is irrelevant in terms of student distribution.

108. These students were randomly selected from the population; three women and three men were selected from each of the five sections.

109. Whether the difference in population and sample is significant is determined by a chi-square statistic. Chi-square is a statistical test that examines the hypothesized difference between independent samples that use qualitative data coded as frequencies. The test is based on differences between observed frequencies and expected frequencies.

110.

Table 1  
Gender and Ethnic Composition of the Population (First-Year Class) and of the Sentence Completion Test Sample

	POPULATION TOTAL N = 417 % (N)	SAMPLE TOTAL N = 200 % (N)
Gender		
Female	46.8 (195)	50.0 (100)
Male	53.2 (222)	50.0 (100)
Ethnicity		
Asian	3.4 (14)	2.5 (5)
Black	7.9 (33)	7.5 (15)
Hispanic	3.4 (14)	3.5 (7)
Caucasian	85.4 (356)	86.0 (172)
Other	(unavailable)	.5 (1)

degree.<sup>111</sup> Groups that used to be minimally represented in law school populations, such as ethnic minorities, women returning to the workplace, and adults seeking a second career, have increased in size.<sup>112</sup>

## 2. Interview Sample

There was also no significant difference between the Interview sample and the general law school population in either gender or ethnic composition. The students' gender was controlled in this sample as well; fifty percent were female and fifty percent were male. The students were otherwise randomly selected.<sup>113</sup>

## D. SOURCES OF DATA COLLECTION

The study used three sources of data collection: the Washington University Sentence Completion Test,<sup>114</sup> the Real-Life

111. For both the sample and the population, the mean age was 27, with a range from 21 to 67; the median was 24; and the mode was 22.

112. Forty-five of the 200 students were married; of these, 23 were women and 22 were men. Six students had three children, 16 students had two, 12 students had one, and 166 students had no children. Of the 34 students with children, 22 were women and 12 were men. Forty-one students, or 20%, had a degree beyond a bachelor's; 18 had masters degrees in arts, science, or education; eight had M.B.A.s; four had Ph.D.s; and three had M.D.s. Of the 41 students with degrees beyond a bachelor's, 19 were women and 22 were men.

113.

Table 2  
Gender and Ethnic Composition of the Population (First Year-Class) and of the Interview Sample

	POPULATION TOTAL N = 417 % (N)	SAMPLE TOTAL N = 30 % (N)
Gender		
Female	46.8 (195)	50.0(15)
Male	53.2 (222)	50.0(15)
Ethnicity		
Asian	3.4 (14)	3 (1)
Black	7.9 (33)	10 (3)
Hispanic	3.4 (14)	0 (0)
Caucasian	85.4 (356)	86.6 (26)

The mean age of the interview sample was 26. The youngest student interviewed was 21, the oldest was 40. Six interviewees were married, three women and three men, and two had children, one woman and one man.

114. See JANE LOEVINGER & RUTH WESSLER, MEASURING EGO DEVELOPMENT I: CONSTRUCTION AND USE OF A SENTENCE COMPLETION TEST 139-46 (1970); *infra* text accompanying notes 124-28 (discussing the scoring procedure for care and rights orientations of the sentence completion test).

Moral Conflict and Choice Interview,<sup>115</sup> and a demographic information questionnaire.

### 1. The Washington University Sentence Completion Test

The study used nineteen sentence stems selected from the Washington University Sentence Completion Test. The Sentence Completion Test is a projective test; individuals respond freely to each of the sentence stems with their own association to the content presented. Examples of such stems include: "When a child will not join in group activities . . . ," and "My conscience bothers me if . . . ." The Sentence Completion Test is both reliable and consistent, and has been used extensively.<sup>116</sup> As a measure of ego development, its construct validity is substantial.<sup>117</sup>

The responses to the sentence stems were scored for rights and care thinking pursuant to a method developed by Annie Rogers.<sup>118</sup> Rogers's study, in which she developed two scoring manuals, one for rating care thinking and one for rating rights thinking on twenty of the thirty-six Washington University sentence stems, established good construct validity and reliability.<sup>119</sup>

### 2. The Research Interview

The study employed an interview method central to Gilligan's research methods. The interview scheme, developed and empirically validated by Lyons,<sup>120</sup> is the Real-Life Moral Conflict and Choice Interview, and its scientific validity is sup-

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115. See GUIDE, *supra* note 59.

116. See Carolyn Redmore & Ken Waldman, *Reliability of a Sentence Completion Measure Ego Development*, 39 J. PERSONALITY ASSESSMENT 236, 243 (1975).

117. JANE LOEVINGER, SCIENTIFIC WAYS IN THE STUDY OF EGO DEVELOPMENT 1-24 (1979).

118. Annie G. Rogers, *Gender Differences in Moral Reasoning: A Validity Study of Two Moral Orientations* (1987) (unpublished Ph.D. dissertation, Washington University, St. Louis).

119. Rogers's study found significant hetero-trait, hetero-method correlations, meeting Campbell and Fiske's specifications for convergent and discriminant validity. This is a measure of construct validity, indicating that this content-rating system has good validity as a system for scoring care and rights thinking. Intercoder reliability, as determined by the kappa statistic, was .74 for the care coders and .70 for the rights coders. Agreement was 88% for the care coders and 87% for the rights coders. To ensure reliability in this study, the researcher and another coder interpreted the responses to the sentence stems independently.

120. See Lyons, *supra* note 53.

ported by ongoing research.<sup>121</sup> The Interview consists of two sections: general moral orientation and real-life dilemma. To ensure reliability, the researcher and another coder independently interpreted the interviews.

The interview consisted of several standard questions. The interviewer asked interviewees to describe themselves and encouraged them to define a moral conflict and discuss, in their own terms, the actions they took and the decisions they made in the moral conflict. The interviewer explored the students' use of moral language to understand how they interpreted and resolved the conflict.

In each interview, the interviewer made the same introductory remarks and asked the same questions.<sup>122</sup> The interviewer read the following to the student:

I want to know your own thoughts and feelings—not what you think I or the legal system would expect you to say. Please do not discuss the specifics of the interview with anyone.

Section I: General moral orientation

1. How would you describe yourself to yourself?
2. Does this describe you in a way that you know it's really you?
3. Has your decision to come to law school changed the way you think about yourself?
4. How? In what way?

Section II: Real-life dilemma

1. Have you ever been in a situation of moral conflict where you had to make a decision but weren't sure what was the right thing to do?
2. Could you describe the situation?
3. What were the conflicts for you in the situation?
4. Why was it a conflict?
5. What did you do?
6. Do you think it was the right thing to do?
7. How do you know?

## E. SAMPLING PROCEDURE AND DATA ANALYSIS

The sampling procedure for both the Sentence Completion Test and the Interview followed standard research practice.<sup>123</sup>

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121. *E.g.*, GUIDE, *supra* note 59.

122. Interviewees also were asked to respond to a legal hypothetical, but these responses were not data for this study.

123. The sampling procedure for the Sentence Completion Test was as follows: Immediately preceding their first formal class session, the entire incoming class was given a written instrument packet. This packet contained a consent letter, a demographic information sheet, and the sentence completion test. In the 32d week of their first year, the entire class was given the written instrument packet again. The identification numbers of the completed written

The data was analyzed in a two-step process. This researcher first reduced the data, interpreting the content and representing it empirically, for both the Sentence Completions and the Interview. The second step was to statistically analyze the data.

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instruments were matched. From this population, a stratified random sampling of 200 responses, 20 men and 20 women from each of the five sections, was selected to be scored and analyzed.

The sampling procedure for the interviews was as follows: Thirty randomly selected students, three women and three men from each of the five sections, were interviewed during their first week of classes. Of the 397 completed consent forms, 30 were chosen at random, holding the section and gender constant. The researcher telephoned each potential interviewee and requested a half-hour interview. The researcher did not inform the potential interviewee of the research variables being investigated, even when asked. The researcher did inform the potential interviewee that the interview could be stopped at any point if there was any discomfort with the questions asked. Only two potential interviewees did not consent to be interviewed and two alternates were randomly chosen from the population, now reduced to the gender and section of the person refusing. The students were informed that they would be interviewed again near the end of the first year of school. During the 32d week of class, the students were contacted again. All were available and met with the researcher or the trained research assistant.

The sentence completion test was administered as follows: All incoming students were in five lecture rooms and simultaneously received the written instrument packet containing a consent letter, a demographic questionnaire, and the sentence completion test. In each room this statement was read: "Research is being conducted on the incoming class at Temple Law School during the year 1989-90. I will be handing out a packet of information for you to complete. Additional data will be collected near the end of your first year of school. The researcher thanks you for your participation." No further information was given. Upon completion, the written instrument packets were collected. The consent letter informed participants that Temple University School of Law had agreed to take part in a research project examining the impact of the first year of legal training on law students. It made clear that data would be collected again in the spring of 1990. The last four digits of each student's Social Security number, which is non-identifiable information, would be the means of matching responses. Confidentiality was assured. The letter also indicated that participants would be chosen at random and contacted to be interviewed, and that participation was not mandatory. During the 32d week of school, the sentence completion test was readministered to the first-year class. At the readministration, the class was told: "This represents the completion of the written data collection for the research conducted on this year's incoming class. Your time and attention has been very much appreciated. Upon completion, results of the study will be made available to anyone who so wishes." No further information was given.

The students were interviewed in half-hour time slots during the first and second week of classes, and again during the 33d and 34th week. Each interview was taped and transcribed in order to code and score it.

### 1. Data Reduction of the Sentence Completion Test

The coders used a scoring system advanced by Rogers to measure rights and care orientations in students' responses to selected sentence stems.<sup>124</sup> Rogers's scoring system builds on recent breakthroughs in gender difference research.<sup>125</sup> Some methods of coding responses to evaluate the rights and the care perspective regard the two as mutually exclusive or dichotomous categories.<sup>126</sup> Rogers's scoring system, however, assumes that the orientations are independent. Each perspective is a way to frame and solve moral problems. Individuals have a tendency to focus on one orientation and minimize the other.

Because the Sentence Completion Test is a projective test, concepts such as should, ought, right, wrong, and care, or rules and notions such as love, connectedness, independence, and role-relatedness can be inferred from the stems and expressed in the responses to the stems. The scoring system identifies, for each stem, rights-oriented and care-oriented projections by interpreting how a response reflects a view of relationships and moral concerns from each perspective. Stems are scored either "C" for care-oriented responses; "R" for rights-oriented responses; "C/R" for both care and rights; and "U" for unscorable responses that reflect neither care nor rights, and for non-responses. The coders did not consider the students' gender, age, or race. The study calculated intercoder reliability as a percent agreement.<sup>127</sup>

Consider the following sample stem and responses from the study: "My conscience bothers me if . . ."; a care-oriented student responded ". . . I don't control my temper and I end up hurting someone close to me." In contrast, a rights-oriented student completed the sentence with ". . . I do something I know is not right or if I have allowed something that goes against my values to take place without my intervening." A student who used both the rights and care perspectives responded ". . . I lie or am disrespectful to someone that I care about." Finally, a response that revealed no moral concerns at

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124. Rogers, *supra* note 118.

125. Rogers's scoring system builds on work by Johnston, *supra* note 55, and Gilligan & Attanucci, *supra* note 51.

126. Lyons, *supra* note 53, at 22-23; S. Walker et al., *Moral Stages and Moral Orientations in Real-Life and Hypothetical Dilemmas*, 58 *CHILD DEVEL.* 842, 845 (1987).

127. For the purposes of intercoder reliability, two coders were used. The level of intercoder reliability was very high; there was an agreement of 95.4% across 30 randomly selected samples.



all was "... if I spend too much money."<sup>128</sup>

## 2. Data Reduction of the Research Interview

This researcher interpreted the interviews according to the most recent method of reading interview text for moral orientation.<sup>129</sup> The interview was read four times by coders who were blind to the gender, age, and race of the participant. During the first reading, the focus was on the story line. The goal was to understand the narrator's tale—the story as it was told. During the second reading, the focus was on the narrator's voice, in particular, on instances in which the interviewees used the word "I" in relation to their moral concerns.

During the third reading, the reader listened for the logic of care thinking and identified key sentences which represented care orientation. The reader thus listened for instances in which the interviewee articulated concepts such as shared responsibility, knowing another well, and attending and responding to need.

The fourth time, the reader looked for examples of rights thinking and identified key sentences which represented the presence of rights-oriented analysis. The reader thus focused on concepts such as reciprocity, putting oneself in another's place, justified punishment, and earned reward. Like the Sentence Completion Test scoring process, this interpretive system assumes that the orientations are independent categories.

This researcher and a second coder then scored the interviews according to the degree of rights and care thinking present in the moral reasoning process.<sup>130</sup>

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128. See *infra* part III.A.1.a (describing the care logic upon which the analysis is based); *infra* part III.A.2.a (describing the rights logic upon which the analysis is based).

129. GUIDE, *supra* note 59.

130. The scoring procedure was developed by Gilligan and Attanucci in their study of 80 adolescents and young adults. Gilligan & Attanucci, *supra* note 51, at 79. Under this procedure, a real-life moral dilemma consisting of only care or rights considerations is labeled care only or rights only, while a dilemma consisting of 75% or more care or rights considerations is labeled care focus or rights focus, respectively. *Id.* A dilemma in which both considerations are present but neither orientation accounts for 75% of the codable considerations is placed in the care-rights category. *Id.* Thus, dilemmas are described as focused only when more than 75% of the considerations fall into one mode. *Id.*

Intercoder reliability for the two independent coders was calculated as a percent agreement. The second coder scored a random sample of ten interviews for the purposes of intercoder reliability. Both coders were blind to gender, age, and race of participants. The two codings achieved a high level of

### 3. Statistical Analysis

The research questions dictated procedures for analyzing data.<sup>131</sup> The study used descriptive statistics for analyzing demographic data.

## III. FINDINGS

The study analyzed the relationships that exist among three variables: gender, moral orientation, and the first year of legal education. This Part describes the study's findings as they relate to each of the six questions, then explains the findings' implications for legal education.

### A. RESEARCH FINDINGS

#### 1. Question One

*Is there a significant difference in the care orientation of women and men at the beginning of their first year of law school?*

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reliability. The range of agreement across the ten randomly selected interviews was 80 to 95%, while the mean agreement was 89.5%.

131. The study statistically analyzed the responses to the six questions in each of the following ways (for the text of the questions, see *supra* part II.A.): To answer question one (about the care orientations of women and men entering law school) using sentence completion test data, a two-tailed t test was used. (A t test is used to determine whether the sample mean qualifies as a probable or an improbable outcome. Each statistical test—the t test, ANOVA, and chi-square—is used to determine the degree to which these results are meaningful. In doing so, the tests determine the probability that the outcome could be a chance occurrence.). To answer this question using interview data, a chi-square test was used. See *supra* note 109 (describing chi-square test).

To answer question two (about the rights orientations of men and women entering law school) using sentence completion test data, a two-tailed t test was used. To answer this question using interview data, a chi-square test was used.

To answer question three (about whether the students' care orientations changed during the first year of law school) using sentence completion test data, a 2 x 2 mixed analysis of variance (ANOVA) was used. (ANOVA is a statistical method for making simultaneous comparisons between two or more means.).

To answer question four (about whether the students' rights orientations changed during the first year of law school) using sentence completion test data, a 2 x 2 mixed ANOVA was used.

To answer question five (about whether the first year of law school has a significant effect on the care orientation of women and men) using sentence completion test data, a 2 x 2 mixed ANOVA was used. To answer this question using interview data, a chi-square test was used.

To answer question six (about whether the first year of law school has a significant effect on the rights orientation of women and men) using sentence completion test data, a 2 x 2 mixed ANOVA was used. To answer this question using interview data, a chi-square test was used.

The study answered this question affirmatively. The Sentence Completion Test data<sup>132</sup> showed a significant difference in care orientation between women and men entering law school.<sup>133</sup> Similarly, the Interview data showed a significant association between gender and moral orientation. Both tests indicated that, upon entering law school, women were more likely to respond to moral dilemmas with a care perspective.<sup>134</sup>

a. *Sentence Completion Test Data Interpreted for Care*

At the beginning of the school year, significantly more women than men used care logic in their sentence stem completions. In response to stems about people who are alone or in trouble, care-oriented thinkers wrote about helping, protecting, or understanding needs.<sup>135</sup> In response to stems that referred to family or friends, care-oriented responses reflected the satisfaction that these relationships bring, as well as the love and

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132. Care scores and rights scores for all sentence completion test analyses were percentage scores, not raw scores. The percentage care score was the ratio of raw care score to total scorable responses. The percentage rights score was the ratio of raw rights score to total scorable responses. The study used percentage scores due to the confounding nature of the unscorable responses. Unscorable responses are those that were neither rights nor care responses, as well as those that were left unanswered. On the first application of the sentence completion test, 36% of the overall responses were unscorable. On the second application, 45% were unscorable.

133. The study computed the means and standard deviations of responses to the 19 sentence stems. The mean care score for women was 57; for men, it was 40. A two-tailed t test was used to examine differences between men and women in care orientation. The result showed a significant effect for gender ( $t(1, 198) = 8.18, p < .0001$ ). This indicated that in the sample of students entering law school, women tended toward a moral orientation of care more than men did.

134. The significance of this finding was the relationship between moral orientation and gender. Both women and men presented dilemmas in the care-rights category, but the care focus was more likely to occur in the real-life moral dilemmas of women at the beginning of the first year of law school, and the rights focus more likely to occur in the real-life moral dilemmas of men at the beginning of law school. The test for statistical significance with the interview data at the beginning of the year yielded a chi-square ( $2, N = 30 = 9.90, p < .01$ ).

135. Representative sentence stems about people alone or in trouble followed by representative care responses of students in this study include:

"When a child will not join in group activities . . .":

"He should be encouraged to do so."

"I would support the child and then ease him into the group."

"When people are helpless . . .":

"I try to help."

"I try to show them I care."

"They need support to become self-sufficient and self-reliant."

patience that they require.<sup>136</sup> In response to stems about self, care-oriented responders described qualities that support relationships, taking care of oneself, taking care of others, and taking pride in the ability to form or enhance relationships.<sup>137</sup> In response to stems about moral dilemmas, care thinkers objected to behavior that interfered with relationships.<sup>138</sup>

The Sentence Completion Test revealed a significant gender difference in care orientation and indicated that connectedness and responsibility to others were predominant themes in women's personal perspectives before they entered law school. The research indicated that this perspective was present in men's thinking as well, but was significantly less important to men's moral decision making than to women's.

#### b. *Interview Data Interpreted for Care*

The Real-Life Moral Conflict and Choice Interview provided another opportunity to evaluate the students' perception of moral problem solving. At the beginning of the first year of law school, fourteen of the fifteen women interviewed and five of the fifteen men interviewed used care logic as they described the conflict they experienced and the choice they made. Ac-

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136. Representative sentence stems about family and friends followed by representative care responses of students in this study include:

"Raising a family . . .":

*"Is one of the joys of life."*

*"Takes planning, patience, and great understanding."*

*"Though difficult, is very rewarding."*

"Being with other people . . .":

*"Is what life is all about."*

*"That I like and am comfortable with is one of the best ways to spend my time."*

137. Representative sentence stems about self followed by representative care responses of students in this study include:

"The thing I like about myself is . . .":

*"My ability to get along with other people."*

*"My ability to reach out and help others."*

"I am . . .":

*"A caring person."*

*"A good listener."*

138. Representative sentence stems about moral dilemmas followed by representative care responses of students in this study include:

"What gets me into trouble is . . .":

*"Putting my foot in my mouth by telling people what I really feel."*

*"My impatience with others' lack of concern."*

*"When I act selfishly."*

"My conscience bothers me if . . .":

*"I hurt someone's feelings."*

*"My behavior is offensive."*

cording to *The Guide to Reading Narratives of Conflict and Choice for Self and Moral Voice*, "A person framing a moral dilemma from the care orientation tends to focus on the specifics of the situation and attend to the particular needs of others involved in the conflict."<sup>139</sup> The students experienced conflicts when they had to choose between a principle in which they believed and another individual's welfare.

The following excerpts from women's interviews at the beginning of the school year illustrate the care construction, as reflected by a conflict between a principle or a duty and concern for another's well-being in a discussion about cheating:

I felt I ought to tell (the person) something, but I didn't want to affect the friendship.

I know that I'm not being fair but I don't want to hurt him.

I had to hurt some people but it was for my own survival.

I had to decide between "Do I do what's right?" or "Do I protect myself and the people around me?"

The following excerpts from men's interviews at the beginning of law school illustrate the care perspective:

I guess the teacher was placing an obligation on us but I didn't want to lose the person as a friend.

I knew I was going to hurt a friend but what he did was really wrong.

I chose not to tell because I felt at the time it would have hurt him too much.

These interviewees were concerned about harming someone else, a relationship, or themselves. The principles that each student had been taught to follow no longer provided them with the "right" answer. Therefore, they needed to reassess the rule. One student, for example, articulated her concern that each of the two options available, cheating and helping a friend, or not cheating and not helping a friend, was disagreeable:

I ended up not giving her my work, but explaining how I went about it . . . . It would have been more "right" to say, "Go do it yourself," but I had another interest; I didn't want to jeopardize the friendship. I'd say it wasn't exactly right, but it wasn't exactly wrong.

This student knew that the "right" decision, vindicating the principle that cheating was wrong, would not resolve the problem. Yet she still did not want to hurt a friend.<sup>140</sup> Her

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139. GUIDE, *supra* note 59, at 95.

140. This student's response comports with Gilligan's definition of moral maturity as seeing in at least two ways and speaking in at least two languages. See GILLIGAN, *supra* note 4, at 173-74.

struggle shows how she acknowledged both principled and care-oriented concerns. She ended up neither giving her friend the paper nor denying the relationship; thus her final decision was a third alternative, her own resolution to the tension between fairness and care.

Lyons points out that a care thinker evaluates a moral choice in terms of whether a relationship is maintained.<sup>141</sup> The care-oriented students expressed this perspective when asked, "How did you know it was the right thing to do?" Some of the responses included:

Because otherwise it would have made matters [a situation involving subject, mother, and sister] worse and they would have ended up not talking.

Because nobody ended up hurt.

Because you have to expend your energy building relationships, not destroying them.

The responses to Question One are significant because they show that both female and male adults have access to the distinctive logic of a care orientation, a result consistent with Gilligan's hypothesis. These results also show that women are significantly more likely to interpret their experience and make moral choices from a care-oriented perspective. In addition, these findings underline the necessity of using male and female samples when developing theories about men and women. Single gender samples furnish incomplete data.

Furthermore, the answer to Question One reveals yet another reason that Kohlberg's model, in which care reasoning is a substage in the sequence of moral development,<sup>142</sup> is inadequate. In 1969, Kohlberg and Kramer stated that relational thinking may be functional for housewives and mothers, but not for "businessmen and professionals."<sup>143</sup> All of the female students in this study were college-educated adults about to enter a professional school. Because relational thinking is only midway in Kohlberg's linear progression to mature moral reasoning, the presence of a care perspective in this sample lends additional weight to the claim of gender bias in Kohlberg's model. At the same time, this finding supports Gilligan's posi-

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141. Nona P. Lyons, *Listening to Voices We Have Not Heard: Emma Willard Girls' Ideas about Self, Relationships, and Morality*, in CAROL GILLIGAN ET AL., *MAKING CONNECTIONS: THE RELATIONAL WORLDS OF ADOLESCENT GIRLS AT EMMA WILLARD SCHOOL* 30, 31-32 (1989).

142. KOHLBERG, *supra* note 20.

143. Kohlberg & Kramer, *supra* note 26, at 108.

tion that mature reasoning is the ability to interpret from both perspectives.

This finding suggests a new and fertile area of research. No other studies have examined the population of women entering law school and explored gender differences in perspective and experience. This absence was not surprising before 1980 because law school populations were predominantly male. In this decade, however, inquiry into the experience of women in law school continues to be minimal.

The study's answer to Question One reveals that women who chose to come to Temple University School of Law in 1989 reasoned predominantly from a perspective concerned with connectedness, preventing harm, maintaining relationships, and responding to need. The research also suggests that women entering law school are much more likely to employ a relational moral decision-making model than men. As these are preliminary findings in this area of research, further investigation is warranted.

## 2. Question Two

*Is there a significant difference in the rights orientation of women and men at the beginning of their first year of law school?*

The study also answered this question affirmatively. The analysis of the Sentence Completion Test data demonstrated a significant difference in rights orientation between women and men entering law school.<sup>144</sup> The Interview data also revealed a significant association between gender and rights-based moral orientation. Before their first year of law school, the male students were more likely than the female students to associate moral conflicts with rights.<sup>145</sup>

### a. *Sentence Completion Test Data Interpreted for Rights*

At the beginning of the school year, significantly more men than women used rights logic in their sentence stem completions. In response to stems about people alone or in trouble, rights-oriented thinkers were more likely to look for reasons to

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144. Means and standard deviations of responses to the 19 sentence stems were computed. The women's mean rights score was 44.38; the men's was 61.88. A two-tailed t test was used to examine the differences between women and men in rights orientation. The result showed a significant effect for gender ( $t(1, 198) = -8.44, p < .0001$ ). This indicated that in the sample of students entering law school, men tended toward a moral orientation of rights more than did women.

145. See *supra* note 134.

explain the situation, emphasize that people should help themselves or seek help, cite a duty or obligation to help, and assert that people have a right to be alone or may even prefer being alone.<sup>146</sup> In response to stems that referred to family or friends, rights-oriented responses reflected concern with role relationships and a duty or obligation to others.<sup>147</sup> In response to stems about self, rights responders noted the values of individuality and independence, fairness and objectivity, accomplishments, ambitions, principles, personal beliefs, and freedom from the influence of others.<sup>148</sup> In response to stems about moral dilemmas, rights thinkers objected to people who broke rules or standards and criticized behavior that interfered with personal achievement.<sup>149</sup>

The Sentence Completion Test measured a significant gender difference in rights orientation and indicated that separateness, objectivity, and fairness were predominant in men's

146. Representative sentence stems about people alone or in trouble followed by representative rights responses of students in this study include:

"When a child will not join in group activities . . .":

*"There is usually an underlying cause and I try to find out the reasons why."*

*"It is the child's choice, he doesn't need to participate if he doesn't want to."*

"When people are helpless . . .":

*"Society must step in and assist in rectifying some of their problems."*

*"There should be resources to help them help themselves."*

147. Representative sentence stems about family and friends followed by representative rights responses of students in this study include:

"Raising a family . . .":

*"Is one of the most important contributions that we can make to society."*

*"Is my greatest accomplishment."*

"Being with other people . . .":

*"Is the way I learn more about myself."*

*"Is fundamental to the development of one's character."*

148. Representative sentence stems about self followed by representative rights responses of students in this study include:

"The thing I like about myself . . .":

*"I am a hard worker and an independent thinker."*

*"My intelligence and drive for success."*

"I am . . .":

*"Striving to reach my potential as a human being."*

*"A young woman with determination, high aspirations, and good values."*

149. Representative sentence stems about moral dilemmas followed by representative rights responses of students in this study include:

"What gets me in trouble is . . .":

*"My tenacity to pursue what I believe is correct."*

*"When I ignore my responsibilities."*

"My conscience bothers me if . . .":

*"I don't work up to my capabilities."*

*"I lie or go against my values."*



personal perspectives before entering law school. These qualities were present in women's thinking as well but were significantly less important to women than to men.

b. *Interview Data Interpreted for Rights*

The Real-Life Moral Conflict and Choice Interview provided additional data on gender difference in problem construction and resolution. At the beginning of the first year of law school, ten of the fifteen men interviewed, but only one of the fifteen women interviewed, perceived moral conflict as an issue involving rights or justice considerations. This demonstrates that men who chose to come to Temple University School of Law in 1989 viewed themselves and their relationships with others predominantly from a rights perspective. That is, the men tended to resolve conflicts by appealing to equity and fairness, by respecting autonomy, and by assuming that each individual possesses preordained rights.

Kohlberg's model provides a traditional description of that perspective:

Justice is not a rule or a set of rules; it is a moral principle. By a moral principle we mean a mode of choosing which is universal, a rule of choosing which we want all people to adopt always in all situations . . . . A moral principle is a principle for resolving competing claims, you versus me, you versus a third person. There is only one principled basis for resolving claims: justice or equality. Treat every man's claim impartially regardless of the man.<sup>150</sup>

Students who approached moral decisions from a rights orientation resolved moral conflicts by weighing competing claims and assessing the comparative weight of the negative and positive consequences. A person framing a moral dilemma from the rights orientation tends to adopt an impartial standpoint.<sup>151</sup>

The following excerpts from men's interviews at the beginning of the school year illustrate the rights-oriented construction of competing claims:

The question was whether to steal from a store. I wanted [the item] but I just thought I was never one to steal and I figured "Why should I start now?"

I felt a moral obligation to return it balanced against wanting to have it in my pocket.

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150. Lawrence Kohlberg, *Education for Justice: A Modern Statement of the Platonic View*, in MORAL EDUCATION 57, 69-70 (Nancy Sizer & Theodore R. Sizer eds., 1970).

151. Lawrence Blum, *Particularity and Responsiveness*, in THE EMERGENCE OF MORALITY IN YOUNG CHILDREN 306, 321 (Jerome Kagan & Sharon Lamb eds., 1987).

I internalized this as a test. You end up daring people to tease you about a decision you make. In that way you also prove to yourself your ability to stand up to other people and do what's right.

I don't like lying to friends because I wouldn't want them to lie to me.

An excerpt from one woman's interview at the beginning of the school year also illustrates the rights construction:

I had to decide whether to lie to my family and not be honest to myself or to be honest with myself and tell my family . . . . Honesty was a moral rule that I had been raised with and I believed was more significant.

Consistent with Lyons's research, these students showed a tendency to evaluate their decisions on the basis of whether they upheld their values, standards, or principles.<sup>152</sup> For example, the following statements were responses to the question "How did you know it was the right thing to do?":

It went against my own personal values.

It wouldn't have been proper to do anything else.

It was my obligation.

I wasn't entitled to it in the first place.

The data that this research generated in response to Question Two supports Gilligan's view that men are more likely to reason from a rights perspective. The finding that men are significantly more rights-oriented than women is similar to the findings of other important research.<sup>153</sup> Traditional moral development theory found rights reasoning to be the predominant perspective among the morally mature because traditional theorists used male subjects only. The study corroborates Gilligan's claim that a rights-oriented theory of moral development does not fully represent human experience because it does not reflect women's experience.

The significance of these findings is that they corroborate the general assumption that the thought processes that law school demands of students and that the general public expects of lawyers—a rights orientation—is aligned with the men who enter law school but not with the women. Epstein, in her sociological study of female lawyers, recognized that because white, middle-aged men were the demographic norm for so long in the profession, male gender characteristics shaped the lawyer mold and determined the substance of good lawyering.<sup>154</sup> As this

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152. Lyons, *supra* note 53, at 37-41.

153. Gilligan & Attanucci, *supra* note 51, at 79-81; Johnston, *supra* note 55, at 58-66; Lyons, *supra* note 141, at 64-69.

154. CYNTHIA F. EPSTEIN, WOMEN IN LAW 265-301 (1981).

finding shows, men who choose to go to law school reason from a perspective congruent with the assumed qualifications for the job. This research also shows that women choosing to go to law school are significantly less likely to exhibit the characteristics necessary for traditional lawyering.

The data collected from students before they began law school demonstrates that men and women emphasize qualities and values that reflect two different approaches to moral reasoning. Only recently have people, in evaluating the legal system, begun to think about qualities and values that are not associated with the male norm.<sup>155</sup>

### 3. Question Three

*Is there a significant change in the care orientation of students from the beginning to the end of the first year of law school?*

The study also answered this question affirmatively.<sup>156</sup> The Sentence Completion Test data showed a significant change over time. Students exhibited greater care orientation at the beginning of the first year of law school than at the end of the first year.<sup>157</sup>

The study assumed that care and rights thinking are not mutually exclusive perspectives. Studies conducted by Johnston<sup>158</sup> and Gilligan and Attanucci<sup>159</sup> showed that people use both moral perspectives but usually employ one perspective more than the other. In both studies, the researchers were concerned that context influenced the likelihood that subjects gave

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155. For the most comprehensive study to date that examines the relationship between moral orientation and lawyers' role-responsibilities, see JACK & JACK, *supra* note 63, at 95-129. Jack and Jack found four different ways female and male lawyers respond to the role demand of nonjudgmental loyalty. *Id.* They range from maximum role identification, where professional and personal morality coincide, to minimal role identification where professional and personal morality are in great conflict and cannot coexist. *Id.*; see also Frances Olsen, *The Sex of Law*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 453 (David Kairys ed., rev. ed. 1990) (discussing feminist strategies for attacking legal theory).

156. For a discussion of the implications of this finding for legal education, see *infra* part III.B.

157. An analysis of variance showed that a main effect for time emerged such that greater care orientation existed at the beginning of the first year of law school, as measured by the sentence completion test (mean = 48.44), than at the end of the first year, as measured by the same test (mean = 43.64) ( $F(1, 198) = 13.25, p < .0001$ ). This indicated that one year of law school education decreased care-oriented responses in the entire sample of students.

158. Johnston, *supra* note 55, at 60-66.

159. Gilligan & Attanucci, *supra* note 51, at 82-85.

care or rights responses.<sup>160</sup> Gilligan and Attanucci's research included a study of first-year medical students, a large number of whom could not or would not describe a moral dilemma.<sup>161</sup> This led the researchers to wonder whether the students' resistance to admitting uncertainty was influenced by what they perceived to be the medical community's values.<sup>162</sup>

Whether context influences students' moral decision making was one of this study's central concerns. The findings in response to Question Three that indicate that law students submerge a care orientation to align with the rights assumptions of law school support the notion that context bias is present. These findings suggest that further investigation into contexts which tend to silence a spontaneous voice of care would be useful.

The answers to Question Three confirm the findings of a study on legal education which concluded that law school does not incorporate the relational side of human nature. Thomas Shaffer and Robert Redmount's 1977 study on humanism in law school reported that almost all of the respondents were "problem-oriented" rather than "person-oriented" in their perception of case-study clients.<sup>163</sup> Shaffer and Redmount concluded that law school "avoids the opportunity to teach students what to do about their humane feelings."<sup>164</sup>

#### 4. Question Four

*Is there a significant change in the rights orientation of students from the beginning to the end of the first year of law school?*

The study answered Question Four affirmatively. The Sentence Completion Test data showed that among all students a rights orientation was significantly less pronounced at the beginning of the first year of law school than at the end.<sup>165</sup>

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160. *Id.* at 83; Johnston, *supra* note 55, at 60-61.

161. Gilligan & Attanucci, *supra* note 51, at 83.

162. *Id.*

163. THOMAS L. SHAFFER & ROBERT S. REDMOUNT, LAWYERS, LAW STUDENTS, AND PEOPLE 115 (1977).

164. *Id.* at 138-39.

165. An analysis of variance showed that a main effect for time emerged such that the measure of rights orientation was less at the beginning of the first year of law school, according to the sentence completion test (mean = 53.13), than it was at the end of the first year of law school, as measured by the same test (mean = 58.11) ( $F(1, 198) = 14.37, p < .0001$ ). The fourth research question was answered affirmatively. This indicated one year of law school education increased rights-oriented responses in the entire sample of students.

This finding is congruent with two comprehensive studies about law school teaching. The first study, a comprehensive survey of eight law schools, found virtual unanimity among students, faculty, and alumni that law school's primary goal was to teach students to "think like a lawyer."<sup>166</sup> The subjects of a second study, students at three law schools, reported that the skills actually taught in law school were finding and using law sources, knowing the legal steps and procedures to take in a case, analyzing legal documents, and careful legal writing.<sup>167</sup> The least-emphasized skills were determining client feelings and attitudes, finding and using social science and other nonlaw data, determining the likely personal or social effect of legal intervention, and formulating a client's problem in nonlegal terms.<sup>168</sup>

If the goal of law school is to teach students to think like lawyers, it is not surprising that a year of law school encourages responses that emphasize rules, objectives, and analytical fact-finding, because legal thinking is rights thinking. Law students are taught that people enter the legal system with certain preexistent rights, and that disputes between people are resolved by rationally analyzing the facts of the dispute against the background of those rights.

Law school also teaches students that rights must have boundaries. Boundaries explain the limits of individual freedom, thus protecting individuals from invasion by others. Further, law school teaches that rights are conceived as rules or principles that operate abstractly. Students are taught to identify or create situational categories in order to sharpen their ability to apply legal rules. The expression "learning to think like a lawyer" is therefore synonymous with "learning to think from a rights perspective."

Learning to "act like a lawyer" requires students to put rights thinking into practice. Law students are taught that the lawyer's role is to advocate their clients' rights. The adversary role requires lawyers to be emotionally neutral about their clients' positions but steadfastly loyal to their clients' causes.

Lawyers pay less attention to the effect that their clients' rights have on others than to their clients' ultimate success. Attorneys also are professionally required to ignore their per-

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166. Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 593 (1973).

167. SHAFFER & REDMOUNT, *supra* note 163, at 127.

168. *Id.*

sonal feelings about their clients' causes. What happens, however, when a lawyer's personal morality and professional responsibilities conflict? The system is structured such that when role requirements are incongruent with personal morality, lawyers must subordinate their personal sensibilities to their professional role.<sup>169</sup>

Law school also teaches problem-solving skills, fact analysis, and abstract reasoning. Students in the study who employed rights thinking at the beginning of the first year did so again at the end. In fact, their rights views were even stronger at the end of the first year.

## 5. Question Five

*Is there a significant difference between the care orientation of women and men at the end of their first year of law school?*

The Sentence Completion Test data revealed that the caring responses decreased overall after the first year of law school, but that the changes in the women and men were significantly different.<sup>170</sup> Women's caring responses decreased significantly, but the men's responses exhibited no significant shift. At the end of the first year of law school, there was no significant difference in the care orientations of women and men.

The Interview data from the end of the year also showed no significant relationship between gender and moral orientation.<sup>171</sup> Women shifted in the direction of a rights construction of real-life dilemmas, while the men exhibited no significant

169. See JACK & JACK, *supra* note 63, at 99-126.

170. Means and standard deviations on sentence stem response data were computed. The women's mean care score was 44.18; the men's was 43.09. An analysis of variance using care response scores resulted in a significant interaction between gender and time ( $F(1, 198) = 37.68, p < .0001$ ). Women demonstrated a greater caring orientation than men at the beginning of the first year of law school. The first year of law school produced changes in the caring responses of women and men that were significantly different. The women's caring responses decreased, while the men's did not shift significantly. A *t* test on women's mean care scores at the beginning and end of their first year showed the decrease to be significant (female care response means, time 1 = 57.09, time 2 = 44.18,  $t(198) = 6.16, p < .0001$ ). A *t* test on men's mean caring scores at the beginning and end of their first year showed no significance in the change (male care response means, time 1 = 39.79, time 2 = 43.09,  $t(198) = -1.47, p = .144$ ). Finally, a *t* test comparing men's and women's care orientation at time 2 also showed no significant difference ( $t(1, 198) = .49, p = .626$ ).

171. At the end of the first year, a test of the interview data for significance yielded chi-square (2,  $N = 30$ ) = 3.96,  $p < .10$ . As this finding did not meet the acceptable alpha level of .05, there was no association between gender and moral orientation according to the interview data.

shift.<sup>172</sup>

The decrease in care-oriented responses to the sentence stems indicated that at the end of the school year, fewer women emphasized the needs of others, their own need to stay connected to others, joy and satisfaction in relationships, and knowledge and understanding of another's particular concerns. The Interview data indicated that the care/rights distribution shifted from nine women perceiving and resolving their real-life dilemmas from a care perspective to seven women perceiving and resolving their dilemmas from a care perspective.

The finding from the Question Five data is congruent with Jack and Jack's study that analyzed interview data from eighteen female attorneys.<sup>173</sup> They found that a majority of their subjects isolated their personal characteristics that were incompatible with the role of a lawyer and guarded against the resulting emotional struggle in one of two ways. Women in one group denied the conflict, subordinating their personal lives to their careers, and, for the most part, disavowing their emotional, relational selves.<sup>174</sup> The women in the other, larger group split their orientations so that their affectionate sides stayed at home and their stoic, detached sides came to the office.<sup>175</sup> The women used these defensive behaviors as protection against the anxiety caused by incompatibility.<sup>176</sup> They inevitably experienced disequilibrium and struggle.<sup>177</sup> Women in a third group hoped to reshape the lawyer's role and incorporate their caring responses into their work.<sup>178</sup>

In shifting from a predominantly care-oriented perspective to a predominantly rights-oriented perspective, the women in the study, were, like those in Jack and Jack's study, isolating the characteristics in themselves that were dissonant with the orientation of legal content and method. Although all first-year law students experience some degree of disequilibrium and anxiety, the emotional dissonance is likely to be far greater for students (mostly female) who have a care perspective, yet

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172. Among the women, there were two fewer interviews in the care focus category, one fewer in the care-rights category, and an increase of three in the rights focus category. Among the men, there was an increase of one in the care-rights category and a decrease of one in the rights category.

173. JACK & JACK, *supra* note 63, at 130-55.

174. *Id.* at 137-44.

175. *Id.* at 144-49.

176. *Id.*

177. *Id.*

178. This type of woman, however, was rare. Only two of 18 adopted this strategy. *Id.* at 149-55.

are forced to accommodate to the gendered structure of legal education. This is particularly true if the structure, in turn, does not meet their emotional needs.

One solution for the anxiety engendered by incompatible internal and external structures would be to attempt to influence the external structure. This would require care-oriented law students to challenge gender bias, identify female norms, and call for the profession to include female norms. The Question Five finding does not show, however, that the women in the first-year class are confronting institutional values. Rather, it seems that the perspective they brought to law school was submerged or denied within the traditional male perspective.<sup>179</sup>

The Question Five finding also provides a preliminary and disturbing response to the question feminist jurists have been asking: Will women transform the legal profession or will there just be more female lawyers?<sup>180</sup> The study demonstrates that, despite the enormous increase in the numbers of women entering law school, after one year of study, the care perspective is not significantly more prevalent in women than in men. It may be that the pressure on law students to conform, and the anxiety students face in advocating change in a firmly entrenched structure, has minimized some of the differences in perspective that previously existed.

This analysis also suggests that the responses of male students were consistent.<sup>181</sup> This finding is congruent with Jack and Jack's study of lawyers' moral perspective.<sup>182</sup> Jack and Jack's interviewers asked subjects to provide general self descriptions, relate real-life professional dilemmas, and respond to legal hypotheticals.<sup>183</sup> The legal hypotheticals were created to examine conflict between professional rules and harm to individuals.<sup>184</sup> The women were predominantly care-oriented in the general interview but shifted toward an expression of rights concerns as the demands of their role as lawyers came into conflict with their personal perspective.<sup>185</sup> Conversely, the men

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179. This core concern is discussed further in part IV. For the discussion of the implications of this research for legal education, see *infra* part III.B.

180. See Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39, 62 (1985).

181. The change in men's perspective was in the direction of increased care response but was insignificant, and thus could have happened by chance.

182. JACK & JACK, *supra* note 63, at 52-94.

183. *Id.* at 53.

184. *Id.* at 55.

185. *Id.*



expressed care and rights perspectives relatively consistently.<sup>186</sup> Jack and Jack hypothesized that the male subjects' congruence of personal and professional moral perspectives contributed to minimal emotional anxiety and allowed them to express their full range of responses.<sup>187</sup> Anecdotal evidence confirms the finding; a few individuals in this study reported that after a year in law school, "the women still seem harassed, while the men loosen up."

## 6. Question Six

*Is there a significant difference between the rights orientation of women and men at the end of their first year of law school?*

The sentence completion data revealed that after the first year of law school, rights responses increased for the sample as a whole, but that the increase in the women's rights responses was significant, whereas the men's responses exhibited no significant shift.<sup>188</sup> At the end of the first year there was no significant difference between the rights orientations of women and men.

The Interview data also revealed no significant association between gender and moral orientation at the end of the year, although the women's distribution shifted in the direction of a rights construction in real-life dilemmas.<sup>189</sup>

The significant increase in rights-oriented responses to the sentence stems indicated that at the end of the school year women were less likely to be oriented to the interconnectedness of others. They also were more likely to regard individuals as sep-

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186. *Id.* at 55.

187. *Id.*

188. Means and standard deviations on sentence stem response data were computed. The women's mean rights score was 57.58; the men's was 58.64. An analysis of variance using rights scores showed a significant interaction between gender and time ( $F(1, 198) = 39.16, p < .0001$ ). Men were more rights-oriented than women at the beginning of the first year of law school. The first year, during which the rights responses of the sample as a whole increased, resulted in significantly different changes in the female and male groups. Women's rights responses increased, while men's decreased. A *t* test on women's rights responses, comparing mean scores at the beginning of the first year with those at the end, showed that the increase was significant (women's rights response means, time 1 = 44.38, time 2 = 57.58,  $t(198) = -6.40, p < .0001$ ). A *t* test on men's rights responses, also comparing beginning and end mean scores, showed no significance in the decrease (men's rights response means, time 1 = 61.88, time 2 = 58.64,  $t(198) = 1.46, p = .145$ ). Finally, a *t* test comparing rights orientation means of men and women at time 2 also resulted in no significant difference ( $t(1, 198) = -.48, p = .631$ ).

189. See *supra* note 172 and accompanying text.

arate entities. In addition, women were more likely to rely on principles for conflict resolution and to seek reasons for particular behaviors. The Interview data, as mentioned above, indicated that females shifted in the direction of increased rights construction.

The study's results prompted a colleague to inquire, "What's the surprise? They go in like women and come out like lawyers." Until fifteen years ago, law schools, including Temple, were largely male-dominated institutions. Traditional legal education incorporates norms, upholds rules, and reinforces a way of thinking that is primarily associated with a rights perspective.

Women enter law school less rights-oriented than men and, after one year of law school, significantly increase their use of rights thinking. This finding implies that many women are learning how to "talk like a (male) lawyer, think like a (male) lawyer, and act like a (male) lawyer."<sup>190</sup> This observation, in turn, implies that the legal profession still values male qualities more highly than female qualities. Were the legal profession not gender biased, all perspectives, emotional as well as rational, subjective as well as objective, would be accessible for problem solving.

#### B. RESEARCH IMPLICATIONS FOR LEGAL EDUCATION

The study's results have several implications for legal education. Gilligan has posited, in contrast to Kohlberg, that there are two dimensions to moral maturity. When individuals see themselves and others as different but connected, moral dilemmas are resolved by stepping into, not back from, the situation; by assessing need; and by taking action based on that knowledge.<sup>191</sup>

Gilligan also claims that the rights and care perspectives are not mutually exclusive.<sup>192</sup> Although both moral constructs are available to women and men, each gender tends to use one perspective predominantly. The important question for moral theorists, therefore, is not how women and men think, but *when* women and men use the different strategies of objective and relational reasoning.

The study also supports Gilligan's conclusions. Prior to entering the first year of law school, the students' gender and

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190. JACK & JACK, *supra* note 63, at 136.

191. Lyons, *supra* note 141, at 42.

192. See *supra* text accompanying notes 56-61.

moral orientations tended to be linked. Both women and men expressed distinct patterns of reasoning; women predominantly focused on care while men predominantly focused on rights.

The results also emphasized the significant effect law school had on women by highlighting their shift toward a rights orientation after one year of law school. The shift appears to be a response to the tension between conflicting professional and personal moral orientations. The possibility exists, as Jack and Jack hypothesized,<sup>193</sup> that the male students' role expectations were congruent with their personal views, thus minimizing tension and allowing an authentic expression of their feelings.

Women's care orientation is a new perspective in law schools, and one which the schools have, the study suggests, ignored. The challenge for legal education is to recognize the validity of care orientation and *value* the moral decision-making process generally associated with women. Is the adversarial model the only route to dispute resolution? Is a highly competitive learning environment the best way to educate students? Would law schools serve their purposes better by integrating a perspective of responsiveness? Why is there resistance to including the full range of mature moral sensibility and personal judgment in legal training?

The integration of care and rights thinking requires educators to change the traditional structure of legal education, not just assimilate women within the existing structure. Those in power must be willing to integrate competing perspectives. A growing number of legal scholars are questioning how and when legal education will reject the sexual discrimination between the putative dualisms of human behavior—i.e., thinking and feeling, objectivity and subjectivity, reason and emotion. Frances Olsen, in her essay on feminist jurisprudence strategies, recognized that sometimes “[i]t is rational to be irrational and objectivity is necessarily subjective.”<sup>194</sup> She also explained that, while the law has been dominated by men, the legal system has obscured, but not eliminated, traits associated with women.<sup>195</sup> In practice, law “is as irrational, subjective, concrete, and contextualized as it is rational, objective, abstract, and principled.”<sup>196</sup>

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193. JACK & JACK, *supra* note 63, at 55.

194. Olsen, *supra* note 155, at 459.

195. *Id.* at 462.

196. *Id.*

Feminist critics of law school education seek changes in content, teaching style, and relationships within the law school. Carrie Menkel-Meadow, in her informative account of the feminist critique of legal education, insists that a case such as *Roe v. Wade* is not an "abstract discussion of the autonomous logical development of the constitutional right of privacy, but a specific sociopolitical and human story that affects real women."<sup>197</sup> From a care perspective, therefore, law should consider real human experience in analyzing case context.

Law professors Michael Burns,<sup>198</sup> Kenneth Karst,<sup>199</sup> and Catherine Hantzis<sup>200</sup> echoed Menkel-Meadow's criticism. "Contextual morality," declares Burns, "can be translated into law without violating the 'rule of law.'"<sup>201</sup> Karst asserts that contextual facts must be "legally irrelevant but morally central" if we are to "widen inquiry, redefine issues, [and] expand the range of possible solutions."<sup>202</sup> The ability to explore new avenues of inquiry is the essence of creativity, both legal and nonlegal.<sup>203</sup>

Integrating a perspective of care also explodes the notion that student-teacher relationships must be hierarchical, formal, distant, and authoritarian in order to be effective. Genuine classroom dialogue that includes feelings and feedback, not just disembodied facts and intimidating probes, would likely "broaden the quality and type[s] of responses to legal problems."<sup>204</sup> Further, feminists advocate a classroom structure that supports shared leadership, risk-taking, trust, and cooperation.

As long as law school training aligns with objective neu-

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197. Menkel-Meadow, *supra* note 2, at 81.

198. Michael Burns, *The Law School as a Model for Community*, 10 NOVA L.J. 329, 379 (1986).

199. Kenneth L. Karst, *Woman's Constitution*, 1984 DUKE L.J. 447, 499.

200. Catherine Hantzis, *Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching*, 38 J. LEGAL EDUC. 155 (1988).

201. Burns, *supra* note 198, at 379.

202. Karst, *supra* note 199, at 499.

203. An indicator that legal education is beginning to seek models other than the win/lose courtroom battle of conflict resolution is the growing number of alternative dispute resolution courses in law school curriculums.

204. Menkel-Meadow, *supra* note 2, at 78. Menkel-Meadow looks at Gilligan's example of how Amy and Jake—the voice of care and the voice of rights—respond differently to the same dilemma. While Jake's response is the conventional objective response that is both expected and rewarded in traditional law school classrooms, Amy "fights the hypothetical," wanting to know more facts and even having the parties talk directly to one another, thus introducing another equally valid view of conflict resolution. *Id.*

trality, adversarial competition, and hierarchy, the care perspective will be excluded. Mainstream legal education, however, is not the only stream.<sup>205</sup> Legal education, educational theory, and developmental psychology are ships that pass in the night, but they carry the same cargo, points out professor Paul Wangarin, an advocate for dialogue between the disciplines of law and psychology.<sup>206</sup> Wangarin urges future researchers to evaluate law students in light of Gilligan's work.<sup>207</sup> This study is a step in that direction.

Jack and Jack's research provided evidence that "attorneys with a strong moral orientation of care will have the primary responsibility for instituting change" in the legal profession.<sup>208</sup> They found a correlation between care-oriented attorneys and women trying to reshape the traditional lawyer role.<sup>209</sup> There are few such attorneys, however, and, as this study demonstrated, law school education silences the care voice. Thus, the hope that women will shift the tide once they become practicing attorneys seems remote.

The most obvious effect of the study is to cast doubt on the assumption that the increasing number of female lawyers will change the legal profession. The movement toward morally responsible advocacy must *begin* in law school and with legal educators. Law schools train some of the brightest, most skilled, most ambitious, and most potentially influential citizens in society. The law school curriculum therefore must set the standard for its profession and for society at large. One scholar has urged:

We must train our students to deal with other human beings, to understand that when a client comes into a lawyer's office he is often in pain . . . . [W]e as teachers must let our students know that we value them, and not only for their intellectual abilities. For unless we, as lawyers, acknowledge and value the compassionate qualities within ourselves, we will be incapable of caring about the human needs of others.<sup>210</sup>

Women, for both cultural and psychological reasons, are the primary voice of the care perspective. The care perspective,

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205. See Paul Wangarin, *Objective, Multiplistic, and Relative Truth in Developmental Psychology and Legal Education*, 62 TUL. L. REV. 1237, 1240-41 (1988) (exploring the fundamental dispute between objective and relative truth in both psychology and legal education).

206. *Id.* at 1299.

207. *Id.*

208. JACK & JACK, *supra* note 63, at 157.

209. *Id.* at 157-58.

210. Burns, *supra* note 198, at 384.

however, is not exclusive to women, nor should it be perceived as such. The emotional cost of change is high. It creates ambiguity which, in turn, causes enormous anxiety—the fear of the unknown. However, the cost of resisting change is higher. Should legal education remain unchanged, the cost will go beyond psychological dissonance in the care-oriented student; it will extend to the profession, the client, and society.

#### IV. AREAS FOR FUTURE RESEARCH

Although these findings are restricted to one class of students at one large, urban law school, the results generate several important questions for future study. First, the study initiated research into the relationship among a moral orientation of rights, care, and legal education. As these findings are preliminary, further investigation of student populations at other schools is warranted. A study using students from more than one law school would broaden the range of data.

Second, the study suggests that female law students use coping strategies that influence their views of themselves and their relationships. Research that expands this finding could be useful in combatting the psychological effects of women's coping strategies.

The study also underscores the need to include women in all research on legal education. Research that is more than eight years old reflects nearly all-male samples. In addition, there is a need for more studies, or repeat studies, that take women's experiences as students in law school into account. A study that identifies the care-oriented incoming students and studies their experiences throughout the year would be particularly valuable. Such a study would identify factors that contribute to the shift to a rights orientation.

The study was not a longitudinal exploration of the three years of law school experience. The change that was measured took place after one year. What takes place after the second and third years of law school is still unknown; research on the effect of the second and third year is, as yet, unavailable.

#### CONCLUSION

This study found that after one year of law school, women are more likely to resolve moral dilemmas by a rights-oriented approach. In the study's sample, women and men revealed significantly different response patterns at the beginning of the year but showed no significant difference at the end of the year.

This was true for both sources of data, the Sentence Completion Test and the Real-Life Moral Conflict and Choice Interview.

Women enter law school predominantly oriented to the web of interpersonal relationships rather than to a hierarchy of abstract principles. However, after one year of learning about a structure that emphasizes rights and rules within a learning environment that is congruent with that content, women express their connectedness to others less frequently but their objectivity and separateness more frequently. Thus, female law students are "trained for hierarchy."<sup>211</sup>

The study showed that legal education is more aligned with the way men think than with the way women do and alters the way women think. The voice of rights and the voice of care are two complementary themes, both embracing truths about the human condition. Continued suppression of the voice of care will block the harmony of a fully human response.

An integrated legal education and practice can occur only if there is extensive dialogue between these two perspectives. This dialogue has already begun with the feminist critique of legal education. Feminist jurisprudence criticizes hierarchy and encourages law schools to include women's experiences and perspective. It also calls for legal educators to revise their assumptions about the legal system. Feminist scholars further insist that law schools refrain from ranking and sexualizing the dualisms of human experience. Continued investigation and exploration will extend the dialogue and encourage law schools to fulfill their missions and incorporate the resources of men and women.

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211. See Duncan Kennedy, *Legal Education as Training for Hierarchy*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 38, 38 (David Kairys ed., rev. ed. 1990) (asserting that law schools conduct "ideological training for willing service in the corporate welfare state").