

Frances J. Ranney:

Aristotle's Ethics and Legal Rhetoric. An Analysis of Language Beliefs and the Law

(Law, Justice and Power Series)

Aldershot & Burlington, VT: Ashgate, 2005

202 pages (appendix; bibliography; index)

ISBN: 0-7546-2541-9

Price: £55; \$99.95

Frances Ranney's *Aristotle's Ethics and Legal Rhetoric. An Analysis of Language Beliefs and the Law* treats an important subject in a thoughtful way. Ranney's goals are twofold, to contest modern legal perspectives and, in light of that critique, refresh legal inquiry by developing her own language-based approach. To those ends, she turns to Aristotle's philosophical and rhetorical works and to works on law by feminist writers, two seemingly contradictory sources that nevertheless share an emphasis on justice and ethics. Throughout the book, Ranney models and tests the theories she examines by applying them to one key case involving sexual harassment, *Carr v. Allison Gas Turbine Division* (text included in the Appendix). Thus, Ranney's study is not only about theorizing but also about finding a methodology with which to put ideas to work. By way of background, in 1994 Mary Carr sued Allison Gas Turbine, a division of General Motors, alleging sexual harassment by several male coworkers. GMC countered that Carr encouraged the males' behavior, a position supported by a female co-worker. However, GMC's arguing for 'welcome harassment' failed, and Carr won the case based on precedent set in the 1991 decision in *Ellison v. Brady*, a case defining 'the reasonable woman' as one whose situation exemplifies a hostile work environment.

Ranney divides *Aristotle's Ethics and Legal Rhetoric* into six chapters that discuss and test the theories she critiques as well as the one she offers in response. Chapter One, "Rhetoric, Law, Ethics, and Feminism" (pp. 1-18), introduces the legal theories under consideration. According to Ranney, in the modern history of the discipline, law was first conceptualized as a science of economics, then as an art of literature, and more recently also as a feminist practice. Ranney represents these three approaches to law with reference to the works of Richard Posner, James Boyd White, and Robin West, respectively. Because these writers have not, in Ranney's opinion, sufficiently clarified what the law is and how it should operate, she also turns both to the feminist writings of Martha Nussbaum and to the philosophical and rhetorical works of Aristotle. As Ranney explains, her study will cull the good from these various approaches and merge that good within her own language-based approach.

As its title indicates, Chapter Two, "The Things We Value: Theory, Practice, and Production" (pp. 19-52), lays out the three key methodological terms on which the study is based and which connects it to the discussion of law in Aristotle's *Nicomachean Ethics*. Thus, in *Nicomachean Ethics*, Book 6, Aristotle defines the five kinds of wisdom available to humans as well as the corresponding habits of mind that facilitate the acquisition of wisdom. Of the three sets of wisdom/habit that concern Ranney, *episteme* (theory) treats universal facts inductively and objectively, while *praxis* (practice) and *poiesis* (production) deal with variable matters in more subjective ways. According to Aristotle's definition (cf. *Nicomachean Ethics*, II.6.4 and VI.4, for example), *praxis* and *poiesis* both produce something by means of *phronesis*

(practical wisdom), but whereas *praxis* produces an activity, *poesis* produces an object. To pinpoint the difference between these two productive habits, Ranney considers a third Aristotelian kind of productive wisdom, namely *techne* (art). As Aristotle explains in the *Rhetoric*, (I.2.1; cf. *Nicomachean Ethics*, VI.4.3), a *techne* also produces objects through *phronesis*, but in contrast to *praxis* and *poiesis*, which produce something beyond themselves, the product of a *techne* is contained within itself. Thus the art of rhetoric, for example, produces speech out of words. Aristotle's *Rhetoric*, which is based on producing speeches rather than analyzing them, also offers Ranney a basis for defining rhetoric narrowly as "a conscious perspective on language that sees it as a means not of interpretation but of the production of a broad range of 'texts'" (p. 17). Having laid out these key terms, Ranney aligns them with modern legal theories. From the Law-and-Economics perspective, law functions like an *episteme* because of its inductive, objective, fact-based case method. Exemplified in Posner's work, this approach may be regarded as "an ethics of detachment" (p. 51). In contrast, from the Law-and-Literature perspective, Ranney suggests, law operates like a *praxis*: the empathetic, close textual readings characterize this approach as "an ethics of immersion" (p. 30). As an alternative to both economics and literature, Ranney's own approach is based on *techne*, understood in part in Aristotle's sense of the term and in part through its use in the works of literary scholar James Boyd White, constitutional scholar West, and Nussbaum. Ranney's approach not only interprets legal texts but also produces them; it operates, therefore, as an ethics of re-production.

Chapter Three, "The Things We Say: The Speculations of Legal Science" (pp. 53-81), deals with economic legal theory and practice. According to Posner, this economic approach is useless, because it aims solely at efficiency and wealth maximization. As Ranney sums up, with "its customary emphasis on customary currency, or current custom", an economic analysis "leads to a 'value-neutral' position on justice that is literally useless" (p. 79). In its focus on efficiency, Ranney suggests, Posner's theory is similar to Aristotle's notion of justice in Book V of *Nicomachean Ethics*, where wealth is associated with objective reciprocity rather than with deliberative usefulness. When Ranney applies Posner's theory to *Carr v. Allison Gas Turbine Division*, the result is hardly a detached, concrete, value-free analysis but one that is emotional, unpredictable, and opinionated. Because of these inconsistencies, the theory is insufficient to the task of identifying the 'reasonable woman', Ranney concludes (p. 71); at the same time, the Aristotelian notions of justice and usefulness, with which the theory can be associated, offer a way to improve the theory, based as it is on understanding law as an objective science.

In Chapter Four, "The Things We Do: The Activities of the Legal Imagination" (pp. 81-106), Ranney demonstrates how literary legal theory operates as a *praxis*. Guided by *phronesis*, this theory becomes one of action or, better yet, a process of translation based solely on the pre-existing text as well as the narrative associated with it. Applied to *Carr v. Allison Gas Turbine Division*, this empathic approach engages its user in lived cultural experiences, making that individual more human through the contact. Nonetheless, its operation is circular because it cannot get beyond the text that it interprets.

While the previous two chapters are critical and analytical, Chapter Five, "The Things We Make: The Productions of Legal Rhetoric" (pp. 107-135), offers Ranney's own, rhetorically re-productive method. Before using it to read *Carr v. Allison Gas Turbine Division*, Ranney recalls that rhetoric is conventionally associated with style, artifice, and *metis* (cunning) – or, in other words, with deception. Nevertheless, rhetoric as a *techne* also produces something useful. In order to better describe Aristotelian production, Ranney points to the fact that production is central to Aristotle's four causes (formal, material, efficient, and final) and that, taken together, the causes define an entity. In a *techne* such as rhetoric, form and matter are inseparable: rhetoric "is designed to infuse form [...] into the nebulous matter of language" (p. 49). Continuing and clarifying the discussion of *techne* offered in Chapter Two, Ranney here details how

rhetorical production contains the product in its own materials, by contrast to the extrinsic products of *praxis* or *poiesis*. Similarly associated with rhetorical production, classical *stasis* theory produces a verdict by asking a range of questions dealing with the fact, definition, quality, and jurisdiction of the given case. When Ranney applies *stasis* theory to *Carr v. Allison Gas Turbine Division*, she wishes to demonstrate that “rhetoric’s unique contribution is not the analysis of text but the means it provides for its production” (p. 123).

Having now read *Carr v. Allison Gas Turbine Division* from three perspectives, in Chapter Six, “Erring for Justice” (pp. 136-167), Ranney returns to and searches for the ‘reasonable woman’ in *Carr v. Allison Gas Turbine Division*. How do we find her, Ranney asks, and by whose standards do we judge her situation? Her own theory, Ranney claims, allows judges and attorneys to deal with “both the law’s language *and* the outcomes it produces” (p. 158). As a useful *techne*, the rhetorical approach to law thus embraces the other approaches within it, producing something new from them all.

The book is carefully carried out on several levels. First, Ranney’s historical discussion of ancient texts appropriately outlines the original contexts in which the authors wrote; at the same time, Ranney uses the historical information to inform contemporary theories clearly, acknowledging modern adaptations when necessary. For example, she dispels the notion that Aristotelian and feminist theories of law are antithetical by recognizing the contexts from which they emerged and pointing out what each has to offer to the current discussion. In addition to this methodological rigor, Ranney practices what she preaches by including theory, practice, and production in her own text. In this, she shows that scholars should not limit themselves to writing theoretically about legal issues but also contribute to legal decision-making. Finally, she exemplifies good scholarly habits by looking at practice from a variety of perspectives. Although the study is a dense read (some background in law and in Aristotle’s rhetoric and philosophy is helpful), it is filled with insights based on good information and analysis as well as refreshing self-reflection and humor. It seems to me that Ranney could have mentioned Chaim Perelman and Lucie Obrecht Tyteca’s immensely important treatment of the relationship between rhetoric and justice in *The New Rhetoric*,¹ as well as the classical tradition of judicial rhetoric (other than a brief reference to *stasis* theory). But, these are minor omissions.

Given the many perspectives dealt with in the study, *Aristotle’s Ethics and Legal Rhetoric* will appeal to scholars and advanced graduate students from many fields, most obviously law, rhetoric, ethics, economics, and feminist studies. Because of the consistency of her methodological work, Ranney not only provides theoretical and empirical data for further study but also produces wisdom in a just, rhetorical, and useful way. Her study is a model of careful, self-reflective scholarly research and practice.

Sara Newman
 Department of English
 Kent State University
 P.O. Box 5190
 Kent, OH 44242-0001
 U.S.A.
 snewman@kent.edu

¹ Chaim Perelman and Lucie Obrecht Tyteca, *The New Rhetoric: A Treatise on Argumentation* (South Bend, Indiana: University of Notre Dame Press, 1969).

Sara Newman holds a Ph.D. in Rhetoric and is Associate Professor and Undergraduate Studies Coordinator at the Department of English, Kent State University. She is the author of *Aristotle and Style* (Lewinston-Queenston-Lampeter: The Edwin Mellen Press, 2005). Her current research deals with rhetorical theories of style and gesture in the context of the history of medicine (esp. with regard to disability issues).