In Memoriam: Memorial Tributes for Professor Elizabeth B. Clark

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IN MEMORIAM

MEMORIAL TRIBUTES FOR
PROFESSOR ELIZABETH B. CLARK

RONALD A. CASS*

Today we come together to remember Professor Elizabeth Battelle Clark, Betsy to all who knew her. We were shocked to hear of her illness, inspired by the intensity of her fight against it, and deeply saddened by her death. We have come together before to mourn her loss. Now we gather once more to celebrate our good fortune to have known Betsy and to share our remembrances of her.

I first heard of Betsy from a friend when she was a Visiting Professor at Harvard Law School. He told me that we should try to hire her, advising that “she’s fabulous” and simultaneously that “you and she will disagree about everything”—adding matter of factly, “you’ll love her!”

My friend was right on all counts. Betsy was fabulous. We disagreed about everything. And, like all of her colleagues and vast circle of friends, I did love her.

Betsy’s life was, from the start, a wonderful fit to her personality. Cities, states, and schools could not contain her, and ordinary conventions did not bind her. Her peregrinations were not meanderings but purposeful marches. Everywhere she went, Betsy went with incredible energy, gathering friends, dispensing advice, collecting ideas, and generating good-willed mayhem.

Betsy was born in Ohio, just eight days before the Republicans recaptured the White House and both Houses of Congress, after a quarter century of solid control by Democrats. Betsy must have hated that—I’m sure Betsy’s political views were fully formed and firmly held, even as an infant, and I’m not sure she ever fully forgave the American public for 1952. She moved in early childhood from Cleveland, Ohio, to Ann Arbor, Michigan, and attended Indiana University, the University of Michigan, Princeton University, and the University of Wisconsin, earning her J.D., Ph.D., LL.M., and universal admiration of students and teachers alike.

She joined the law faculty at Cardozo Law School in 1987, and in just one decade held faculty positions at five schools plus a fellowship at the Charles Warren Center at Harvard. We were blessed to have Betsy as a member of the Boston University law faculty for six of those years.

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Before coming to Boston University, Betsy had gone in short order from Cardozo to the University of Pennsylvania Law School to Harvard Divinity School to Harvard Law School. Despite the unsettled nature of her early academic career, Betsy already had compiled an admirable record, both as a scholar and teacher. Legal historians were unanimous in singing her praises, and everyone who knew her predicted academic success, many academic stardom. We quickly decided that we wanted her and set about recruiting Betsy to our School. Although members of the Harvard faculty also were courting Betsy, we were more ardent suitors and succeeded in our pursuit.

True to predictions, in her time at Boston University Betsy proved to be a marvelous teacher and a serious, insightful, creative scholar. Her work continued to grow, combining admirable qualities of maturity, subtlety, and complexity of analysis with an uncommon clarity of exposition. She dug deep into the sources that informed her work and also went beneath the common nostrums that explain historical events. These qualities were evident in her writing and teaching alike.

Much as I admired her scholarship and teaching, my most vivid memories of Betsy are from her role as colleague. Betsy was a “low maintenance” faculty member. She asked for very little, and gave a great deal. More than anything, she cared. Betsy cared about people, and she took us as we were, accepting us faults and all. In my case, the fault was a fundamental wrong-headedness about almost every political and academic issue.

Betsy could discuss any issue with an expression that ranged from impish delight at the argument she was about to launch that surely would clinch the point, to amused disbelief that someone seemingly nice—or at least within hailing range of humanity—could hold such odd views, to frustration bordering on fury that she could not quite pull enough folks to the right side—I should say, the correct side—of the divide.

Betsy served in any capacity she was asked, and she threw herself into each task, however mundane, with energy and passion. Some tasks were easy, others clearly painful to her. She was personally invested in appointments issues and deeply concerned about the choices we made as a school. While serving on the School’s Appointments Committee, Betsy oscillated between exhilaration and exasperation. And you didn’t have to ask her to know which it was.

But no matter how much she cared about issues, Betsy cared even more about people. And she let you know it. If she thought you had a good heart, she could forgive almost anything. Not overlook it, or condone it, just forgive it. Because she had a heart of gold, Betsy had enough love to fit so very many of us into her heart, each in a special place, each in a special way.

She leaves behind an impressive body of scholarly work, striking academic attainments, enviable entries on her professional curriculum vitae. But her enduring legacy is the memory each student, and colleague, and relative, and friend carries of Betsy—of her goodness, her passion, her
determination, her love of life and her love of us.
We cannot replace her. But we will not forget her.

THOMAS A. GREEN

The first time I met Betsy, now some twenty years ago, she simply appeared during office hours to ask about being a research assistant. She had finished her first semester of law school, she said, and—as she put it—“there must be something more to it than this.” So began Betsy’s career as a legal historian; to which she brought a classics background, a powerful mind, prodigious imagination, irony, whimsy, and, to put it mildly, a way with words.

Betsy was, of course, a superb student, as Charlie Donahue, Bruce Frier, and I immediately recognized, one from whom one learned as much as one taught. Her range of interests—from Roman law, to medieval Continental law, to the entire common-law tradition—was rare indeed. Betsy’s writing was economical yet colorful, affecting and often inspired. And perhaps the highest commendation: the quality of her papers always justified the length of the incomplete she had taken.

Betsy’s humor and her humanity were sources of delight and support. She and Victoria List, laboring on my office floor in a sea of file cards, conspired to undermine my occasional tendency to take things too seriously—“Get a life!,” or its then equivalent, was their well-intentioned advice. “Just keep working on those cards,” I would reply. How the name of our cat, Sappho, got into the page proofs of the Thorne festschrift index I never determined, but I have my suspicions.

Research assistant, student, friend and confidante: Betsy was all those things, and we remained close after she left Michigan. My wife, Ruth, and I saw her on the frequent trips first she, then she and David, made to Ann Arbor to visit her parents and brothers; and I saw her at A.S.L.H. conferences, where on the Friday night, Charlie and I, Betsy, Victoria, and others in the old Michigan group went out to dinner. Betsy was now a scholar in her own right, widely known and respected for her wonderful work. I had come to be one of her editors—Dirk Hartog and I were working with her toward completion of her book. And as it happened, she had come to play that role for me.

Betsy was, in fact, an exceptionally talented editor. Her most substantial task on my behalf was to rescue an article I had written during what I sometimes admit was a mid-life crisis, and which the article’s few readers

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think is a mid-life crisis. Betsy helped me in many ways to get through those difficult years; our experience with the article might have strained, but in fact strengthened, our relationship. Betsy was supportive and, as always, generous; but of course, she had a way with words: "If you must write about Roscoe Pound, try not to sound like him." Betsy crossed through all the paragraphs that could—in her view, should—be deleted, and pencilled in bridging prose that both preserved what was worth preserving and made up for lost transitions. It was a spectacular performance. But if Betsy was a great editor, I was not a great editee. I shall never forget those long phone calls, by turns uproarious and sombre, filled with my anxieties and Betsy’s reassurances, and ultimately descending into frenzied negotiation: “I’ll cut this paragraph if I may keep that one”; “well you’d do better keeping this other one than that one”; “ok, if I may also keep the one that follows it; they sort of sound right together”; “it’s a deal, but now you owe me another.” And so on. Many calls, over many weeks. That was Spring 1995, and a large chunk of Betsy’s last untroubled summer. It was not lost on either of us, through all of this, that I was supposed to be one of her editors. We had talked for hours over the years about her work, about themes, narrative, strategy of organization—macro stuff—but I had also line-edited the drafts she had sent me, making only modest suggestions compared with her thorough overhaul of the “Age of Pound.” But our role-inversion was not an irony Betsy would indulge—not openly, at any rate. I was her teacher, her advisor, her editor: that—so it seemed—was that.

The last time I saw Betsy was Tuesday, December 23, three days before she passed away. Ruth and I spent a half-hour with her; it was painful in so many ways, that so obvious but unnamed leave-taking. The essential Betsy shone through, her frailty notwithstanding. Toward the end, and with some effort, she stood to hug us good-bye; Ruth found the words that I could not, to tell Betsy how important she had been to me; we helped her back down onto her sofa. Then I sat next to her and said—still engaging in euphemism—that if she did not feel strong enough to get back to the book, Dirk and I would see it through to publication. She was at first concerned that it would be too much work for us, that if we did it, we should be co-authors. It was her work, I assured her; we were her editors, and it had all been decided. Betsy was visibly deeply pleased that her book would see the light of day—and she said as much. Then her concerns about authorship returned. “We will have to dither about this,” she said. “Don’t you think we need to dither a bit?” Now “dither” is a very Betsy word, meaning in this case, I think, that we should engage in all the discussing, back-and-forthing, weighing of the matter, taking into account of real feelings—all of the very human aspects of scholarly life that Betsy loved to engage in, that we all loved her for. “We really must dither about this,” she persisted as we left, and she was smiling at the very thought.
My life with Betsy is bounded with bookends—two phone calls. The first, in 1980, came from Tom Green, describing a wondrous student and person whom we absolutely had to admit to the Ph.D. program at Princeton. I told him I would do my best, but couldn’t imagine that it could not be done—until, that is, I received Betsy’s law school transcript. How to explain to my historian colleagues that exceptional law students were sometimes very inconsistent, and got both A’s and C’s? Betsy’s record was up and down, depending upon whether she found her courses interesting. When she was good she was very, very good, and when she was bad . . . . In any case, I did manage to convince my colleagues that Betsy was an admissible paragon, and so she was.

I have known few young historians with such a natural flair for doing history. She instinctively knew which were the interesting historical questions, and it simply did not occur to her to think about them in the usual ways. She didn’t reject the tradition, but it usually didn’t seem very helpful to her way of thinking. The great benefit of this was that she had brilliant insights and forays into unexplored territory. The downside was that she was forever thinking and writing about something new. Her dissertation started out in a pretty straightforward way to contemplate women and politics in the nineteenth century. Then came women and political theory. Then feminism, and so on. Would Betsy ever finish? But the problem was only that her mind was too inquiring and her historical sensibilities too finely honed to be satisfied with lower order answers. It put a bit of a strain on a teacher, who felt some obligation to urge her to finish her degree.

Betsy was a person of contrasts, and only pairs of terms come to mind when thinking about her: bitter/sweet, tough/love, committed/sympathy, idealistic/realism. She was simply not contained by disciplines or formulae. She was also one of the angriest people I have known. She was angry at the injustices of the world, especially at threats to peace and to good will among men and women. And she was, in the end, angry at what had been done to her. As well she might have been.

Betsy was a lovable, loving person, much beloved. For each of us whose life she entered, she did something beautiful. The bookend at the end of our friendship was a call last year from Betsy, mildly angry at me that I was ignoring the welfare of another of my graduate students, and telling me in no uncertain terms to get on with taking care of him. She was, of course right, and so that student became another of Betsy’s beneficiaries.

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I am old enough to know that life is never fair. But Betsy’s death was cruelly unfair. And I am angry about it.

KATHERINE STONE

Betsy Clark was a historian, involved in exploring the shape of the past and using memory to enrich the present. She was also a good friend to many of us who had the privilege of knowing her well. Here I want to take a few pages to share some of my memories of Betsy, as part of a collaborative effort to use memory to help keep alive Betsy’s wonderful gifts.

I first met Betsy when I served on the committee that hired her at Cardozo Law School for her first law teaching job. I was taken by her light-hearted yet intellectually serious manner in the interviews, and by her engaging talk to the faculty. Once she joined the faculty we quickly became friends. She was living in Princeton and working in New York City, so she occasionally stayed with me when she needed to overnight in the city.

As a teacher, Betsy was greatly beloved by her students and colleagues. From the outset of her academic career, she displayed a rare quality—she could talk to those with whom she disagreed. She did not compromise her own positions, she was willing to take unpopular positions and state them clearly, but she could also respect the contrary views of others. Betsy and I were allies on an appointments committee during a particularly stormy period for Cardozo. After we had experienced what we felt were betrayals, she would talk the issues over with those with whom we were locked in combat. And she managed to convey her viewpoints and listen to theirs without escalating conflicts. Indeed, some of those with whom we had sharp disagreements later became good friends of hers. This was a model of academic conduct that I have often tried to emulate.

When Betsy left Cardozo for Boston, it was for me a great loss. But it was a loss that was partially overcome by frequent phone calls, visits, and participating in a common network of colleagues and friends. Betsy was, as all her friends know, a master of overcoming time and space and keeping friendship alive.

Now that Betsy is gone, I want to share some of the memories and images she has left me with in an effort to capture her being and in some small way, keep her alive. I picture her round, reddish face and her indescribable orange-colored hair, loosely held back and flying out from under some hairclip; her monochromatic wardrobe of brown and sienna-colored, loosely fitting clothes; her little car stuffed full of books, tapes, clothes, and papers.

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How much order and beauty came out of the seemingly thrown together world, or rather, whirlwind, that she inhabited.

When I think of Betsy, I think of many things. I think of beauty—her own unusual, physical loveliness; I also think of the beauty she created around her, the physical spaces she designed, like her kitchen and her study, sites for two tasks she deeply enjoyed, cooking and scholarly work. And I think of the art galleries and artists’ studios we visited, and of the paintings and decorative items she loved to look at and, on occasion, to collect. I also think of walks in woods and on seashores, and her total embrace of the beauty of life around her. Betsy’s ability to find beauty in life, and to give herself over to it, made the world a more beautiful place for us all.

When I think of Betsy, I also think of generosity—of her remarkable ability to give of herself, her time and energy and attention, even when her own internal resources were strained to the limit. She had an uncanny ability to sense when others needed help and to provide it with grace and simplicity, whether by helping a friend pack for a move, making a pudding and leaving it on a doorstep for a friend who had suffered a setback, or driving a sick friend to the doctor. Betsy was there for her friends in a rare way, and I know that we all feel more lonely now that she is gone. But perhaps she has taught us how to pause in our own lives and do that small favor, make that small gesture, that can give pleasure or strength to another.

Betsy also had an uncommon and wise perspective on the world. Her viewpoints and reflections were thoughtful and refreshing, never clichés, always illuminating. This is why a conversation with Betsy, whether about an intellectual question, a professional dilemma, or a casual observation, was always interesting and lively. Her insight was combined with her wonderful sense of humor—she had a quick wit, and an ability to express ideas with unusual turns of phrases, bubbling with perceptiveness and irony, light-hearted yet profound. She was able to find the light side of all events, even of sickness. I remember about a month before she was diagnosed with cancer, she was describing the various health problems that had been plaguing her in the recent months. But then, rather than wrap herself in self-pity, she said in a light-hearted but poignant vein, “My body is not, and never has been, my friend.”

When I think of Betsy I also think of energy and hope. She had a boundless ability to pack so many activities into a day, to live life to the fullest. She could combine an effortless whirlwind of activity with a sea of calm. It was not uncommon for Betsy to get up at the crack of dawn, drive hours to see a friend far away, stop along the way for a long walk, and then arrive ready to shop, cook, play tennis, go to a museum, do a few errands, play a card game, bicycle, read, and still have the time to sit around with a cool drink and have a leisurely conversation.

Let us also not forget Betsy’s music—the lightness and animation of her voice when she spoke, the richness and sweetness when she sang. And her cello playing. And last but not least, her whistling. Betsy was a great
whistler, and she knew a lot of songs. How many women whistle when they go about their day-to-day tasks?

I leave to others to talk about Betsy’s scholarship. Let me only say that she had a remarkable ability to interest others in her projects. When she gave papers or workshops, she spoke softly but with such enthusiasm and engagement that she drew others into her topics and interests effortlessly. Her listeners would lean forward and intently follow her sometimes complex and nuanced train of thought. I have often wondered at this gift—I think it has something to do with her approach to her audience, her ability to be respectful and inclusive rather than distanced and formal. Despite doing painstaking historical work—work which was often tedious and lonely, enduring long spells in archives and generating mountains of notes—she found a way to make that work germane and accessible to a wide range of audiences. Without grandstanding or overstating her claims, she would weave a web of words and images, of evidence and categories, peppered with insights and interesting asides, and then step back and place it all in a historical perspective, or indeed several perspectives, thereby addressing major theoretical questions from a situated, concrete basis. It is one small part of the tragedy of her death that she was unable to complete her book and get the recognition that she deserved.

I will never forget the day Betsy called me and said, “I’m not doing very well—I have ovarian cancer.” From that day on, she was clear that she did not want to know the worst case scenario, did not want to bask in morbidity and self-pity. Instead, she wanted to find the sources of hope, she wanted to stay connected with the world of the living and not descend into despair. Her fight against cancer was a heroic statement about the love of life and the power of the human spirit.

How can we commemorate Betsy’s life and keep her spirit with us on a day-to-day basis? I have thought about this question often in recent weeks, as I do not want to lose touch with the many beautiful gifts Betsy gave us. I believe that we celebrate Betsy by keeping close in our lives the things that she valued and loved—the books, art, music, the walks in the woods, cooking, meditation and, most of all, friends.

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**PNINA LAHAV**

Betsy joined our faculty at Boston University School of Law in 1991. At that time she had already accepted an offer from the University of Pennsylvania Law School, and we were acutely aware of the fact that we

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were very fortunate to have her. It was her love for David that made her want to stay in the Boston area, and we were the beneficiary of her determination to establish a home here.

We soon learned that there was something very special about Betsy. Of course, she was extremely able and erudite, very charming and lovely, and delightfully funny, and one does not encounter very many law professors who meet such a description. But I am thinking of something else. For many of us, Betsy represented the embodiment of the values of citizenship.

Now, in the academic milieu we frequently invoke the concept of "institutional citizens"—those who not only "do their own work" but who sit on committees, teach basic courses, and attend endless and often fruitless meetings. Betsy was a good institutional citizen. She served on many committees—the appointments committee, the academic standards committee, the library committee, the tenure committee. She taught the basic first-year course in property law, and a survey course in American legal history; she even agreed to take the ungrateful and time-consuming chore of faculty advisor to the Probate Journal. All of us highly appreciated her presence and contribution.

But that hardly captures what was special about Betsy. What I have in mind is Betsy as a model of good citizenship. Betsy's genuine concern for the welfare of the law school as an educational institution, her intense interest in every aspect of the life of the university, her active effort to be informed, her open-mindedness and ability to reach out to representatives of radically different points of view—to listen and to weigh seriously conflicting positions. Her outrage and willingness to fight when she confronted injustice. She not only had a clear concept of the public good that a good law school should serve, but she also had the self-consciousness to separate it from her own personal good. And she had the courage and integrity to pursue the public good even when she understood that the pursuit of her own interests would benefit from a different course of action.

Let me give you an example. Betsy taught the first-year, basic property course. One typically has a hundred students in such a course. At the same time she was also struggling to finish her book, she was maintaining a rather heavy schedule of appearances in workshops and conferences all over the country, and she was discharging her responsibilities as an institutional citizen. In addition to all of that she was also a young wife, anxious to become a mother. Finishing the book and building national recognition through the acceptance of various speaking engagements were very important, both in order to facilitate the tenure process and in order to fulfill her personal ambition. In the face of all of these demands, she could have done what the large majority of us do: choose a good casebook and stick to it, do the best you can in the classroom, give one final examination and do only one round of grading (which by itself kills a month of your life).

But Betsy had a well thought out philosophy of teaching, of what good education meant, and she was not willing to compromise it or to subordinate
it to her personal interests. This is what I mean by good citizenship. At Boston University, candidates for tenure are asked to describe their courses and methods of instruction. Here is Betsy explaining her approach to the teaching of property law:

In teaching property I have also supplemented the casebook with materials designed to broaden the student’s angle of vision. Property itself is a changing field, and I have included materials on new problems . . . (issues raised by advances in biotechnology or by erosion and pollution across boundaries, for example) . . . this provides students with a critical orientation in matters of policy in preparation for the changes they will confront over their long careers.

And here is Betsy describing her legal history course:

I have spent a great deal of time devising an innovative syllabus that reflects my vision of the subject and its function in a law school curriculum. In teaching legal history, my pedagogical and substantive aims are closely related. I believe that the standard first year of law school in particular, in its focus on doctrine and private law, gives students an inadequate grounding in the broader social and moral contexts of jurisprudence; and that ideally each student should receive at least a rudimentary background in history, economics, and legal philosophy. The legal history course which I have taught since 1990 . . . is designed to show students that law is not just the product of legislative or judicial action, but of a more complex interaction between different normative spheres in which values are formed . . . .

Betsy then addressed her teaching and grading methodology:

I have found that the standard law school system of a single in-class exam at the end of a course often does not give students enough time to reflect thoughtfully on complex material, or to learn the process of constructing a competent legal analysis of a problem. Although it involves much more grading, I break the exam down into two or three parts, with at least one being a take-home exam or paper, a system which produces much sounder results and provides a better lesson in crafting legal arguments . . . .

In teaching seminars, I have tried to give students a good grounding in research skills in addition to substantive discussions of the materials. I have asked students . . . to work in pairs giving critical readings of each others’ early drafts, which I believe helps them to develop their own analytical skills.

Betsy did not seek any shortcuts or easy ways out. She performed her role as a Professor in accordance with the high standards that she believed were right, regardless of the toll that it took on her personal career.

The students understood that. Let me read to you some of their comments as they appear in Betsy’s teaching evaluations:
Professor Clark was the best professor I had this semester. She was extremely accessible. I enjoyed Property class more than any other and I am sorry to see it end. Class discussions (and during her office hours) were always informative. She maintained our interest in the subject matter, even during “nuisance.” She is also very funny. EXCELLENT, EXCELLENT PROFESSOR.

Professor Clark is a property Goddess! She is extremely fair, but pushes us toward thought-provoking issues with no easy answers. Stimulating classroom environment; Not flashy “Hollywood” type, but full of substance.

Professor Clark, as well as being a very fine professor, (who assigns a lot of work), is genuinely one of the coolest people I’ve ever known.

Unfortunately I am not well liked by another unnamed professor, as I was called “the drone of the Betsy Clark fallacy” by Professor “X” in the middle of the class. That’s Okay. When I grow up, I want to be as “with it” as Prof. Clark.

It was good that Clark sent out letters midway into the semester to students with poor attendance. Some people (like me) need that type of kick in the ass to motivate them.

Now I wish to pause here and say I have seen a good number of praiseful evaluations in my time, but I have never seen such humorous ones, nor have I seen so many comments addressing the Professor by her first name, and I think that what we see here is that Betsy’s legendary sense of humor was contagious – she infected her students with it – and they reciprocated with loving humor. We also see that the students developed a very warm and direct affection for her, while maintaining their high esteem of her professional abilities. And there’s more – I know, because she had told me, that Betsy found the reference to the “Drone of the Betsy Clark fallacy” very amusing. What she did not tell me—was how that student ended the short comment: “when I grow up I want to be as ‘with it’ as Professor Clark.”

Betsy was brilliant and full of good humor, but she was also very, very modest and would not brag about the fact that she has become such an important role model for her students.

I now return to the students’ evaluations. Here’s what they said about her course in American Legal History:

Great job. You are one dedicated teacher. Thanks again for letting us put in rough drafts.

I learnt a great deal not only about the subject but also about writing.

Betsy could have saved time and energy by simply teaching the same courses or seminars over and over again. But she thought that diversification would be good for the curriculum and for the students, and furthermore, as she had told me several times, she needed the intellectual challenge that
comes with teaching new courses. Here is what the students had to say about her additional courses and seminars:

Women and the State in the 19th Century:

Professor Clark is great . . . . A real breath of fresh air in such a rigid anal place.

She is extremely knowledgeable about the subject matter. Ideas tumble out of her mouth – she is a walking bibliography.

[C]ritique of term papers was very helpful in formulating arguments and revisions.

Social History of Rights:

Professor Clark is an inventive and interesting instructor . . .

[T]his seminar had great readings and fostered an atmosphere of inquiry which I have rarely experienced in law school. I feel lucky to have taken this class to have studied with Professor Clark.

Finally, the last course she taught, Trials in American Culture:

Absolutely one of my favorite classes . . . Prof. Clark was a wonderful story teller, lecturer, instructor, debater and listener.

This course has given us an understanding of the social function of law with a depth and perspective unavailable in any other course. The perspective is so encompassing and broad that it has not yet settled, yet we sense that we are onto something very valuable and exciting.

Lest you think that only students thought that Betsy was an outstanding teacher, let me quote my friend and colleague Professor Fran Miller, one of the most seasoned and best teachers at Boston University: “Clark is a most engaging classroom professional, and she achieved with me what I consider one of the foremost goals for a professor – I want to learn more about the things that she so obviously knows.”

Betsy was also concerned about education on the college level. She wrote:

I am anxious to develop a regular undergraduate course in legal and constitutional history in the Department of History at Boston University. More students arrive at law school knowing less about the law than in any other graduate field; for them and for other students I believe that it is important to have such a course taught in the college.

Betsy was also willing to give of herself to the community of scholars outside of the university. In her tenure application she describes one of her projects. Every teacher will recognize the value of this project, but also the fact that it is not one which brings prestige or enhances one’s career:

While the field of legal history as a whole has moved away from the exclusive reliance on case law, texts have not caught up; almost without exception each legal historian teaches from his or her own idiosyncratic
pile of dog-eared Xeroxes. In order to further an interchange about the wide range of sources being used today I undertook to collect and edit syllabi from legal historians around the country, which were made available at the 1993 annual meeting of the American Society for Legal History.

I don’t have to tell you that Betsy was also a superb scholar. But I can say that when she and I discussed her tenure record, and she told me that she had already had a contract to publish her book, I asked her why not hurry, polish the dissertation a bit, publish it, and then, after tenure, work on another book, that will incorporate her evolving vision and fresh insights. I urged her not to be a perfectionist. But she would not hear. She had a clear idea of what the book should look like, and even though she wanted tenure with all of her heart—she was not willing to bend the standards that she knew were right.

Even without the book, Betsy’s tenure was an easy case. It was clear that she was already a shining star. Her tenure letters, from the most prominent people in her field, were stunning, and the tenure committee’s report to the University found it appropriate to emphasize how rarely had we, at Boston University, seen such a splendid file.

Betsy was also full of ideas and projects, to be undertaken once her book was complete. I wish to mention them, in order for us to begin to gauge the dimensions of our loss. Betsy was planning a project comparing divorce in the United States and Ireland, and expected to spend some time in Ireland for this purpose. She was also planning to study the economic regulation by church courts on the Midwestern frontier of the 1830s and 1840s. And she wrote:

After these projects are completed, I hope to begin a second book, one about which I have already had several discussions with ... Harvard University Press, about the relationship between popular and theological decline in orthodox Calvinist doctrine, and legal notions of free will and responsibility, not just in criminal law but in areas such as tort and contract as well.

No one can fail to see the broad range, the creativity and the versatility of Betsy’s intellect.

Betsy was also a warm and caring colleague. In particular, she was a devoted mentor to our young faculty—Kate Silbaugh, Hugh Baxter, Daniela Caruso, and many others as well. She was generous with her time, she shared her contacts, she knew how to listen, but—and this I heard from many—she was also demanding and uncompromising in her pursuit of true quality.

She was so very important to us, on so many levels. I know that her untimely death leaves a void that perhaps will never be filled.
In all these things we are more than conquerors through him who loved us. For I am persuaded that nothing in all creation will be able to separate us from the love of God.¹

Like others, I have feared this moment ever since Betsy’s illness was diagnosed almost two years ago. Feared the time when Betsy’s life on earth would have a definite span, and we would gather to celebrate her gifts. Now the moment has arrived.

Shortly after Betsy came to Boston University, we began a series of conversations about the nature of Christianity. Her Anglican affiliation was at the opposite end of the denominational spectrum from my Unitarian upbringing, and her spiritual pilgrimage had taken a very different path from my own. Still we found much to talk about.

I would like to share a few glimpses of these conversations. Talking about another person’s religion is always perilous, of course, and particularly so when that person is no longer physically present. Yet Betsy’s spiritual vitality was such that her faith merits more than passing mention, even at the risk of not getting everything entirely right.

Betsy was what might be called an “intentional Christian,” in the sense that religion for her meant more than an accident of birth or culture, and more than formal worship. While going to church was important for Betsy, she did not see attendance at Sunday services in itself making a Christian any more than visiting Paris makes a Frenchman.

Rather, to Betsy being a Christian meant taking seriously a redemptive power she found in the narrative of Jesus’ life, death and resurrection. The most problematic element of this narrative, of course, is the last bit. To Betsy, however, the empty tomb and the resurrection were as integral a part of the story as any other.

Betsy and I talked about the resurrection once over a cup of tea after we attended church together downtown. I told her that for me personally one aspect of the Christian narrative no less astonishing than the resurrection, was what happened afterwards—or more precisely, what did not happen: namely, the absence in the New Testament records of any attempt at revenge. The victim became the victor not by seeking to even the score, but simply by demonstrating how little ultimate power is really exercised by worldly empires.

This conversation led Betsy to give me a poem by George Herbert, a 17th century Englishman associated with a literary group known as the

¹ Romans, 8:37-39.
"metaphysical poets." Called Love, the verses speak of a divine compassion that outwits all of the inadequacy and self-doubt of the beloved:

Love bade me welcome: yet my soul drew back,
Guiltie of dust and sin.
But quick-eyed Love, observing me grow slack
From my first entrance in,
Drew nearer to me, sweetly questioning,
If I lack'd any thing.

A guest I answer'd worthy to be here:
Love said, you shall be he.
I the unkinde, ungrateful? Ah my deare,
I cannot look on thee.
Love took my hand and smiling did reply,
Who made the eyes but I?

Truth Lord, but I have marr'd them: let my shame
Go where it doth deserve.
And know you not sayes Love, who bore the blame?
My deare, then I will serve.
You must sit down, sayes Love, and taste my meat:
So I did sit and eat.²

One thing these lines tell us is that Betsy’s vision of Christianity valued individual freedom. The beloved was free to accept or to reject Love’s invitation to sit and eat. Love coaxed, rather than coerced, giving the beloved freedom to say “no.”

But Love also manifested persistence, a second element of Betsy’s Christianity. Love contrived to bring to the dinner table even the most reticent of guests. Thus the divine love that sustained Betsy as a believer reached out in different forms to others who might give that love different names, or no name at all.

The poem, of course, gives no explanation of how divine love can allow suffering like the pain that afflicted Betsy. But Betsy could put such questions in a mental box labeled “Awaiting Further Light,” recognizing that any attempts to describe God’s ways are at best inadequate shorthand symbols pointing to a reality beyond our complete understanding.

In the face of her life’s uncertainties, Betsy was like someone reading a dramatically distressing episode in the middle of a novel, but who had

already skipped to the end of the book to learn that in the final chapter goodness triumphs.

AVIAM SOIFER

“She sang beyond the genius of the sea.”¹

Invoking Wallace Stevens in remembrance of Betsy Clark initially seems incongruous. Stevens was notoriously detached and dispassionate; Betsy seemed to be fully involved in everything. She also had an amazing ability to detect pomposity and wrongdoing, and she followed wherever her cat-in-the-dark keen perception might lead her. Betsy and I never discussed Stevens. I suspect that she found him too intellectual, too lacking in the juices of everyday life in which she reveled. If Stevens delighted to use the incongruous metaphor, Betsy lived an exuberantly incongruous life.

For all that, Stevens’s great poem The Idea of Order at Key West is particularly apt in recalling Betsy’s life and her extraordinary courage, creativity, and panache. The poem begins with an unidentified woman singing on a beach. The narrator hears her song with more intensity than the sound of the “ever-hooded, tragic-gestured sea.”² Her song soars: “For she was the maker of the song she sang. . . . It was her voice that made / The sky acutest in its vanishing.”³ The singer ends her song, but her creativity continues to aid others in “[a]rranging, deepening, enchanting night.”⁴

Despite our loss, we cannot escape thoughts of Betsy happily at home at the ocean at Pemaquid, and it is so painfully funny and sad to remember her refrain about what a great life one might live in an old island house off the Maine coast. If ever there were a person who was not herself an island, however, it was Betsy. She also understood with exceptional clarity that the bell does toll for, and link, us all. Though Betsy studied and appreciated

¹ WALLACE STEVENS, The Idea of Order at Key West, in COLLECTED POETRY AND PROSE 105 (Frank Kermode & Joan Richardson eds., 1997).
² Id.
³ Id.
⁴ Id. at 106. There surely are multiple levels within this human presence in the night. The “glassy lights” in the fishing boats at anchor in the town may have “[m]astered the night and portioned out the sea,” but the reverse also occurs. Both forms of mastery and fixity can be only transitory. Such “[a]rranging, deepening, enchanting” of night as might be done through human intervention—“Fixing emblazoned zones and fiery poles”—is likewise done by night’s constantly changing darkness, which clearly represents other darknesses as well.
people individualistic and dedicated enough to chop swaths through established patterns in their search for their own truths, her uncommon generosity challenged the "[b]lessed rage for order" in distinctly relational, reciprocal ways.

Those blessed to have known Betsy Clark have described very differently yet consistently how Betsy lived with extraordinary verve in the moment. No matter what the setting, Betsy seemed able to sing "beyond the genius of the sea." This clearly was the case in her career as a scholar, for example, as Betsy did extraordinary archival work in previously untapped nineteenth-century sources. She asked and began to answer wonderfully new questions while avoiding, with great aplomb, the danger of anachronistic, presentist interpretations of the past. Betsy demonstrated time after time her striking ability to illuminate old controversies with fresh insights. She cogently conveyed new sense she could discern from within the murky roar of words of the past. Despite Betsy's fervent commitment to the search for justice in the here-and-now, alongside her irrepressible hope for the future, her work somehow manages to avoid the seductive urge to pour old lines into new battles. Betsy was committed simply but passionately to the integrity of careful scholarship.

Betsy loved good poetry, just as she loved the fine ethnic food she ferreted out in the funkiest restaurants and the startling colors she wore to enliven the drab groves of academe. Like the best poets, Betsy was keenly attuned to metaphor. This talent, so apparent in her sparkling conversation and forceful writing, enabled Betsy to live wisely and well at the very juncture of the unique and the universal. Yet for Betsy, acute attention to metaphor was never enough. She also was committed on an ongoing basis to the unrealizable search for justice. This commitment drew her passionately, yet critically, to other seekers: to Elizabeth Cady Stanton and her fellow suffragists; to those who celebrated Anne Hutchinson's antinomianism at the bicentennial of her trial and expulsion from the Massachusetts Bay Colony; to protesters who sought the reformation of status relationships across the centuries; and to those who used and abused the metaphor of suffering as they crusaded against slavery and other forms of oppression.

Like a great poet, a superb teacher and scholar—as Betsy Clark surely was—cannot hope to measure either the efficacy of her creativity or the impact of her effective use of words to connect to others. It is too sad and so unfair that it is left to those who survive to begin to appreciate how much Betsy will be remembered as a blessing (a rough translation of a sad, yet hopeful Jewish wish on behalf of a person who has died) in a multitude of ways.

As a teacher of property law, Betsy would concede that "a politics / Of property is not an area / For triumphals." The absence of "triumphals" did

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5 Id.

6 WALLACE STEVENS, Reply to Papini, in COLLECTED POETRY AND PROSE, supra note
not faze her. But her work consistently suggests that the problem lies elsewhere: within too-ready acceptance of the politics of the property system we have inherited. Through her keen analysis of the Sacred Rights of the Weak, for example, and within her discovery and careful critique of the individualistic claims anchored in claims of "natural necessity" that activists made in the years around the Civil War, Betsy underscored contrarian possibilities long buried until she did her marvelously tenacious research.

While the weightiness of words carefully chosen was of immense importance to Betsy, she also understood the crucial need to distinguish differences and degrees of difficulty. Things change and, some would say, shit happens. Betsy knew this all too well. Yet she insisted on and persisted in a brilliant scholar-teacher's leap of faith: facts matter, generalizations should be hard-earned, and individuals should not to be treated as fungible. Moreover, we are not entitled to manipulate today's realities in an effort to control the past or the future.

Wallace Stevens was a poet-lawyer widely regarded as too detached from the lives and struggles of most people. Even Tom Grey, author of a first-rate study that grounds Stevens's poetry in pragmatism and beautifully elaborates its relevance to the practice of law, concedes that "even when he tries, Stevens does not succeed as a social or political poet." Grey compellingly argues, however, that Stevens was able to carve out both for himself and for his readers a zone in which paradox is accepted. Stevens himself recognized coolly that "[T]he squirming facts exceed the squamous mind, / If one may say so." Living comfortably within paradox, Betsy Clark insisted on pursuing squirming facts unrelentingly. Repeatedly, she tried to connect the facts as she found them to social realities. Betsy thus often felt compelled to fight academic battles with vigor, and she was willing to be arrested when she perceived that the facts and justice demanded active protest against governmental policy.

In fact, Betsy was astonishingly adept at living energetically and comfortably within the attachment/detachment dilemma we all face. Her friends, students, and colleagues repeatedly describe her commitment to

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1, at 382-83.

7 In fact, Betsy's talking, teaching, and writing about property and history overlapped markedly with the frequently defiant task for poets Stevens proclaimed in this poem: "hymns appropriate to / The complexities of the world, when apprehended, / The intricacies of appearance, when perceived. . . . The poet / Increases the aspects of experience, / As in an enchantment, analyzed and fixed / . . . . The satisfaction underneath the sense, / The conception sparkling in still obstinate thought." Id. at 383-84.


10 Id. at 7, 108 (quoting WALLACE STEVENS, Connoisseur of Chaos, in Collected Poetry and Prose, supra note 1, at 194-95).
others; however, Betsy also was unwaveringly devoted to her craft as teacher and scholar. Betsy understood and embraced the professional’s striving for objectivity. Simultaneously, however, she knew when to step out of her roles to be herself with flair and wickedly warm humor. A vivid image from another Wallace Stevens poem—replete with a wry reference to property law, the subject area of Betsy’s teaching—helps to illuminate how remarkable Betsy was, as well as how starkly different from the norm her essential view of law could be:

Above the forest of the parakeets,
A parakeet of parakeets prevails,
A pip of life amid a mort of tails.11

Like Stevens, Betsy believed deeply in the immediacy of words: “The poem is the cry of its occasion, / Part of the res itself and not about it.”12 Yet sometimes Stevens seems to insist that a poem must be so anchored in the present that it cannot look either forward or backward: “The poet speaks the poem as it is, / Not as it was. . . . He speaks / By sight and insight as they are. There is no / Tomorrow for him.”13 By contrast, Betsy delightedly looked backward and forward constantly. This was so in her work; in her approach to law, which she viewed as remarkably malleable; and in her quotidian living, even as she faced her own death.

In An Ordinary Evening in New Haven, Stevens describes a poet’s quest for the “exterior made interior,” purportedly in contrast to the philosopher’s search for “an interior made exterior.”14 Near the end of this long poem overflowing with weird and wonderful extrapolations from an ordinary evening in the Elm City, some wandering mariners arrive in the land of the lemon trees: “Yellow-blue, yellow-green, pungent with citron-sap, / Dangling and spangling, the mic-mac of mocking birds.”15 Despite such abundant, luxuriant counterindications, the mariners proclaim themselves back in the land of the elm trees. And because of their “alteration / Of

11 WALLACE STEVENS, The Bird with the Coppery, Keen Claws, in COLLECTED POETRY AND PROSE, supra note 1, at 65. We learn about this dominant bird that “though the turbulent tinges undulate / As his pure intellect applies its laws, / He moves not on his coppery, keen claws.” Id. This bird, whose lids are white because he is blind, might exemplify the allure of formal legal justice. He does not move nor get involved in any way. Rather, this bird with coppery, keen claws “munches a dry shell while he exerts / His will, yet never ceases, perfect cock, / To flare, in the sun-pallor of his rock.” Id. The flare is shared, but this law bird otherwise is most unBetsy-like.

12 WALLACE STEVENS, An Ordinary Evening in New Haven, in COLLECTED POETRY AND PROSE, supra note 1, at 397, 404.

13 Id.

14 Id. at 410.

15 Id. at 415.
words that was a change of nature,” Stevens proclaims, “[t]he countrymen were changed and each constant thing.”16 And the stanza simply ends: “Their dark-coloured words had redescribed the citrons.”17

Time spent with Betsy Clark zinged with lemon trees and constantly dazzled with dangling and spangling colors. Even the dark-coloured words of death cannot alter the profound effects Betsy had on a remarkably variegated range of people. To those blessed to know Betsy, her brilliant “yellow-blue, yellow-green” qualities are too palpable to be forgotten. No matter what anyone said, she could tell a lemon tree from an elm tree. And though Betsy might delight in the “mic-mac of mocking birds,” she also knew what is needed to make lemonade.

DAVID J. SEIPP

My words are about Betsy Clark and the life of a scholar. I knew Betsy primarily as a scholar. We both taught legal history and occasionally guest-lectured in each other’s courses. We both wrote legal history and talked legal history. We talked about libraries, archives, microfilm, and eyestrain, about big pictures, good stories, little details, and footnotes. We talked about each other’s current projects and read each other’s drafts. Together we hosted a legal history speaker series, and together we served on the nominating committee of the American Society for Legal History.

As I write these words, I realize that they will sound dry, dusty, and

16Id.

17Id. at 415. The poem ends:

Like an evening evoking the spectrum of violet, / A philosopher practicing scales on his piano, / A woman writing a note and tearing it up. / It is not in the premise that reality / Is a solid. It may be a shade that traverses / A dust, a force that traverses a shade.

Id. at 417.

* Professor of Law, Boston University.
perhaps boring. But every scholar is passionate about her or his special field, and few could be more passionate than Betsy was. The first of her articles was about passion, and the last of her articles was about pain.

In her first article, Betsy tells us that the passion and intensity of religious revivals led directly to the antislavery and woman’s rights movements before the Civil War. Betsy teaches us that religion—liberal Protestant Christianity—is essential to understanding the language of rights and reform that we have inherited from the nineteenth century. The secular, abstract, sterile rhetoric of overarching rights in the Constitution of 1787 and the Bill of Rights gave way to a more personal, concrete, direct language of rights underlaying every human life. Here are a few of Betsy’s words in Religion, Rights, and Difference in the Early Woman’s Rights Movement:

The onset of the first woman’s movement came after the Second Great Awakening had stirred the country to new heights of millennial passion and transformed the public’s understanding of social change. Within this Christian framework, the possession of power was construed in a peculiar way. . . . The power of the husband, the father, the slaveowner, the legislator, the judge—were all potentially abusive, or abusive by the fact of their existence, as intrusions between God and the individual. Betsy goes on to show that the early woman’s rights movement didn’t just want the vote. They didn’t just want to change the law. They intended to change minds. She writes:

The majority of feminists believed that legal and political change—changes in statutes, court rulings, the common law, interpretations of women’s political rights—were symptomatic, and could only reflect deeper change on the level of public opinion worked by individuals coming to a real understanding of natural laws.

For the many who believed that divine and natural laws ruled the world in intimate detail, human legislation loomed small.

When it came to law and governance, their attitude is best expressed by the text they so frequently quoted—“Behold, I make all

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2 Id. at 45-46.
3 Id. at 30-31.
4 Id. at 31.
5 Id. at 32.
things new."

The pursuit of "happiness," always a somewhat vague component of revolutionary philosophy, took on a new specificity in claims to food, clothing, jobs, education—claims measured by needs and wants. . . . Women and slaves did not know Latin, but they could know hunger, and from the capacity for hunger sprang the entitlement to food.7

These have been Betsy's own words, but she makes her case by quoting the words of women of the 1840's and 1850's. Betsy has a rare talent for finding just the right quotation. Any of us might have written about putting women on a pedestal, but one of Betsy's early feminists in 1851 "rejected the idea that they were 'fine porcelain' to be laid on the shelf, and insisted on their right to 'mingle with the rude stone jugs, mugs and platters of humanized crockery.'"8 As Betsy puts it herself, men were suspected of "packing women off to heaven prematurely to limit their influence on earth."9

I have not done justice to all the ideas and insights in her first article, and I won't do more than mention her other marvelous articles on Elizabeth Cady Stanton10 and on the early woman's rights attitude toward marriage, slavery, and divorce,11 or her bibliographic essays, review essay, and reviews.12

Betsy's last article, as I said, is about pain. The title is "The Sacred Rights of the Weak": Pain, Sympathy, and the Culture of Individual Rights in Antebellum America.13 Betsy won the Binkley-Stephenson Prize for this one, which means that it is the best article published by the Organization of American Historians in that year.

Listen again to Betsy's words. In "The Sacred Rights of the Weak", Betsy tells us that "graphic portrayals of slaves' subjective experience of physical pain" became a staple of antislavery literature in the 1830's and "served as a vehicle for new arguments for a 'right' to bodily integrity."14

In the evangelical framework, the measure of authenticity lay in the

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6 Id. at 33.
7 Id. at 47.
8 Id. at 35.
9 Id.
12 All of Betsy's publications of which I am aware are listed at the end of this tribute.
14 Id. at 463.
feelings, not the intellect; the most striking oral and written testimony was the eyewitness account, which put the reader as close as possible to the slave's pain.\footnote{Id. at 467.}

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...In the 1840's and 1850's, [first-person slave] narratives offered intimate glimpses into the tragedy of suffering that were more persuasive than reformers' didactic rhetoric.\footnote{Id. at 470.}

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A body in pain—particularly pain deliberately inflicted by another—became compelling evidence of human transgression: thus, a policy or system built on governance by pain could impugn the legitimacy of the government sponsoring it.\footnote{Id. at 473.}

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The force of the abolitionists' appeal to sympathy for the slave was directly bound up with the career of [religious] revivalism and derived much of its power from the same source.\ldots Using intense feeling as the touchstone for authentic spiritual experience, their greatest measure of success—frequently achieved—was that they had left "not \ldots a dry eye" in the house.\footnote{Id. at 478.}

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[A]bolitionists used narratives of slave suffering to help bring about a change in conventions of moral reasoning that underlay rights claims, specifically in conventions about individuals' right to protection from bodily abuse.\ldots [F]or better or worse, this strategy contributed substantially to the growing power of individual rights within our system of jurisprudence.\footnote{Id. at 493.}

This, in quick and excerpt form, is the story Betsy tells us about pain, sympathy and rights.

To give us her marvelous articles, Betsy labored through the proceedings of every woman's rights and antislavery convention, every speech, tract, letter, and every issue of early feminist and abolitionist periodicals. The last time I spoke with Betsy, she told me how much pleasure she took in spending a day once more working on her book, how much joy she still felt in opening up a new set of primary sources. Another historian once described her sources to me as "people who used to be dead." Historians
spend a lot of time with people who used to be dead. Those of us who write history let our characters speak and act on the printed page as if they were alive once more. Betsy could make friends everywhere she went, and I feel sure that she made many friends among the women and men who fought the good fight a century and a half ago.

It is when I read Betsy’s articles that I miss her most. It is when I read Religion, Rights, and Difference or Elizabeth Cady Stanton or “The Sacred Rights of the Weak” that I am angriest at the cancer that kept her from writing more such pieces. But her warm, beautiful words on the cold, flat page are—at least for me—a way in which she stays alive and will stay alive as long as her words are read. And I know from my own work that historians—particularly legal historians—never stop reading the history that was written before.

Betsy’s articles are her children. She gave them birth, and brought them up well, and sent them on their way in the world. She can be very proud of them. Her book manuscript is the last of her children, the one she kept with her until the end. She knew at the end that two of her oldest friends, Tom Green and Dirk Hartog, will see that Betsy’s book too is well brought up and presented to the world. And she will be glad.

Betsy Clark’s Bibliography


Women Lawyers and the Origins of Professional Identity in America: The


