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Chapter 7 - Reflections on the Scholarship of Elizabeth B. Clark

Kristin Olbertson

Carol Weisbrod

Christine Stansell

Martha Minow

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CHAPTER SEVEN

Religion and Rights in Nineteenth-Century American Law: Reflections on the Work of Elizabeth B. Clark

by KRISTIN A. OLBERTSON*

The 150th anniversary of the Emancipation Proclamation has attracted scholarly and popular attention alike, but all this interest seems to have generated more heat than light. Lincoln's intentions and motivations, in particular, remain at least partly inscrutable. Was he acting as a reformer, or a lawyer? Were his motivations primarily moral, or practical and strategic? What notion of freedom, precisely, did he envision for freed African-Americans? This essay does not seek to provide conclusive answers to these questions, but it does suggest a fruitful place to begin an exploration of them. The work of the late Elizabeth B. Clark analyzes antebellum reformers, abolitionists in particular, and offers an important perspective on how and why emancipation was ultimately achieved.

Elizabeth Clark's essays on early nineteenth-century reform movements make a compelling case that abolitionists and feminists alike understood individual rights from a profoundly religious perspective. Clark also demonstrates how these reformers advocated the protection of so-called "natural rights" for enslaved African-Americans and white women in the vivid and fervently emotional language of evangelical revivalism. Broader cultural and intellectual trends of resistance to governmental and clerical authority, trends rooted in liberal and evangelical Protestantism, Clark argues, helped fuel attacks on slavery and gender inequality. Rejecting other historians' portrayals of the antebellum reformers as primarily secular in orientation, Clark makes the arresting, and well-substantiated, assertion that "For a time liberal religious thought became the primary carrier of notions of individual integrity critical to liberal political theory." Antebellum reformers retrieved pre-Revolutionary

* Kristin A. Olbertson is Assistant Professor of History at Alma College, Alma, Michigan. I am grateful to Tom Green and Dirk Hartog for initially suggesting, unflaggingly supporting, and helpfully commenting on this project. Whatever flaws remain are mine alone.

language of natural rights and natural law and critiques of excessive state power and resurrected a Reformation-era faith in the epistemological reliability of individual conscience and private judgment, fusing them all into a set of "moral conventions" which "over time . . . have become incorporated as a persistent strand in our rights tradition," notably the Thirteenth Amendment and the Civil Rights Act of 1866.¹

The story of how religious-minded reformers rescued individual rights, however, is not entirely straightforward. That is to say, once antebellum reformers had formulated their "dynamic" vision of bodily autonomy and its component rights, how did this vision become a vital force in the legal and constitutional life of the nation? By Clark's own account, the abolitionist movement, and the early women's and temperance movements, operated largely in direct opposition to law. The right of self-ownership, for nineteenth-century reformers, was not limited to the "familiar possessive paradigm," but was "far more dynamic . . . describing the ecology of moral relations with others, and ultimately with God," and was rooted in an individual's "spiritual nature and the conscience"—and thus was implicitly *not* rooted in law or any sort of "self-evident" truths, but in an individual's obligations to develop fully her divinely-bestowed gifts. Individual rights in general were "individual" not in reference to any Enlightenment-era sense of the liberal, autonomous person, but by "identification with the right of private judgment" and individual conscience. These reformers perceived themselves as heirs of the Reformation, not the Revolution, in their opposition to state policies regarding slavery. In fact, Clark reports, abolitionists had little regard for the reformative capacity of law itself, and for evangelical reformers, "the rejection of legalism served as a leitmotif in the struggle against Calvinism and slavery both." The institution of slavery (and as later reformers would point out, marriage), after all, was a corrupt legal arrangement according to which the state had privatized certain domestic relationships and their concomitant mechanisms of social ordering. Some anti-slavery activists even discouraged their adherents from participating in the legal sys-

¹ Elizabeth B. Clark, "The Sacred Rights of the Weak": Pain, Sympathy, and the Culture of Individual Rights in Antebellum America, 82 J. Am. Hist. 463, 463-493, 471, 487 (Sept. 1995).

tem in any way, and Clark describes some antebellum feminists as utterly "divorced from law and legal processes."²

The rejection of legalism also entailed a rejection of legalistic discourse. The language of religious reformers, as Clark reminds us, was deliberately emotional, as preachers exhorted their listeners to identify imaginatively with the plight of enslaved people, and anti-slavery literature relied on graphic, vivid imagery of physical abuse to stir feelings of horror and sympathy in its readers. Evangelical religious and antislavery rhetoric was anecdotal rather than argumentative, conversational rather than didactic, and often in the more immediate first-person voice rather than the detached third-person—in every way, opposed to the "cold, dry legalism of orthodoxy."³

The reformers' preference for an affective style of discourse, as well as their preoccupation with social relationships of sympathy, developed in a broader culture increasingly attuned to matters of "personal spirituality" and "moral relations with others." Contemporary romantic and sentimental literature, Clark argues, focused not on the "classic restraint problems of sovereignty, but rather the problems of perception and connection, for which law is useless but intuition is key." Here Clark is most directly writing about the changing nature of authority in early nineteenth-century American culture, but she also seems to be making a point about how reformers perceived the broader problems of social ordering. For abolitionists and other religious reformers, slaveholding and orthodox Protestantism alike were corrupt institutions sustained by soulless legal formulas, which could be rehabilitated (or eliminated, in the case of slavery), only by hearkening to the cries of individual conscience, which supplied not only a supra-legal moral judgment but also the impetus to act upon that judgment.⁴

Surely Clark is correct in emphasizing the unique epistemological loyalties of religious reformers, and in drawing a sharp contrast between law and intuition as alternate means of constructing a worldview in nineteenth-century America. And drawing this contrast is an important component of the larger argument which weaves

² Elizabeth B. Clark, *Anticlericalism and Antistatism* 1-2, 3, 38, 41, 42-43 (unpublished ms. 1995) (copy on file with Elizabeth B. Clark Papers, Boston University Law School); Elizabeth B. Clark, *Religion, Rights, and Difference in the Early Women's Rights Movement*, 3 *Wis. Women's L.J.*, 29, 33 (1987).

³ Clark, 82 *J. Am. Hist.* at 476.

⁴ Clark, *Anticlericalism* at 9, 9-12.

its way through all her articles on antebellum reform: the women's and abolitionist movements were not essentially secular, as many historians have described them, but rather were rooted in liberal Protestantism. Clark's analysis consistently distinguishes religious-minded reformers from the hidebound institutions of church and state, emphasizing the reformers' evangelical and sentimental ideology, vividly emotional and persuasive discourse, distrust of excessive state power, and antipathy towards clerical authority and hierarchies. The secular state and ecclesiastical institutions, meanwhile, were typified by a legalistic adherence to precedence and procedure, a secular and rational discourse, an emphasis on argument over analogy or sympathy, an individualistic conception of rights, and an inherently masculine character.⁵

The distinctions between liberal Protestantism and law, distinctions that were profoundly gendered, were paralleled in differences between the private and public rhetoric of antebellum religious reformers. The 1848 Seneca Falls Convention's Declaration of Sentiments, for example, is famous for its evocation of the language of the Declaration of Independence. We now know from Clark's work that the Declaration of Sentiments was less a direct reflection of the philosophy of most women reformers than a conscious adaptation designed to appeal to constitutionally-minded men. For these women, rights came from God, not from government, and existed not as a guarantor of individual liberty but as a means to achieve divinely-intended self-expression, an infinitely more radical and potentially socially transformative vision of rights and government: "Rights claims for antebellum feminists were not in the nature of strict bids for inclusion in a grant of powers and protections from human government. Rather, they expressed the terms on which individuals could best live out God's designs for human happiness." Yet, save perhaps for a few passages, this is not how the Declaration of Sentiments reads.⁶

Clark perceives the stark contrasts between reformers' public and private communications, both in content and in style, as tantamount to "two distinct languages," indicating that "women themselves

⁵ "Masculinity" in this context was typified by the drinking and swearing practiced by members of the legal profession. Clark, 3 *Wis. Women's L.J.*, at 38-41.

⁶ Clark, 3 *Wis. Women's L.J.* at 46; *The Declaration of Sentiments, in Early American Women: A Documentary History, 1600-1900*, at 242-243 (Nancy Woloch ed., 2nd ed., McGraw-Hill 2002).

identified their values and politics as in some way separate from men's." And indeed, the "gender-based legal critique" of some reform periodicals so fiercely attacked the legitimacy of manmade law that it applauded extra-legal violence in furtherance of reform goals, such as the woman who horsewhipped a bartender in the name of temperance.⁷ Such drastic measures were necessary in the eyes of reformers, Clark explains, because the law and legal institutions were so utterly unresponsive to the moral claims of women. The anti-legal stance of many female reformers, notwithstanding their goal of gender equality, was firmly rooted in a contemporary ideology of gender difference. Women reformers themselves understood there to be fundamental differences between the sexes, differences which in no way translated into women's inferior status, but were central to reformers' conceptions of social evils and their necessary correctives.⁸ Thus, law was a tool of men, while women, utterly "divorced from law and legal processes," sought to "promote moral sentiments."⁹

The broad dichotomy Clark establishes between liberal Protestantism and law in early nineteenth-century America serves not only to clarify her point about the religious background, philosophy, and goals of the reformers, a novel and important argument in itself, but also to bolster her critique of Elizabeth Cady Stanton for her post-Civil War shift toward the side of legal orthodoxy in her worldview and political strategy. Stanton's later focus on individual autonomy, Clark argues, led her to reject greater state involvement in domestic relations, thereby limiting the achievements of liberal feminism.¹⁰ In Clark's recounting, then, Stanton's career was a model in disillu-

⁷ Clark, 3 Wis. Women's L.J. at 44, 40-41.

⁸ Here Clark parts company from Ellen DuBois and other historians who would exclude difference-minded reformers from the genealogy of true, equality-minded feminism. Most of these early women reformers did not believe they had to be identical to men in order to merit equal civic and political status; in fact, their ostensibly superior moral characters actually endowed with them superior qualifications for participation in politics and governance. See, e.g., See Ellen Carol DuBois, *Outgrowing the Compact of the Fathers: Equal Rights, Woman Suffrage, and the United States Constitution*, 74 J. Am. Hist. 836, 843, 856-57 (1987).

⁹ Clark, 3 Wis. Women's L.J. at 33, 32.

¹⁰ Elizabeth B. Clark, *Self-Ownership and the Political Theory of Elizabeth Cady Stanton*, 21 Conn. L. Rev. 905, passim, esp. 924 (1988-89); Clark, *Matrimonial Bonds: Slavery and Divorce in Nineteenth-Century America*, 8 L. & Hist. Rev. 25, passim, esp. 49 (Spring 1990).

sioned and misguided retrenchment, a regrettable abandonment of the reformers' moralistic and sympathetic culture for the perceived practicality of liberal individualism.

In order to characterize Stanton as having gone to the dark side, however, and in order to maintain her focus on the essentially religious orientation of early nineteenth-century women reformers, Clark needs to maintain a clear picture of distinct "sides," to contrast clearly the world of the spiritual and sympathetic from the world of the rational and legalistic. Yet these two spheres may not have been as impermeable as she at times seems to suggest. Despite their disdain for legalism as a worldview, and their distrust of the law as a mechanism for effecting social change, religious women reformers nonetheless did attempt to achieve legal reforms, and they were certainly capable of adopting legalistic language when it suited their purposes to do so; the 1848 Declaration of Sentiments is only one example of this sort of translation. These women, whose private communications were suffused with religious imagery and animated by broad, morality-based arguments, corseted their otherwise radical public pronouncements and appeals to male lawmakers into the reassuringly familiar mode of liberal ideology, with its strict focus on the political and legal rights of the individual.

Moreover, the two spheres of evangelical reformers and legal actors were hardly mutually exclusive in terms of their discourse. Even the most heartwrenching depictions of the abuse of slaves were presented according to "scrupulous standards of proof," relying on "firsthand testimony" not only to stir readers' emotions but also to "[avoid] hearsay." One gets the impression that for all their evangelical fervor, antislavery advocates were also highly conscious of meeting legal standards of proof; Clark quotes Theodore Weld and the Grimké's asserting that "Facts and testimonies are troops, weapons and victory, all in one."¹¹ And one advocate for the moral supremacy of private judgment over manmade laws and institutions argued, "This necessity of answering for himself at the bar of God, obliges every man to act an independent part."¹² It is telling that in describing an individual's relationship with God, "unmediated by civil or ecclesiastical authorities," the abolitionist quoted here nonetheless resorted to a legalistic metaphor, cloaking

¹¹ Clark, 82 *J. Am. Hist.* at 467-68 (citations omitted).

¹² Clark, *Anticlericalism* at 12 (citations omitted).

the divine in judicial robes and casting the good Christian as a courtroom defendant (or, perhaps, an attorney).¹³ These examples are not culled from appeals to male lawmakers, but from texts largely intended for the reform community itself; it seems unlikely that these legal standards and metaphors were consciously deployed as a rhetorical strategy. Rather, these authors reflexively chose language which resonated with them and their readers. Throughout these essays, Clark rightly insists that we take these women reformers at their word, and listen carefully to how they described their objectives and themselves. But if the “language women spoke among themselves” both manifested and manufactured the unique culture of early nineteenth-century female reform movements, then we need to grapple with the fact that so much of this language was in fact legalistic.¹⁴

Notwithstanding their philosophical and moral objections to legalism and the legal system, religious reformers still inhabited a world in which legal standards were the *sine qua non* of proof, and legal metaphors had the most evocative associations with fairness and justice. Just as women reformers, however radical, were nonetheless acting within a cultural context in which significant differences between the sexes were largely unquestioned as both natural and desirable, they were also acting within a cultural context that embraced law and legal forms as some of the most legitimate expressions of community values, and legal standards (e.g., of proof, of evidence) as important guarantors of rights and liberties. And just as they could not fail to be influenced by prevailing gender norms, nor could they ever wholly escape contemporary valuations of the law, as a symbol or metaphor as much as an institution.

But in order to understand fully the significance of writing in legalistic metaphors, we would have to know more about the legal culture of early nineteenth-century America. For while the religious ideology of antebellum reformers certainly conditioned the ways in which they thought about law, its usefulness as a tool of reform, and their relationship to it, their views were just as certainly informed by contemporary legal culture, the “values and attitudes which bind the [legal] system together, and which determine the

¹³ Clark, *Anticlericalism* at 11.

¹⁴ Clark, 3 Wis. Women's L.J. at 43.

place of the legal system in the culture of the society as a whole."¹⁵ Many women reformers perceived American legal and political culture as thoroughly masculine, in the worst sense of the word, populated by rum-swilling, brawling, and profanely swearing judges and legislators.¹⁶ But while the outspoken critique of masculine legal culture may have been new, the very identification of the law with masculine values and activities was not. In eighteenth-century Connecticut, for example, as colonial civil courts adopted more technical legal procedures and focused their business on extra-local economic relationships, women became less and less likely to appear in court. And in criminal courts, men tended to speak in legalistic language, while women spoke in more religious terms.¹⁷ Women's "[divorce] from law and legal processes," like most painful breakups, had a long history of alienation and miscommunication, after all, and it would be easier to understand the final dissolution, not to mention the later reconciliation, if we had some sense of this history.

Complicating the dichotomy Clark sets up between religious reformers and secular legalists in this way returns us to our original question. Given abolitionists' antipathy for legalism on both philosophical and stylistic grounds, how did these keepers of the flame of liberal political theory convert their notions of individual rights into legal reality? Clark occasionally hints at the mechanism by which affective, emotional rhetoric penetrated the dry discourse of legal institutions, as when she suggests that "The spare liberal notion of bodily autonomy made its way into the courts cloaked in sentimental garb," or that "narratives of suffering . . . shape[d] arguments for legal redress."¹⁸ She argues that expanded notions of "the rights of the person" propounded by abolitionist activists altered social and legal norms, resulting in "broadened definitions of assault" in the criminal law and contributing to the "slow process of the constitutionalization of individual rights." The "rhetoric of sympathy," too, introduced "empathic identification" to American culture, most significantly in making arguments by analogy effective

¹⁵ Lawrence Friedman, *Legal Culture and Social Development*, 4 L. Socy. Rev. 29, 34 (1969).

¹⁶ Clark, 3 Wis. Women's L.J. at 40.

¹⁷ Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1789*, passim (U.N.C. Press, 1995); Dayton, *Taking the Trade: Abortion and Gender Relations in an Eighteenth-Century New England Village*, 48 Wm. & Mary Q 19, passim (1991).

¹⁸ Clark, 82 J. Am. Hist. at 486, 486 n. 58.

in constitutional jurisprudence for the first time.¹⁹ And as the reformers' vigorous anticlericalism expanded to undermine all forms of discretionary authority and hierarchical status relationships it contributed to liberalism's "theory of limited state power."²⁰

But this is the extent of what we are told about how the extra-legal—if not downright anti-legal—ideologies of antebellum religious reformers eventually became legal ideologies, and even legal realities, themselves. This is not to suggest that Clark should have undertaken a detailed analysis of how reformists' philosophical principles migrated into legal standards, procedures, and institutions; this is not her central project.²¹ And it is not to question the premise that sentimental language can effect cultural shifts resulting in legal change; we have to look no further than the recent success of the religious right in shaping public opinion in this country on a whole range of social issues, notably abortion and gay marriage, to see the power of emotional rhetoric. However, it would be helpful to hear more about the political strategy that directed avowed anti-legalists to seek change through the law, and the cultural shifts that primed ostensibly orthodox judges and legislators to accept sympathetic and sentimental arguments for legal change.

Clark does tell us that beginning in the 1850s, women reformers began to accept legal and political means of reform, and increasingly sought change through legislative and judicial action rather than through moral suasion. The immediate efficacy of anti-liquor legislation trumped many women's philosophical preference for achieving individual and social reform through persuasion and conversion, and endowed the formerly secondary goal of suffrage with new significance. This new "emphasis on legal rights, narrowly conceived," Clark argues, "diminished discussions of economic and social entitlement." But even these new claims for legal rights were premised upon older, gendered ideas about women's obligations to their families and communities, not necessarily their civil rights as autonomous individuals.²²

¹⁹ Clark, 82 J. Am. Hist. at 492.

²⁰ Clark, *Anticlericalism* at 36.

²¹ For an example of such an approach, see Barbara S. Shapiro, "*Beyond Reasonable Doubt*" and "*Probable Cause*": *Historical Perspectives on the Anglo-American Law of Evidence*, passim (U. Cal. Press, 1991) and Shapiro, *Probability and Certainty in Seventeenth-Century England: A Study of the Relationship between Natural Science, Religion, History, Law, and Literature*, passim (Princeton U. Press, 1983).

²² Clark, 3 Wis. Women's L.J. at 56.

Given what Clark has told us about reformers' earlier opposition to legal institutions and orthodoxies, it is unsurprising that they did not plunge with abandon into a more secular, rights-oriented discourse. The philosophical and discursive shifts Clark describes are more uncertain, subtle, and complex—which makes one wish she would have had the time to explore them more fully. Important questions remain: did the early nineteenth-century reform movements and their fervent religious discourse mark an isolated moment, a deviation from secular liberal individualism between the first two great eras of constitutional change, the founding era itself and the post-Civil War Amendments? That is, did liberal religious thought interrupt a tradition of secular rational conceptualization of individual rights, or was it actually an important element of that tradition? How does our answer to this question shape our understanding of the intent and meaning of the Emancipation Proclamation? And if sympathy and sentimentality eventually penetrated jurisprudential reasoning and discourse, did they survive in evangelical or in humanistic form—just what is this “persistent strand in our rights tradition”?²³

We might wish for more from Clark herself, but with her many important insights, her quietly understated revelations, and the dense network of ideas within her own discourse, she has left future historians—of women, of politics, and of the law, for starters—ample foundation for further thought and research. Her elaboration of the religious strains in antebellum political theory provides a richer context for scholars who seek the full measure of Lincoln—no stranger to the rhetoric of religious reformers himself—and his Emancipation Proclamation. The mid-century changes in legal discourse that she so matter-of-factly observes are in themselves provocative phenomena for scholars of legal language and culture, and the conversion of lawmakers and judges from orthodox legal analysis to sympathetic reasoning should be further explored by legal historians. Elizabeth Clark was able to leave us, however, a new and deeper appreciation for the crucial role played by antebellum women reformers in shaping and preserving the cultural, political, and constitutional history of individual rights in America.

²³ Clark, 82 *J. Am. Hist.* at 487.

{Elizabeth Clark—A comment*

Carol Weisbrod, Law School, University of Connecticut

*This comment was written in 2004 as a contribution to a book which was not published. The piece was slightly revised in 2019.

“Like many late-Victorian intellectuals who suffered breakdowns—William James, Max Weber, Abraham Kuyper—Royce left his wife and children behind and took a curative holiday alone.”¹ The list of names—leaving aside the behavior—seems strange. Of the four men, two and possibly three are known and even well known in the world of American historians. The Dutch theologian-statesman Abraham Kuyper is quite possibly not known at all, at least to those outside the fields of religious or modern European history. We are not surprised to find such a list in the work of those associated with a religious tradition—the author is in fact Ronald Wells, of the history department at Calvin College. And we would not be surprised to find such a list in a work by Betsy Clark.

This comment discusses two ways in which Betsy Clark’s work is out of the ordinary. The first relates to the way in which she read texts, and the kinds of things she read. The second relates to the particular concerns she brought to the essays in the unfinished book she called, *Women, Church, and State*.

I.

¹ Ronald A. Wells, *Foreword* to JOSIAH ROYCE, CALIFORNIA: FROM THE CONQUEST IN 1846 TO THE SECOND VIGILANCE COMMITTEE IN SAN FRANCISCO [1856] A STUDY OF AMERICAN CHARACTER, at xx-xxi (2002).

As to her reading, one can comment both on the manner of the reading and the subjects of it.

Betsy Clark fit things together in ways that, while not unique to her, made her highly unusual in her professional context. Her extraordinary intellectual strength was the ability to project herself into the minds of those who lived in another time and who thought in other categories. To a notable degree, she was able to go beyond conventional approaches, particularly approaches relating to religion, and reach the historical connections which are understood now to be a major contribution of her scholarship.

Betsy Clark stands outside of law and looks at it. But where is she standing when she does that? She was a historian who taught on a law faculty. Religion, religious thinking, literature, law, and culture were not things apart, separated by disciplinary boundaries, but were integrated in her general historical discussions. Is she, then, standing on the platform of history? Law? Something else?

If we were to say that it is from history she looked at law, we might have expected her to look through the optics on law provided by major contemporary historians. But Betsy Clark was not doing that. She read Stanton, or Willard, for example, and wanted to know how they saw law and rights. If they read Stephen Pearl Andrews or Charles Fourier, then she would also. Writing about religion, she only briefly engaged the familiar historical arguments over the history of church and state. Rather, she tried to reconstruct the role of religion, and the relation of religion and law as it seemed to exist in the heads of the specific people she wrote about. One concludes that

she was trying to stand not where her discipline placed her, looking at law, but where her individual human subject placed her. As Steven Wilf suggested to me, we may want to describe her method in terms of the goals of a figure like Wilhem Dilthey—emphasizing the need for understanding of the cultural, immersion in the details of social environment, stressing the need for understanding (as distinct from mere knowing), and of empathy.

At times, Betsy Clark saw herself as writing history, unmodified. When she comments that her approach to evangelical and liberal Protestantism may seem like “egregious lumping”,² she writes as a part of a profession which might consider inappropriate joining egregious. It is as one writing history that she rejected “monocausal history.”³ At other times, there is a quality of normativity in her writing which places her closer to law. Sometimes the normative shows up in a footnote, as when she writes that “[w]hatever Foucault thinks about voluntary pain,” her position, “is that, until invited, not beating people is better than beating people.”⁴ But this kind of personal footnote is not the only thing that seems beyond the familiar historical discourse. Rather, it is the apparent need to pass on the substantive question. When she discusses the feminist orientation of various historians, Betsy Clark does not seem to be engaged in a discussion of historiography. Rather, she seems to be seriously concerned about something else: which version is the truest to feminism. As Aviam

² Elizabeth B. Clark, *The Sacred Rights of the Weak: Pain, Sympathy, and the Culture of Individual Rights in Antebellum America*, 82 J. OF AM. HIST. 463, 464 (1995).

³ Elizabeth B. Clark, *Self-Ownership and the Political Theory of Elizabeth Cady Stanton*, 21 Conn. L. Rev. 905, 940, n.154.

⁴ Clark, *supra* note 2, at 492, n.74.

Soifer points out, in general, she “was committed on an ongoing basis to the unrealizable search for justice.” And he adds, “[t]his commitment drew her passionately, yet critically, to other seekers ... 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.”⁵

These actual political concerns—they motivated her often, as is plain from the memorial tributes in *Boston University Law Review*—give Betsy Clark’s work a sound which is entirely distinctive. In the footnotes and asides, one hears her voice as an individual, as specific to her as her image of Elizabeth Cady Stanton: a “majestic, solitary figure ... sailing through the universe with a star in one hand and a ballot in the other.”⁶

The normative sound suggests that she perhaps came closer to the approach of what we now call law and culture than the approach of law and history.⁷ If law/culture is distinguished by its relatively new emphasis on films, we can link Betsy Clark to that approach through her citation of Woody Allen. If the idea is a connection to the general culture, we can refer to her sense that she was, in her late piece on Frances Willard, pursuing the method of Jackson Pollock and just getting the material down on paper. Or we can cite the pictures she used to illustrate the discussion in *Journal of American History*. And if these tests are too narrow—as they probably are—we can define

⁵ Aviam Soifer, *Memorial Tribute for Professor Elizabeth B. Clark*, 78 B.U. L. Rev. 244, 245 (1998).

⁶ Elizabeth B. Clark, *Religion, Rights, and Difference in the Early Woman’s Rights Movement*, 3 Wis. Women’s L.J. 29, 52 n.105 (1987).

⁷ See generally, *LAW IN THE DOMAIN OF CULTURE* (Austin Sarat & Thomas R. Kearns eds., 1998).

law/culture as an inquiry directed loosely to law as part of the culture as a whole. Betsy was expert in the culture. One of Betsy Clark's articles includes an unannotated parenthetical reference to a man who refused an offer of Graham bread, "saying that he had noted that when you began with Graham bread, you ended with infidelity."⁸ The law journals would probably have insisted on a source. Had Betsy Clark finished the work, she might have identified the source. But as it is, this is a posthumously published essay, edited by others. As it stands, the unapologetic absence of the specific source—she seems to know from her own direct experience—seems to show how deeply Clark had absorbed the culture she was describing.

Of the range of questions historians approach—why something happened when it did or why something did not happen at all—Betsy Clark seems to have focused particularly on one: What did people mean by the words they used and how did those meanings relate to the professional legal understandings of those same words? She was concerned about the role of the state and the development of the state, but did not limit her inquiry to the official understandings and the official texts. Her sense of what was important in the rights discussion was different from the central legal and political narratives evidencing the development of rights arguments. She read what others have read but perhaps read those materials differently. She clearly read things that other people often do not read at all.

⁸ Elizabeth B. Clark, *Breaking the Mold of Citizenship: The "Natural" Person as Citizen in Nineteenth-Century America (A Fragment)*, in *CULTURAL PLURALISM, IDENTITY POLITICS AND THE LAW* 41 (Austin Sarat & Thomas R. Kearns eds., 1999).

One can imagine that, had she lived to carry her work forward, Betsy Clark would have continued to work along the same lines. An anecdote about Jane Addams might have caught her attention. The story comes from Chicago in 1903. It was midnight, and horses had been injured but not killed in a fire. Firemen in Chicago were supposed to ask judges for permission to shoot horses within the city limits. They could not find a judge and would have to wait until morning to relieve the suffering of the horses. They went to Jane Addams for permission to shoot the horses. She said, "I have no legal authority, but I will take responsibility" and she went to watch the shootings.⁹ In this story, the private becomes public (though unofficial) through the fact that it is acknowledged, established as a kind of authority, recognized by those who submit themselves to it. Betsy Clark might have found the story interesting, linked as it seems to be to her inquiry into anti-statism in the 19th century, and her projected work on 20th century thinking.

Moving forward, Betsy Clark might have looked at the idea of rights, and of the status of constitutional or canonical texts about rights, as they appear to people in the general culture who are not professionally concerned with these texts. She might have commented on Elaine Scarry, talking about the language of the Declaration of Independence as though she were talking about the language of a poem, stressing scansion and rhythms.¹⁰ Or Philip Roth referring to the Declaration of Independence in *The Dying Animal*, treating the language of foundational documents as a support for a

⁹ JEAN BETHKE EHLSTAIN, *THE JANE ADDAMS READER*, at xxxiv (2001).

¹⁰ ELAINE SCARRY, *ON BEAUTY AND BEING JUST* 102-03 (1999).

particular life style.¹¹ Or Umberto Eco playing with the changes in meaning which might result from the introduction of ellipses.¹²

And she might have reopened the general question of the relation of religious institutions and religious belief to the developments of her own time.

II

In 1995, Betsy Clark indicated that the title of her book was to be, *Women, Church and State: Religion and the Culture of Individual Rights in 19th Century America*. The echo of the title of Mathilda Joslyn Gage's *Woman, Church and State* cannot have been unintentional though, of course, we can only speculate about the precise meaning of the reference. At the very least it is a move away from the "essentialism" of Gage's title. For the rest, we don't know.

Gage herself is cited several times in Betsy Clark's articles and Gage is discussed in a 1987 bibliographic essay:

Gage's masterwork, *Woman, Church and State*, published in 1893, remains one of the few scholarly investigations of that three-way relationship, and strikingly prefigures the work of contemporary feminist theologians like Mary Daly. Gage saw practices such as celibacy and witch-hunts as part of the church's policy to degrade women by perpetuating the image of a lustful and wicked female sexuality. For Gage, women's glory had been in the pre-Christian matriarchal societies; they had suffered their own Fall in their degradation after the establishment of Christianity. Equally prescient were Gage's descriptions of the psychology of oppression, of women's

¹¹ PHILIP ROTH, *THE DYING ANIMAL* 52 (2001).

¹² UMBERTO ECO, *HOW TO TRAVEL WITH A SALMON & OTHER ESSAYS* 187 (William Weaver trans., 1995).

passivity and inability to exert themselves, their morbid dependence on men for their identities.¹³

I think that in adopting a variation of Gage's title, Betsy might also have offered an explicit comment on Gage's view of the question of women and religion. Gage's view stressed the repressive aspects of church's teachings on women and the sinfulness of women's work for equality. Clark advanced a reading by women of religious materials which saw different possibilities. One might say that Betsy Clark's work on the question of religion and women, religion and women's rights, was an implicit comment on Gage's view, a response to someone with whom one was in conversation, as if to say, *but perhaps there is more to be said*.

As noted earlier, Betsy Clark did not write much directly on church and state. She was clear that separation meant more than disestablishment (noting the long process of legal and cultural change). She also thought that, while the vitality of the church might have been reduced, issues of church control in the 19th century were still real. Her conclusion is a mid-point:

It is questionable whether either patriarchy or the church ruled as forcefully by Stanton's day as she suggests, or whether she was beating a dead horse. I think she was beating a sick horse. Both pure patriarchy and pure Calvinism were already well in decline by the mid-nineteenth century, with Stanton enthusiastically preparing to pound in the coffin nails.¹⁴

There is little on the First Amendment to the United States Constitution or the standard cases, 19th and 20th century, which are thought to constitute the canon in the field of

¹³ Elizabeth Clark, *Women and Religion in America, 1870-1920*, in *CHURCH AND STATE IN AMERICA*, A BIBLIOGRAPHIC GUIDE 394 (John F. Wilson ed., 1986).

¹⁴ Clark, *supra* note 3, at 908 n.11.

church and state. Instead, Betsy turned her lens on what might today be called religion and law, broadly understood. (Thus we have two specialized law journals, the *Journal of Religion and Law* and the *Journal of Church and State*, reflecting this difference.) One can perhaps state, or overstate, the point this way: Church and State focuses on the connections between religion and the State, and often deals with a familiar range of questions concerning Supreme Court litigation over the First Amendment to the Federal Constitution. Religion and Law is more interdisciplinary in its focus, discussing broader questions of the religious and moral dimensions of law and the human condition. One can imagine that someone with Betsy's particularizing approaches would be more sympathetic to the field of law and religion. But there seems to be no way to entirely ignore the structural issues which are central to the field called "church and state."

There is a piece of Gage's history which might have intrigued someone with Betsy's range of interests as she carried the story of 19th century feminism forward into the 20th century. Mathilda Joslyn Gage became a theosophist. Suddenly we are not talking about mainstream Protestantism or even familiar evangelicals. We are at the fringe of religious movements, talking about the new religions Betsy Clark dealt with in her earliest writing on women and religion.¹⁵ We also, through the figure of Gage's son-in-law, Frank Baum, are at the center of popular culture through the familiar images of Baum's *Wizard of Oz*. Baum himself was well known as a creator of department store windows, a man deeply involved in the new consumer culture.¹⁶ His book is analyzed as

¹⁵ See, Clark, *supra* note 13.

¹⁶ See WILLIAM LEACH, *LAND OF DESIRE* (1993) (discussing this link between theosophy and retailing).

social and political commentary in various ways. Many things might have come together, not the least being on the point that Oz, great and powerful, is a small man pulling strings behind a screen, unmasked by a young woman. Betsy Clark, writing on this, would have been worth reading.

Betsy's work leads us to ask about the possible continuing influence of religion,¹⁷ in its various manifestations. Gage moved to an orientation we might link to "New Age" spirituality or figures like Rudolf Steiner. Still other groups consider religion and religious tradition and the political world in a more structured way. Betsy herself lived in Cambridge, Massachusetts, a 19th century home of liberal Christianity. She could have seen a world that Charles Peirce had seen some time earlier, when he invoked the Gothic cathedrals. Peirce wrote: "One feels that the men who did these works did really believe in religion as we believe in nothing."¹⁸ But then, in her concern with cultural materials she might have also seen some other things. Betsy Clark might have been struck with the resurgence of Christian apocalyptic thinking that sold millions of copies of Hal Lindsay's *Late Great Planet Earth* in the 1970's and is marked by the success of the *Left Behind* series. And beyond the millennial concerns of large numbers of evangelical Christians, she would have observed many others who are interested in the questions of Gnosticism reopened to general audiences by the work of Elaine Pagels. Thinking more generally about America, Betsy Clark would have remembered that the United States has had often had higher church attendance records than Europe. Her

¹⁷ On her Christianity, see William Park's memorial comment in 78 B.U. L. REV. 242 (1998).

¹⁸ CHARLES PEIRCE, *SELECTED WRITINGS* 77 (Phillip P. Wiener ed., rpt., 1966) (providing a critical review of Berkeley's *Idealism*, 1871).)

historical focus might have suggested parallels with earlier times. For example, many medieval writers lived with a sense of the imminent return of the Messiah:

[M]any medieval authors believed that the prophecies of the Apocalypse and other visionary works were being fulfilled in the present, that the scriptural warnings were given so that Christians could prepare for the persecution that doctrine taught was imminent, and that it was imperative that they speak out with prophetic fervor condemning contemporary evils.¹⁹

I do not speculate on how she would have discussed these dimensions of our culture, or what literature she would have engaged on religion, on Christianity and on Evangelicalism²⁰. If Betsy Clark had looked at the contemporary questions—when these issues are not marginal and are widely discussed—we can be certain that she would have suggested illuminating differentiations between the various positions staked out. Questions of religion, state, citizenship, and individual obligation presently engage us. These were issues which Betsy Clark cared about and deeply understood.

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¹⁹ RICHARD EMMERSON & RONALD HERZMAN, THE APOCALYPTIC IMAGINATION IN MEDIEVAL LITERATURE 32 (1992).

²⁰ e.g., RICHARD JOHN NEUHAUS, THE NAKED PUBLIC SQUARE: RELIGION AND DEMOCRACY IN AMERICA (1988); Richard John Neuhaus, *Why Wait for the Kingdom?: The Theonomist Temptation*, FIRST THINGS (May 1990), <https://www.firstthings.com/article/1990/05/why-wait-for-the-kingdomthe-theonomist-temptation>.

Christine Stansell
History Department
Princeton University

Betsy Clark's work still vibrates with the argumentative excitement of her early forays into feminist thought. Perhaps more than any other historian, Clark read deeply and precisely in the nineteenth century texts. In following turns of thought and language so closely, she came to understand and to communicate to us, her contemporaries, something of the elation which stirred readers and audiences long ago. Closely quartered with pages of stately, clause-ridden nineteenth century prose, she felt the heat, sensed the audacity of particular turns of thought. Elevated sentiment and lofty rhetoric did not distract her from a fundamental rambunctiousness. Clark was as cerebral as her great subject/nemesis, Elizabeth Stanton; and like Stanton she had an intuitive grasp of how much was at stake in the tints and shades of the terms by which we understand the world and its largely invisible powers. The natural rights championed by the women's movement were, she showed, colored a deeper hue-purple? scarlet?-than the rights acknowledged the Founding Fathers: those one can only imagine as beige after reading Clark's analysis.

For Clark, the antebellum period is fluid and formative. She stirs up curiosity and surprise about historical subjects we thought we knew thoroughly, familiar protagonists who, it turns out, were more interesting than historians had thought. It is easy enough, in teaching the origins of feminism, to hop over the precursors (Mary Wollstonecraft and the Grimke sisters), take a cursory look at the Seneca Falls "Declaration," and get on with the real business of the suffrage business after the Civil War. But Clark takes us back to the 1850s and shows what varied and deep-going intellectual work-the current term would be "theoretical"-went on in these small circles of politicoes and their fellow travellers.

Women's rights for these early activists were natural rights rooted in the body and its most private, intimate relations, sanctioned and protected by a close, heady acquaintance with the Divine. This interpretation challenges our common historical wisdom.

Other scholars judged the first articulations of women's rights in the 1850s to be an expansion and modification of republican political theory, inspired by a similar abolitionist revision of the natural rights of the enslaved. Clark proposes that a more ingenious transmutation occurred; women fundamentally reworked the Constitutional settlement. The rather abstract language of rights used by the Founding Fathers was common currency in America, and women drew on it for help in fashioning their arguments and in making public appeals." this is why the organizers at Seneca Falls pitched their "Declaration of Rights and Sentiments" in the form of the Declaration of Independence. Yet they infused the familiar rhetoric with soul-stirring assumptions born of the Second Great Awakening and liberal Protestantism. Rights were not only protections from the unjust use of power; equal rights would allow each individual to use her God-given capacities for the good of those around her.

Lucy Stone quote

An understanding of liberty based in secular thought was thus not separate from religion. Religious conviction, conventional views of women's virtue, and demands for political justice mingled easily; and religious language underscored the language of dispassionate reason inherited from the late eighteenth century. Even as staunchly anti-clerical a thinker as Elizabeth Cady Stanton habitually used.....**quote here** "Rights claims for antebellum feminists were not in the nature of strict bids for inclusion in a grant of powers and protections from human government. Rather, they expressed the terms on which individuals could best live out God's designs for human happiness." Modern feminists, drawn to the secular elements of the tradition, have tended to pass over the religious sentiments, relegating them to a pre-history before women's rights entered the political arena proper. It is Clark's contribution to propose that the admixture of claims is fundamental.

The argument about the transformation of natural rights philosophy goes a long way toward explaining a paradox in the emotional cast of women's rights; the vehemence with which the woman question burst onto the radical scene coexisting with the supreme confidence with which feminists of the 1850s went about their business. The flustered, harried notes in Mary Woilstonecraft were gone; so was strain of deep aggrievement in Sarah Grimke. Each, in her different way, had been badgered and baffled by the intractability of radical republican culture; its seeming hospitality to liberties of all sorts

coupled with a fundamental disdain for women. Both, in different ways, were always trying to measure up to its standards of citizenship and finding themselves, and their sex, somehow wanting. And both, of course, had addressed female audiences who, however persuaded they were by denunciations of injustice, did not think to collect themselves for political action.

By contrast, the 1848 Seneca Falls Convention, the first full scale meeting devoted solely to women's rights in history, could have been a flash in the pan, another fleeting episode in a fitful history of grievances. But the women in upstate New York seem to have brought a different political unconscious to the gathering. The immediate result was a wide-ranging list of grievances, some implying practical remedies (ex.), some gesturing toward diffuse, radical change. The more remarkable result, in view of what hadn't come before, was a determination to organize. Meetings and annual conventions proliferated through the 1850s and even continued, more haltingly, through the Civil War; at least two women's rights newspapers carried the news to across the Northeast and Midwest. The record of those efforts through the 1850s is one of striking certainty of the lightness of the cause and the inevitability of victory, a **few exs.**

How did the Seneca Falls generation develop so quickly such complex and efficacious ideas of the rights of women? Historians have attributed their astonishing initiative to the experience women in the reform movement had already gained in abolition organizations, as well as to the millennial fervor of the times. From this angle, the woman-as-slave metaphor they created seems natural and unremarkable. But Clark makes us look again at what is so familiar. Although she died before she could fully explicate the intellectual genesis, connections can still be made. Hers is a powerful revaluation of the role of sentiment, feeling, and empathy in popular women's culture. No longer does sentimentalism seem an embarrassing gush of Victorian female resentments and projections.

The essay on slavery, pain, and the political culture of sympathy allows us to peer into the deep background, to perceive how images and stories seeped into the recesses of antebellum imaginations to precipitate a new political valuation of what Dark elegantly calls "the tenanted body." We can speculate about the connections between imagining the bodies of the slaves to be endowed with rights and conceiving the idea of the natural rights

of women. The collective experience, Clark seems to suggest, thickened up ideas about what it meant to occupy a body, however different that body might be from the male citizen's. We can (ill in her sketch to think about the leavening influence of other modes of comprehension. Melodramatic tropes of cruelty (stemming from slave narratives and popular fiction and theater), Romantic thought which highlighted the keen particularities of individual experience, and above all, the Second Great Awakening, still rumbling: these all helped create and make plausible the governing and galvanizing analogy of woman and slave.

But if women's political culture did thicken up in the 1850s, then, in Clark's view, it thinned in the post-war years. This view of declension reverses our habitual chronology, which traces the evolution of the women's rights movement from a small, self-contained offshoot of pre-war reform circles to a full-scale mass movement, organized around the drive for the vote. Clark makes her case chiefly from the limitations of Elizabeth Cady Stanton. Stanton, in her drive to slough off what she saw as the encumbering relations of women, bypassed women's God-given "duties" to embrace a gleaming notion of abstract "rights." Her brainy affinity for abstractions, we might say, lured her into a class liberal trap, as she advanced a theory of woman harrowed of her relations with others.

The female citizen stood alone, bargaining and dealing in a world of contracts. The thrust was deregulatory—a word that packed a punch in the late years of Reagan, when Clark was writing her dissertation, and which still does in these early years of Bush—and anti-institutional: if obligations hooked women into what was cloying and confining, then the legal protections which accompanied obligations could be sacrificed. The result was that Stanton never developed a way to link her potent idea of women's self-ownership to a positive theory of the state. Because her fundamental question was whether the individual was paramount in law and policy, it was difficult to think about public interest as anything but a pleasantly vague outcome of a consortium of freely acting self-developers.

Feminists have never had such a chastening view of Stanton. The interpretation is never tendentious or polemical, as are some denunciations of Stanton as racist, based on quick and partial samples of her texts. It is knowledgeable and precise in the extreme. What others have only sketched of the sources of Stanton's ideas—the germinative influence of Victoria Woodhull, for example, on her ideas about self-will in guiding one's sexual

relations-Clark studies fastidiously, so that we have a picture of a more full-blooded intellect: a mind, for instance, that could knead Fourierist ideas into classical liberal notions of the individual to come up with a theory of female self-ownership that throbs with a very unliberal passion.

Clark is never categorical in her judgments: she allows Stanton to be a radical even she finds fault with her as a liberal. Reminding us that Stanton's young adult years are also the period of high American Romanticism, she touches on the Romantic strains in Stanton's feminism, the celebration of the genius of Universal Womanhood, and the powers of the developing individual, which link her to Margaret Fuller, dead only four years before Seneca Falls. There are a few biographical misreadings-we know now, for example, that Stanton was not only a vigorous mother but a happy and beloved one-but mostly, this is a Stanton her followers (then and now) can recognize: a woman blessed with adamant faith in herself and her convictions, imperious, brilliant, and oddly comic at the same time. The difference is that Clark didn't much like her and the rest of those who have studied her generally do.

Yet the disagreement isn't about a cult of personality; it's about the adequacy of interpretation. For all its power, Clark's argument still reads like a lawyer's and not a historian's, as if she were working to buttress a legal brief. She looks to what supports her argument but she is not interested in weighing her claims. The texts float in a void; and this is true of the antebellum writings which she celebrates as well as Stanton's speeches and articles which she criticizes. Most of the antebellum evidence rests on two newspapers, The Lily and Una. Written before historians felt the impact of 1990s literary criticism which offered complicated ways to understand the relationship of texts to their production, the essays ignore questions of audience and reception. These concerns become pressing once one realizes that both papers came out of tiny towns in the Midwest, written and published by women at the edges of the movement and probably read by a few hundred people, not the "thousands" that Clark floats at one point

And for all Clark's scrupulousness, she still judges Stanton as if she were a figure outside of time, meant to be an eternal fount of ideas and strategies for twentieth century dilemmas--providing material perhaps for an amicus brief in a 1980s reproductive rights case. The political demands that prompted Stanton's ideas are hazy in these essays. "Duties" for

example, the side of the "rights and duties" equation which Stanton ignored. Duty meant, first and foremost after the Civil War, duty to the abolitionist cause, duty to the freedmen, duty to support the fifteenth amendment. Fulfilling this duty made women's (both black and white) constitutional status worse, not better: Stanton was correct in this judgment. Women's duties threatened to bury women's rights. And in the aftermath of Reconstruction, the difficulties of imagining a positive theory of the state were hardly unique to Stanton: Northern reformers across the board retreated into notions of private associationism and it was left to Southern African-Americans to.....**Dirk-can you help me out here?**

At the same time Stanton's version of rights seems to have been suited to a much broader but no less devoted and eager constituency The National Woman Suffrage Association, which she founded with Susan B. Anthony in 1869, brought a new kind of sheep into the fold: women too young for abolitionist work in the 1850s, aspiring professional women and men as well-doctors, businesswomen, self-supporting writers-who had both practical experience in the world of contract-making and knowledge of the debilities they incurred as women in that world. White Clark would leave us with the portrait of Stanton as a radical individualist and deregulator, she also allows us to how, at the same time as she advocated contract as the basis of streamlined, equitable relationships, Stanton was engaged in a wholesale mental reconstruction of woman's view of herself and her most intimate relationships.

That mental reconstruction was hardly stripped down into a deracinated exposition of the female self. Here we come up against what is, for all the nuance of these essays, an ahistorical and overly categorical judgment of liberalism. Stanton's liberalism was full-blooded, not the willfully blindered philosophy (**mixed metaphor**) which Clark reads in-falling pretty too much, I believe, to her assessment of liberal politics in her own time. **Stanton quote here** White she was willing to see "rights" as elastic and supple, changing over time, she was unwilling to grant the same flexibility to "contract."

Clark's method encourages us to notice the mixture rather than the homogeneity of intellectual impulses that made up feminism. But she is unwilling to acknowledge how much Stanton's thought continued to harbor, in its mix of freely contracting individuals, Romantic destiny, and Fourier's voluntary affections, zapping about society. These survivals from the antebellum period were immensely appealing and promising, over time, to middle-

and working-class women who made them, both inside and outside the women's movement, the basis for a powerful ideology of female self-realization.

The problem with the declension argument is that the women's movement did anything but decline. Stanton's "bodily autonomy" can be seen as a "spare liberal notion" only from the perspective of later left-wing denunciation of liberalism; women in the late nineteenth and early twentieth centuries surrounded this notion with imaginative layers of hopefulness for grander lives. Of this ethos we could easily apply the words of literary critic Nina Baym, whom Clark quotes approvingly on sentimentalism; no less than the rhetoric of Woman's rights and duties in the 1850s, Stanton's idea after the war provided not "evasive self-absorption" but "a practical philosophy of community."

Clark's declension model, to be fair, rests more on the decline of Elizabeth Cady Stanton. She seems to suggest that Stanton's contract-based liberalism was irrelevant to a mass movement sparked by the Women's Christian Temperance Union. In this turn Clark's argument is at its most provocative, but also its shakiest, even at the time she was writing. Of course, even to revisit the WCTU seems to me an act of intellectual chutzpah; many have referred to, but few have actually investigated, the matronly politics of the Midwest-based organization since Ruth Bordin's study some xxx years ago. While Clark did not get the chance to draw the precise connections, she was suggesting an affinity-or perhaps a direct genealogy-between the antebellum movement, with its notions of rights and duties stemming from divine endowments, and Christian feminism of the late nineteenth century. She employs the same method she used with such good effect in the earlier period-examining closely a language and web of political metaphors easily dismissed as sentimental and cloying.

Frances Willard has long been an attractive figure, with her championship of suffrage and her interest in socialism, but the legions of women she commanded have been a different story. For feminists like Clark, writing amidst the resurgence of the Christian Right and the family values campaign, the religious rhetoric she heard around her was a spur not to reject but to reconsider the greatest middle-class mass movement of the late nineteenth century. She was hoping to connect the WCTU to not only the Social Gospel movement but also to much more appealing progressive initiatives. Jean Elshtain's recent biography of Jane Addams, which stresses the Christian elements of her social mission, would have helped

Clark make her case, although undoubtedly she would have found Elshtain a strange bedfellow. Clark wanted to revive the meaning of "duty" within a feminist lexicon as an invigorating and mobilizing political notion; this is just what Elshtain argues about Addams' beliefs in her work at Hull House. Duty, both these scholars want us to see, could be invigorating rather than burdensome; it could promote open-ended sympathy rather than deadening condescension towards its objects. The WCTU's emphasis on personal engagement and a network of obligations created, Clark insists, a genuinely participatory politics. Small actions, local organizations, small steps set up organizational precedents which led to New Deal bureaucracies. 'Duty', not Stanton's large-spirited 'serf', allowed women, in this interpretation, to develop a positive theory of the state as receptacle of and provider of a public good, with protection as its highest "duty."

The weak point of this argument is that it rests on the WCTU's own self-representation, taking it to be historical actuality. Again, I wish that Betsy could have passed through the linguistic turn in historical studies, because a greater shrewdness toward her sources could only have complicated and deepened her argument. She takes the WCTU writers' large claims to affinity with their fellow man (and woman) at their word and doesn't seek out independent corroboration of either their political activities or their political effects. Frances Willard's members were given to seeing themselves as mothers, but fathers were strikingly absent in the rhetoric. How did the fathers figure in the political sphere? What were the local branches' ties to party politics? How did the figure in the labor battles that swept across the country in the Gilded Age? And how did the immigrant women, poor women, prostitutes, and working women who were their appointed "daughters" in their schema respond to their matronly care? Such questions require moving out from the organization's printed sources to study its activities on the ground.

Having finished a draft of this last part of her book, Betsy Clark was ready to ask some sharp questions. As always, her questions are prizes in themselves: rich, penetrating, original, suggesting lines of self-criticism but also paths whereby the interpretation can be strengthened. She mused about the Christian elements of WCTU ideology—a problem she downplays in this essay so much that sometimes this feminism appears to be Christian feminism without Christ. What were the implications of this stance in a society as deeply fragmented as Gilded Age America, with its millions of Catholic and Jewish immigrants?

Did Christian feminism provided the basis for a significant lay critique of legal and political institutions? And, most important from my own point of view: did *"these ladies have any political starch or represent simply an unusually vapid and sappy brand of communitarianism"*¹

Betsy would have taken much from work that she didn't live to see, especially in African-American women's history. A line of studies have sketched out an alternative female tradition of Christian duty that came from black women, North and South, and was based in solidarity with the greater good of the race rather than in a paradigm of self-advancing individuals. Elsa Barkefy Brown has written about those freedwomen participating in political discussions during Reconstruction and saw black men's votes as a literal representation of the whole community. Evelyn Brooks Higginbotham has delineated the social initiatives Baptist women took in Southern communities, forming useful alliances with Northern white women even in the worst years of segregation. And surely Clark would have been thrilled by Glenda Gilmore's nuanced study of the temperance movement in the South; how it provided the black community one avenue of positive action that was not blocked by Jim Crow; how it opened up channels of communication between white and black women at a moment when virtually the only other cross-racial conversations between women occurred between female employers and domestic servants. I hope this volume will inspire others to pick up her unfinished tasks.

**Rights and Relationships from Nineteenth-Century Feminism to Twenty-First-Century
International Human Rights:
An Essay in Honor of Elizabeth Batelle Clark***
Martha Minow
Harvard Law School

Ideas about rights have inspired revolutions in politics and in homes; ideas about rights animate grassroots social movements and campaigns to hold governments accountable for their abuse and neglect of individuals and groups. Yet rights also inspire vivid critiques. Condemned as hopelessly abstract, incapable of generating adequate remedies, diverting political action into passive postures before courts, impotent in the face of private rather than governmental power, or mistakenly portraying people as isolated, self-determining individuals,¹ the idea of rights emerges both more battered and more ambiguous than their symbolic significance would suggest. Political theorists and lawyers have much to learn from historians who see rights as repositories of specific human aspirations and human actions, inflected by particular times and struggles, even as the language of rights becomes a basis for analogies and transformed meanings in new contexts. Indeed, unless we are aware of the historical context generating rights claims and rights consciousness, we risk misunderstanding or distorting their potential for strengthening human relationships and advancing social justice.

In this light, the unfinished work of historian Elizabeth Battelle Clark is particularly tantalizing. Rejecting the claim that nineteenth-century American women activists simply revived and reinterpreted the secular liberal rights consciousness of the nation's Founders, Clark examined the religious roots in two competing strands of nineteenth-century feminism. For modern secular readers, ignorant of the religious subtext of the nineteenth-century arguments, Clark performed a task rather like a musicologist who recognized musical notation alongside lyrics otherwise read simply as words. Clark found religious dimensions in not only the evangelical reformers but also the arguments of the liberal feminists and unearthed commonalities across camps usually understood as rivals. In so doing, she identified intellectual resources for a conception of rights expressive of human bonds and capable of advancing social and economic justice rather than solely individual autonomy.

* I am indebted to Hannah Solomon-Strauss for her research assistance.

¹ Amy Bartholomew & Alan Hunt, *What's Wrong with Rights?*, 9 LAW & INEQ. 1 (1991); Alan David Freeman, *Legitimizing Racial Discrimination through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049, 1054; Peter Gabel & Duncan Kennedy, *Roll Over Beethoven*, 36 STAN. L. REV. 1, 26-30 (1984); Ed Sparer, *Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement*, 36 STAN. L. REV. 509 (1984); Mark Tushnet, *An Essay in Rights*, 62 TEX. L. REV. 1363 (1984).

She did not neglect difficulties in working out such a concept of rights. Those difficulties included the risk of state-backed coercion of individuals, biased views about the good that could oppress members of relatively powerless groups, and simple inability to attract sufficient political and legal support to achieve implementation. Yet even with these difficulties, rights claims become rich with current possibilities when they are relocated within the religious and political context of the nineteenth-century.

Clark acknowledged the differences between liberal and evangelical feminists and their liberal and evangelical forebears in the struggles to abolish slavery. Nonetheless, she found within all of them traces of the critique of Calvinism washing across Protestantism in America during the early 1800s.² If Christian theology had once treated pain and suffering as ordained by a judgmental God and inevitable given original sin, limited salvation, and the glorification of Christ's own suffering, newer Christian views of a benevolent God cultivated human sympathy for the bodily suffering of others. Antislavery activists built on these views to attack the suffering inflicted on slaves who no less than any other humans inhabited bodies created by a benevolent God.³

Abolitionists summoned a notion of rights growing from the fact of human embodiment within a divine creation. Evangelicals in particular cultivated moral reasoning from sympathy, mirroring the warm bond between an individual and a loving God. Abolitionists joined in urging a right to self-ownership as fundamental to all other rights. Indeed, in the wake of liberal Protestantism, doing good as a matter of conscience was the path that should inspire relationships of respect and grounds for criticizing abusive relationships.⁴

Clark argues that by stressing self-ownership, abolitionists meant to root a collection of rights addressing the wants and needs of a physical body. She described "the right to freedom of movement, the right to marry and establish domestic relations; the right of a female slave to refuse sexual relations with white men; and the right of a slave to be free of physical abuse or coercion imposed by masters or other quasi officials without due process of law," as well as a right to be free of coercion for any who respect the rights of others.⁵ A right to self-ownership became central. Yet the connotation of solitary autonomy associated with that term today misses how it was infused with Christian conceptions of the path toward enlightenment. Accordingly, this right also implied the struggle for conscience and duty.⁶

² See Elizabeth B. Clark, *"The Sacred Rights of the Weak," Pain, Sympathy, and the Culture of the Individual Rights in Antebellum America*, J. AM. HIST. 463 (1995).

³ Clark makes the important point that in these respects, religious thought pushed against popular and scientific ideas emphasizing as real the differences of people marked by race, class, or other distinctions. Id., at 475.

⁴ ELIZABETH B. CLARK, ANTICLERICALISM AND ANTISTATISM (unpublished manuscript) (ch. 2), 20-31, 51-53.

⁵ Id., at 488.

⁶ CLARK, ANTICLERICALISM AND ANTISTATISM (ch. 2), 69-73.

As feminists drew upon abolitionist ideas, they emphasized an analogy between abused or abandoned wives and the image of the suffering slave. They also extended the arguments against bodily coercion. For both liberal reformers exemplified by Elizabeth Cady Stanton, and evangelical activists, illustrated by Frances Willard and the Women's Christian Temperance Union, the human body became the touchstone for rights. The body could suffer. The body was divinely made. With a focus on the body that could suffer, feminists, like abolitionists, sought to cultivate empathy for the suffering of others. By emphasizing the divine origin of all humans, the feminists sought a kind of universality that also acknowledged differences. According to Clark, the feminists also meant to invoke the religious sensibility that "stressed the interconnections between rights and responsibilities, between civil and domestic relations, and between the workings of the state and the home."⁷ Rights would represent ways of envisioning new social relationships, linked to responsibilities; rights would function within the context of a set of reciprocal obligations, with freedom dependent upon restraints and freedom even found in being bound to others.⁸ Clark cites Jane Croly who viewed the interdependence of human beings as mirroring the interdependence of parts of one body.⁹

This conception seems especially promising to those who are moved by the critique of liberal rights, charged with tending to neglect or suppress human relationships of interdependence and need. These critiques have gained steam since the 1970s and reflect both a second wave of feminism and other intellectual movements, affected by Marxism, the Frankfurt School of Critical Theory, and communitarianism.¹⁰ Critics charged that rights predicated on the solitude and separateness of each person wrongly imply individual self-sufficiency or deny rights to anyone who demonstrates vulnerability or dependency. In this light, the nineteenth-century feminist notions of rights interconnected with responsibilities, mutual regard, and conscience afford a potential alternative. Indeed, the early feminists thought that individual rights would protect the community.¹¹

This alternative view is quite different from a notion of group rights: rights afforded to members of a group by dint of their group affiliation as a protection against intrusion and a

⁷ Elizabeth B. Clark, *Religion, Rights and Difference in the Early Woman's Rights Movement*, 3 WIS. WOMEN'S L. J. 29 (1987).

⁸ *Id.*, at 53.

⁹ Elizabeth B. Clark, *Matrimonial Bonds: Slavery and Divorce in Nineteenth-Century America*, 8 LAW AND HIST. REV. 25 (1990).

¹⁰ MICHAEL SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE (1982); Robin West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 15 WIS. WOMEN'S L. J. 149 (2000); DUNCAN KENNEDY, THE CRITIQUE OF RIGHTS IN CRITICAL LEGAL STUDIES IN LEFT LEGALISM/LEFT CRITIQUE (Brown & Halley, eds., 2002); Karl E. Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 MINN. L. REV. 265 (1978). See also MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW (1990); Martha Minow, *Beyond Universality*, 1 U. CHI. LEGAL F. 115 (1989).

¹¹ Clark, *Matrimonial Bonds: Slavery and Divorce in Nineteenth-Century America*, 8 LAW AND HIST. REV. 25, 48 (1990).

basis for claiming access to certain goods or privileges. The feminists were interested in people who could be identified as members of groups—notably, women, and slaves. Yet they sought rights rooted in each person and each person’s conscience. And they hoped to reconstruct society to promote the civic competence and personal development of each individual.¹² This hope is exemplified in the use of the word “woman” rather than “women” in their writings and even the names of their organizations and activities.

The feminists’ alternative also offers a richer relational emphasis than the gesture toward relationships in the analytic jurisprudence of figures like Wesley Hohfeld. Hohfeld emphasized conceptual rather than sociological or psychological relationships. He wrote that legal rights have what he called correlatives, etching out relationships between the rights-bearing and others. Rights accordingly should be viewed as advantages conferred by the state, advantages that create particular vulnerabilities or restrictions for others.¹³ If one person has a right, another has a duty; if one person has a privilege, another has no right; if one person has a power, another has a liability; and if one person has an immunity, the other has a disability. This variety was necessary because Hohfeld emphasized that it was a logical error to deduce rights from liberties, since some liberties carry no correlate duties for others not to interfere, and policy considerations rather than logic arrange the relationships among rights bearers and others.¹⁴

Hohfeld’s theory does not reflect the social, religious, and even psychological vision of the nineteenth-century feminists who would draw on religious conscience rather than policy to etch patterns of human interdependence to be recognized and supported by legal rights. Yet Hohfeld posed a challenge that is not fully addressed by the feminist notion of interdependence. He argued that rights theories cannot express an inherent logic because rights themselves encompass contradictory principles of freedom of action and security, resolvable only through ethical and policy debates.¹⁵ The feminists acknowledge conflict but imagine it to take the form of abuse and coercion.

Clark explains that women writing in the 1850s revealed fears “that in the brave new world of politics there was no place for the standard of moral accountability which pertained between relatives, friends, and neighbors, and that the law was not creating any new ethic whereby the bonds of community, loosely worn but still taut in times of need, could be maintained.”¹⁶ Evangelical women built the Woman’s Christian Temperance Union, a vision of informal bonds, animated by love, and nonconfrontational methods of persuasion to match their opposition to

¹² Clark, *Religion, Rights and Difference in the Early Woman’s Rights Movement*, 3 WIS. WOMEN’S L. J. 29, 49 (1987).

¹³ Joseph William Singer, *The Legal Rights Debates*, 1982 WIS. L. REV. 975, 976 and 987.

¹⁴ *Id.*, at 993.

¹⁵ *Id.*, at 1059.

¹⁶ Clark, *Religion, Rights and Difference in the Early Woman’s Rights Movement*, 3 WIS. WOMEN’S L. J. 29, 55 (1987).

force and coercion as means and as ends.¹⁷ Proceeding themselves from a sense of obligation in their efforts to improve the lives of poor people and prisoners, the feminists hoped others would do the same.

This created for the women advocates a different sort of difficulty: how could their vision be translated into a theory of governance; involving the state? Although the feminists sought social justice, they resisted the kind of coercion represented by government policy power. Clark explains, “Far from looking to government for remedies and favors, there was a strong emphasis on self-help and a belief that, by readying themselves and their neighbors, activists could bring about the desired transformation without seeking direct political change or soliciting governmental intervention.”¹⁸ Influenced by abolitionist work, the reformers had to question state power that had enforced slavery.¹⁹ Ideally, they saw charitable work not as private work but as a public alternative to government. Women’s groups raised money to build sidewalks, hospitals, and other local services.²⁰ In these ways, they would avoid the problems later identified with twentieth-century “governance feminism,” policy initiatives relying on governmental power.²¹

The nineteenth-century feminists thought the Golden Rule should be the first principle of governance: treat others as you would want to be treated.²² Yet, the Woman’s Christian Temperance Union (WCTU) women came to want more effectiveness in implementing their vision. To pursue the idea of “organized mother love,” after the Civil War they did begin to advocate for state actions and government prohibitions, epitomized by the ban on alcohol.²³ By the turn of the century, the WCTU came to stand for repressive force, using government power to implement the presumption that some know what is best for all, and using state power to impose the views of a group of white, upper- and middle-class women on others. Yet its members began with a different vision: the goal was to resist all coercion and force, and instead seek mutual aid and local action.

Liberal feminists diverged sharply and embraced instead the individualist version of rights. Elizabeth Cady Stanton’s early writings may have been ambiguous, but as time went on she sharply differed from the evangelical feminists. Notably, after the Civil War, Stanton built upon abolitionist arguments against positive law and pushed for sharp limits on the power of the

¹⁷ Elizabeth B. Clark, *The Woman’s Christian Temperance Union and Moral Governance* (unpublished work), 4, 19-20.

¹⁸ Clark, *Religion, Rights and Difference in the Early Woman’s Rights Movement*, 3 *Wis. WOMEN’S L. J.* 29, 32 (1987).

¹⁹ CLARK, *ANTICLERICALISM AND ANTISTATISM*, 40.

²⁰ Elizabeth B. Clark, “Organized Mother Love” and the Maternal State (unpublished work), 40-41, 46.

²¹ See JANET HALLEY, PRABHA KOTISWARAN, RACHEL REBOUCHÉ, & HILA SHAMIR, *GOVERNANCE FEMINISM: AN INTRODUCTION* (forthcoming 2018).

²² Clark, “Organized Mother Love” and the Maternal State, 9.

²³ *Id.*, at 2-4.

government.²⁴ The government should at best protect individual liberty. Hence, she called for divorce in the name of personal liberty.²⁵ She emphasized personal liberty producing skepticism of state power, and she objected to using the Golden Rule to guide government by raising doubt that anyone could really know others well enough to know what they want.²⁶ Nonetheless, she used the notion of rights to articulate autonomy and self-determination. Sometimes, you just need the language of rights to say no, to erect a barrier against coercion, to demand the space to be, to choose, to diverge.

The liberal theory, backed by Stanton, could elaborate individual freedom for these purposes but could not afford a basis for government action in pursuit of social justice. The evangelical theory, backed by Willard, could pursue a vision of the collective good but in so doing, underestimated the malignant and coercive dangers of government action.²⁷ Is there any alternative to these two positions?

I think that Clark unearthed resources for an alternative view from the points of connection among feminists who later diverged: Their shared commitment to the body that can suffer as the locus of rights, their recognition that self-ownership should entail the ability to feed and care for the body and to develop the self. Cultivating a sense of obligation and creating the social change they advocated by their own local and collective action, the feminists engaged in governance even when they bypassed formal government power.

The work of mutual and communal help animated the settlement house movement in the early twentieth century, and like some of the nineteenth-century feminist local action, generated some changes in positive law. Many attribute to their work the foundations of the welfare state.²⁸ Jane Addams, for example, initiated factory inspections as a private citizen of a sort that

²⁴ See, e.g., Elizabeth Cady Stanton, *Solitude of Self*, "Address Before the Committee of the Judiciary of the United States Congress," January 18, 1892; <http://etc.usf.edu/lit2go/185/civil-rights-and-conflict-in-the-united-states-selected-speeches/4854/solitude-of-self-address-before-the-committee-of-the-judiciary-of-the-united-states-congress-january-18-1892/>. See ELLEN CAROL DUBOIS AND RICHARD CANDIDA-SMITH, eds. ELIZABETH CADY STANTON, *FEMINIST AS THINKER* (2007).

²⁵ Clark, *Matrimonial Bonds: Slavery and Divorce in Nineteenth-Century America*, 8 LAW AND HIST. REV. 25, 30 (1990).

²⁶ Clark, "Organized Mother Love" and the Maternal State, 9.

²⁷ *Id.*, at 28; Clark, *Self-Ownership and the Political Theory of Elizabeth Cady Stanton*, 21 CONN. L. REV. 905, 938 (1989).

²⁸ JOHN H. EHRENREICH, *THE ALTRUISTIC IMAGINATION: A HISTORY OF SOCIAL WORK AND SOCIAL POLICY IN THE UNITED STATES* 35 (1985); ELLEN FITZPATRICK, *ENDLESS CRUSADE: WOMEN SOCIAL SCIENTISTS AND PROGRESSIVE REFORM* (1990); STANLEY WENOCUR & MICHAEL REISCH, *FROM CHARITY TO ENTERPRISE: THE DEVELOPMENT OF AMERICAN SOCIAL WORK IN A MARKET ECONOMY* 26-29 (1989); Peter Gabel, *The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves*, 62 TEX. L. REV. 1563 (1984); Linda Gordon, *Black and White Visions of Welfare: Women's Welfare Activism, 1890-1945*, 78 J. AM. HIST. 559; Linda Gordon, *Social Insurance and Public Assistance: The Influence of Gender in the Welfare Thought in the United States, 1890-1935*, 97 AM. HIST. REV. 19 (1992); Seth Koven & Sonya Michel, *Womanly Duties: Maternalist Politics and the Origins of Welfare States in France, Germany, Great Britain, and the United States, 1880-1920*, 95 AM. HIST. REV. 1076 (1990); Kathryn Kish Sklar, *Hull House in the 1890s: A Community of Women Reformers*, 10 SIGNS 4, 675-77 (1985); Kathryn Kish Sklar, *Hull-House Maps and Papers: Social Science as Women's*

later become mandated by law. But her efforts at Hull House modeled forms of social relationships, as wealthy college graduates moved to poor immigrant neighborhoods and participated jointly with local residents in cultural and political activities. Today we might call this “capacity building.”²⁹

A more recent but similar effort is the battered women’s movement, which created new private institutions—shelters—while also successfully agitating for changes in the law and in the practices of police and judges. Again, a conception of bodily integrity and self-ownership proved central—but as important were commitments to ensure that women could fulfill their roles as mothers, protecting their children from abuse, and women could find strength by helping one another.

Yes, dilemmas and compromises have accompanied the successes of the battered women’s movement. When shelters receive public dollars, they become more professionalized and bureaucratic and less characterized by mutual aid.³⁰ A few commentators have struggled to articulate a right to a safe relationship rather than simply severing the relationship with an abuser.³¹ This idea points toward personal and social transformations unlikely to be achieved by law. When laws change to protect people from violence in their homes, state power grows, and that power can be abused or can generate public backlash.³² Yet advocates can instead work to

Work in the 1890s, in *THE SOCIAL SURVEY IN HISTORICAL PERSPECTIVE 1880-1940*, 111-47 (Martin Bulmer, et al., eds., 1991).

²⁹ See, e.g., World Health Organization, Capacity Building and Initiatives, http://www.who.int/tobacco/control/capacity_building/background/en/.

³⁰ ELIZABETH M. SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING* 95-97 (2000); Elizabeth M. Schneider, et al., *Battered Women & Feminist Lawmaking: Author Meets Readers*, 10 J. L. & POL’Y. 313, 347 (2002) (discussing the role of the welfare state, and offering a comparative perspective to the United Kingdom); Mearle H. Weiner, *From Dollars to Sense: A Critique of Government Funding for the Battered Women’s Shelter Movement*, 9 LAW & INEQ. 185 (1985).

³¹ LINDA G. MILLS, *INSULT TO INJURY* (2006). See generally, Christine A. Littleton, *Women’s Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1 U. CHI. LEGAL F. 4 (1989); Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 2 (1999); Jennifer Nedelsky, *Reconceiving Rights as Relationship*, 1 REV. CONST. STUD. 1 (1993).

³² Donna K. Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801 (2001); Margaret B. Drew & Marilu E. Gresens, *Denying Choice of Forum: An Interference by Massachusetts Trial Court with Domestic Violence Victims’ Rights and Safety*, 43 SUFFOLK U. L. REV. 293 (2010); Laura Dugan, et al., *Exposure Reduction or Backlash? The Effect of Domestic Violence Resources on Intimate Partner Homicide*. National Criminal Justice Reference Service (2001). <https://www.ncjrs.gov/pdffiles1/nij/grants/186193.pdf> (last visited Sep 18, 2017); April L. Girard, *Backlash or Equality? The Influence of Men’s and Women’s Rights Discourses on Domestic Violence Legislation in Ontario*, 15 VIOLENCE AGAINST WOMEN 5 (2009); Miriam H. Ruttenberg, *A Feminist Critique of Mandatory Arrest: An Analysis of Race and Gender in Domestic Violence Policy*, 2 AM. U. J. GENDER & SOC. POL’Y & L. 171 (1993); Natalie J. Sokoloff & Ida Dupont, *Domestic Violence at the Intersections of Race, Class, and Gender: Challenges and Contributions to Understanding Violence Against Marginalized Women in Diverse Communities*, 11 VIOLENCE AGAINST WOMEN, 38 (2005) (arguing for a more intersectional approach to legal regimes addressing domestic violence); 209A Restraining Orders Can Be Abused, Lynch & Owens (2017), <https://lynchowens.com/209a-restraining-orders-can->

raise consciousness, and build informal and formal relationships and institutions on the ground and in tune with people's expectations and demands. This has been a guiding approach in the battered women's movement, which seeks in large part to promote changes in people and their relationships, rather like the nineteenth-century feminists' efforts to build on liberal Protestantism's invitation to change human relationships.³³

The contemporary international human rights movement also expresses similar themes. For international human rights around the world, advocates have stressed the crucial importance of nongovernmental, often grassroots action; the centrality of consciousness-raising in remaking norms, institutions, and practices; and the affirmation of these changes in formal legal documents, created to confirm the changes in mindset already underway.³⁴ That contemporary international human rights work addresses social and economic rights as much as political and civil rights mirrors the nineteenth-century feminists' effort to resist the division between negative and positive liberties. Lacking a global government, these approaches may be inevitable for international human rights. Networks bridging governmental and nongovernmental actors, and efforts to secure national endorsement and to design international institutions respecting the role of nongovernmental actors, have characterized international human rights development.

The nineteenth-century feminists illustrated the resources enabled by "the powers of the weak," mobilizing to create social change in method as well as ultimate vision, and building upon a mass consciousness change enabled by the reforms of liberal Protestantism. Liberal conceptions of rights remain important to constrain government power from abuse, even when it is authorized in the name of doing good. Yet Clark's work lifts up the implicit commitments to mutual aid, responsibility, and recognition of the common needs of all humans at work in ideas of rights. She also demonstrates the significance of social and religious movements in inspiring people to enact the vision they advocate in their own relationships and local actions.

Clark's work also teaches that the thinking of nineteenth-century feminists can assist current efforts to articulate rights as necessarily relational.³⁵ The earlier thinkers emphasize more than

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But cf., Machaela M. Hctor, *Domestic Violence as a Crime against the State: The Need for Mandatory Arrest in California*, 85 CAL. L. REV. 643 (1997).

³³ ELIZABETH M. SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAW-MAKING* (2002).

³⁴ HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS*, 2000; R. Charli Carpenter, *Setting the Advocacy Agenda: Theorizing Issue Emergence and Nonemergence in Transnational Advocacy Networks*, 51 INT'L. STUD. Q. 99 (2007); Elaine M. Chiu, *Confronting the Agency in Battered Mothers*, ST. JOHN'S U. SCH. L. FACULTY PUBLICATIONS, 55 (2001); Kenneth Roth, *The Human Rights Movement and International Humanitarian Law*, in *HUMAN RIGHTS: FROM PRACTICE TO POLICY* (ed. Carrie Booth Walling & Susan Waltz, 2010).

³⁵ For current efforts in this direction, see JENNIFER NEDELSKY, *LAW'S RELATIONS: A RELATIONAL THEORY OF SELF, AUTONOMY, AND LAW* (2011); MARY LYNDON SHANLEY, *MAKING BABIES, MAKING FAMILIES* (2001); Donald P. Judges, *Taking Care Seriously: Relational Feminism, Sexual Difference, and Abortion*, 73 N.C. L. REV. 1323 (1995); Martha Minow & Mary

current theorists that seeing rights relationally requires seeking mutual accommodation, recognizing responsibilities, and finding strength and even freedom through bonds with others. No less is demanded by recognition of each body's rights. This recognition might hold a deeper vision for rights than the image of total control over one's solitary property that animates individualistic notions. The dilemmas of reconciling individual liberty and security and benevolent and oppressive state power remain. I wish Elizabeth Clark were here to develop more fully how she believes these tensions can be addressed, but the challenge now falls to others. Meanwhile, the connections she so finely drew between religious revision and transformative social movements offer renewed inspiration.