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THE FEMINIST ACADEMIC'S CHALLENGE TO LEGAL EDUCATION: CREATING SITES FOR CHANGE

*Ann Shalleck**

While a few pioneering women legal academics inhabited law schools and throughout the 20th century sporadically challenged the pervasive male domination of legal education, legal feminism did not begin to flourish in law schools until the 1980s. Drawing on broader feminist efforts to transform academia, feminist law teachers, students, and activists began questioning not only the content of the material included in the curriculum that dominated legal education, but also the nature of scholarly inquiry and analysis, the assumptions underlying pedagogical methods, the gendered components of the culture that dominated legal education, and the daily practices that characterized law schools, both in and out of the classroom. From these initial efforts to bring the second wave of feminism into law schools and legal thought, legal feminists generated vast and enduring change. For more than thirty years, Clare Dalton contributed to creating a vibrant movement that has sustained succeeding waves of innovative and diverse forms of feminist legal thought and pedagogy. These early feminist academics, such as Clare, challenged prevailing ideas, pervasive norms, and entrenched structures of power. Often greeted with hostility, their efforts needed strength, flexibility, and creativity. Clare

* Professor of Law and Carrington Shields Scholar, American University, Washington College of Law. This essay is based on the presentations I and others made at *Challenging Boundaries in Legal Education, A Symposium Honoring Clare Dalton's Contributions as a Scholar and Advocate* held at Northeastern University School of Law on November 5, 2010. Many thanks to Anna-Kristina Fox and Brittany Ericksen who provided expert research assistance and valuable insight.

worked with others to develop multiple sites within legal academia—in scholarship, in teaching, and in curricular design—where legal academic feminism could flourish. She built upon and expanded understanding of the gendered nature of law, deployed forms of critical legal analysis that illuminated the dynamics of gender within the structures of legal thought, brought issues that implicated the operation of gender in society and law into the classroom, and implemented an innovative model of clinical education that enabled students to act as lawyers in ways that engaged the experiences of women and sought to accomplish change.

Clare appeared as an explicitly feminist legal academic early in this development. When I started the Women and the Law Program at American University, Washington College of Law in 1984, Clare already appeared to me and to other feminist academics as an established and respected scholar.¹ With so few women and far fewer feminist professors in this period of rapid change, when the span of each generation was remarkably short, we beheld Clare as a senior colleague (although only an Assistant Professor) who revealed vistas that we had only incompletely imagined. She identified herself, however, not as the exceptional woman forging her own distinctive path, but as a friend akin to us, someone with the courage and confidence to help us all be stronger in our commitment to and better in our ability to bring feminist insight and practice to law. Her work, in its brilliance and originality and its urge to reach across disciplines and find new ways of understanding gender, was our work—a project that could undergird and foster our own nascent efforts. It could help in our resistance to demands and impulses to replicate dominant models for achieving success within existing academic terms. With our collective strength,

¹ This essay proceeds, as do others in this volume, from an explicitly situated perspective. Some of us have taken the opportunity presented by this symposium to reflect upon the history of feminism in legal academia, a history we were active in creating, through reflection upon Clare Dalton's contribution to that history. Therefore, in important respects, this essay contains certain characteristics of memoir as I (and others) interrogate how our experiences as participants in these developments influenced the history of legal education and the history of feminist change.

determination, and expansive vision, we felt through Clare the possibility and excitement of transformation.

This essay chronicles Clare's contributions to the creation of a feminism that was able to challenge and reconstitute the legal academy. Part I describes how her ground-breaking approach to contract theory encouraged others to apply different kinds of feminist critiques to fundamental assumptions underlying legal doctrine, expanding the range of feminist critiques of law beyond many of the initial efforts that often focused on questions regarding the legal concept and meaning of equality.² Part II recounts Clare's attempts to reform law teaching and the law school curriculum. While scholarship was a mark of legitimacy for the legal academic, in the curriculum and teaching practices, feminist academics had to learn how to have their new legal understandings take root and gain acceptance in the daily life and institutional structures of the academy, particularly as transmitted to students. Through the Women's Rights and the Law School Curriculum workshop, Clare and other colleagues helped to fashion the beginnings of a first-year curriculum that recognized and even embraced feminist perspectives, including initiatives such as teaching torts with the recognition of domestic violence as a fundamental violation of the obligations in relationships among people. Part III discusses Clare's efforts to create institutions within law schools that united feminist theory and practice. In the founding of the Northeastern University School of Law's Domestic Violence Institute, Clare moved from integrating feminist thought into traditional modes of legal pedagogy to transforming that pedagogy.

I. BRINGING FEMINISM TO THE CENTER: DECONSTRUCTING CONTRACT DOCTRINE

During the early 1980s, Clare's scholarship took on nothing

² KATHERINE T. BARTLETT & DEBORAH RHODE, *GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY* 1-3 (5th ed. 2010) (explaining that gender equality analysis focuses on the premise that individuals should be treated alike and generates challenges to law based on sex-based classifications). Formal equality constitutes only one of many feminist legal theories.

less than a critique of the basic assumptions underlying contract doctrine, using critical methodologies still largely unfamiliar to the legal academy. Her article, *An Essay in the Deconstruction of Contract Doctrine*,³ remains a classic to this day, bringing together methods from different critical traditions in philosophy, political thought, and literary analysis and drawing on feminist thought across disciplines.⁴ Just as she seeks in these traditions new ways to understand the operation of law and the activity of legal scholarship, her work reflects her purpose to understand women as they appear in law and whose lives law shapes. She explores how women are situated differently in relation to the materials of the law and to authority in interpretation of law. The treatment of women in law is at the center of her concerns. In describing her own goal in engaging in the deconstruction of doctrine, Clare declares, “my own first commitment is to assess how women are viewed and treated in legal contexts.”⁵

To fully appreciate Clare’s contribution, we must situate her project within the context of the feminism that was beginning to establish itself within the legal academy and understand those efforts in light of the powerful resistance that a feminist presence and feminist legal thought encountered.⁶ While academic feminism was growing rapidly in some disciplines throughout the 1970s, law schools remained largely impervious or hostile to bringing feminist critical thinking to bear on legal thought and analysis. The intellectual breadth and sophistication of Clare’s scholarship reflected and furthered a broad feminist determination to open up intellectual terrain that could create space for understanding the relationship of law to gender. Concomitantly, her intellectual pursuits remained bound up with her aspiration to make feminist thought central to legal thought. She situated herself and her writing within the commitments of feminism.

In her stunningly ambitious project, *An Essay in the*

³ Clare Dalton, *An Essay in the Deconstruction of Contract Doctrine*, 94 YALE L.J. 997 (1985).

⁴ See *id.* at 1005–09.

⁵ *Id.* at 1009 n.23.

⁶ Clare Dalton, *Where We Stand: Observations on the Situation of Feminist Legal Thought*, 3 BERKELEY WOMEN’S L.J. 1 (1987-88).

Deconstruction of Contract Doctrine, Clare elucidates the relationships among seemingly discrete intellectual frameworks for analyzing legal doctrine and legal thought, all of which she maintained directly and indirectly contributed to the development of feminist legal thought. She analyzes and critiques contract law by identifying three central recurring themes—the distinctions between the public and the private, subjective and objective understanding, and form and substance—that she argues drive selected doctrines across the field of contract law. The distinction between the public and the private becomes her frame for exploring the structure and development of the concepts of implied-in-law and quasi-contracts, as well as the doctrines of duress and unconscionability.⁷ The dichotomous understanding of subjective and objective viewpoints guides her analysis of contract formation, parol evidence, and mistake; in each of those areas doctrinal devices operate to favor objective over subjective interpretations of contracts.⁸ The wavering formulations of purported explanations of differences between form and substance propel her analysis of consideration and reliance. As form devolves into substance, doctrines that concern whether something has value and how that value is understood resurface questions of the objectivity of value and the uneasy distinction between the public and the private.⁹

In her analysis of these three thematic dichotomies, Clare brings to bear critical methods and insights that highlight underlying structures of law. Most explicitly, her title announces her use of the methods of deconstruction in legal analysis.¹⁰

⁷ In these discrete areas of contract law doctrines, Clare identifies ways that the dominant conception of contract law as private is subverted by submerged concerns for the public that appear clearly in justifications for these seeming “deviations” from the law’s concern for private bargains. Dalton, *supra* note 3, at 1001.

⁸ These devices are seen as a way to disguise how the existence of an objective way to understand what happens in a bargain is a threat to contract law’s claim that it is private, not public. *Id.* at 1001–02.

⁹ Thus, as in the other areas, arguments about and within these intricate doctrinal formulations serve to displace questions about the public nature of seemingly private contract law and the instability of an objective realm of interpretation in ways that disguise fundamental questions. *Id.* at 1002.

¹⁰ J.M. Balkin, *Deconstructive Practice and Legal Theory*, 96 YALE L.J.

Two aspects of deconstructive techniques appear in her work as most powerful. First, Clare draws upon analyses of the “role of conceptual duality” and its hierarchies of inclusion and power in critiquing contract doctrine.¹¹ She identifies how legal doctrine attempts both to frame and resolve dualities (such as public/private, objective/subjective, and form/substance) in particular legal contexts, by favoring one pole of the duality over the other. The constructed dualities create forms of legal argumentation that, while seeming to generate determinate answers, actually disguise underlying problems of power and knowledge. This process submerges contradictions and inconsistencies in the creation of the duality in an attempt both to achieve stability for law and to disguise how the privileging of one pole can generate benefits for some at the expense of others. Second, the creation of the duality involves circularity. Clare shows that while each pole relies on the other for its meaning and each is unrecognizable without the other, law attempts through its doctrines to separate the opposing concepts from each other. The law treats one concept as fundamental or foundational and the other as secondary or supplemental to the first. Arguments within intricate doctrinal formulations serve to displace, and therefore to disguise, questions about the very nature of the duality, its hierarchical structure, and the questions it presents.¹²

743 (1987) (identifying methodological techniques and philosophical ideas from deconstruction that can illuminate how legal doctrines are formed and influenced by ideological thinking).

¹¹ Dalton, *supra* note 3, at 1007. Dalton analyzes how the “hierarchal relationship between the poles” of a duality produces a disfavored pole. While Dalton draws most explicitly on the work of Derrida and deconstructive methodologies within post-structuralism, a related strand of feminist thought goes back to Simone de Beauvoir. In the introduction to *The Second Sex*, de Beauvoir identifies her analysis of women’s situation as rooted in the operation of the duality of masculine and feminine: “[N]o group ever sets itself up as the One without at once setting up the Other over against itself The Other is posed as such by the One in defining himself as the One. But if the Other is not to regain the status of being the One, he must be submissive enough to accept this alien point of view. Whence comes this submission in the case of woman?” SIMONE DE BEAUVOIR, *THE SECOND SEX*, at xvii–xviii (H. M. Parshley trans. 1952) (1949).

¹² Dalton, *supra* note 3, at 1000–01, 1007–08. For example, in creating

Clare also draws upon other critical traditions in her analysis of three dichotomies that recur in contract law. She argues that liberal legalism—which posits abstract universal legal subjects who can freely interact with others without state interference, except that which protects them from the overreaching of others—also disguises what is at stake in the dichotomies between public and private, subjective and objective understanding, and form and substance. By constructing contract doctrines that assume the abstract universal legal subject in the creation of the lines that demarcate the boundaries between the poles of each duality, contract law disguises the structures of power that underlie the lives of the actual people implicated in each particular doctrinal formulation.¹³ In exploring her three thematic dualities, Clare shows how the doctrines reflect liberal legalism’s vision of the relationship of the individual to others and to the state, while also presenting forms of argumentation that legitimate underlying structures of power that allocate benefits within society. By revealing the underlying understandings of individuals, assumptions about their relationships to each other and to the state, and the forms of power disguised within doctrinal formulations and analysis, Clare provides academics and advocates with “a most sophisticated sense both of the array of available argument and of the limits of legal discourse.”¹⁴

While other schools of legal critique, most notably legal realism, had long assaulted the orthodoxy of classical legal thought, none embraced the insights of the second wave of

a duality between the public and the private, and in valuing the private over the public in contract law, doctrines seek to make the private the norm and the public the deviation from, or the supplement to, the private. If questions about the actual public nature of seemingly private contract law become questions about the precise contours of specific doctrines such as unconscionability, then doctrinal formulations maintain the stability of the idea that contracts are private and disguise how fundamental questions of fairness are marginal to the interpretation of contracts.

¹³ *Id.* at 1007.

¹⁴ *Id.* at 1009.

feminist thought that emerged and matured outside law.¹⁵ Clare, however, integrates multiple forms of emergent feminist thought with other critical traditions. Her thematic analysis of the dichotomies of contract doctrines and her challenge to the abstract legal subjects who appear in the resulting doctrinal formulations present a feminist approach to confronting any area of legal doctrine. In critiquing “liberal political theory and legal liberalism,”¹⁶ Clare demonstrates how liberal legal thought posits a universal (rather than particular) and abstract (as opposed to contextualized) vision of individuals and relationships and, thereby, evades the conversation about “how we should conceive relationships between people” and “how we should understand and police the boundary between self and other.”¹⁷ Her critique, which reflects the feminist discomfort with the abstract, isolated individual as the central figure in liberal legal thought,¹⁸ calls for careful and sustained attention in each doctrinal area to the “concrete aspects of social life.”¹⁹ Further, Clare highlights how the abstraction disguises “how a legal order . . . can still operate to exclude important constituencies from the benefits available within the society.”²⁰ This exclusion makes the experiences of women, however situated, invisible or indistinguishable from those of men even when social reality makes the differences in experiences critical to understanding how law does and could operate. Abstract doctrines, when applied in particular legal and social contexts, distort understanding of women’s participation in society or work to exclude them from crucial spheres of life.

¹⁵ Thomas C. Grey, *Modern American Legal Thought*, 106 YALE L.J. 493, 500–08 (1996) (reviewing NEIL DUXBURY, PATTERNS OF AMERICAN JURISPRUDENCE (1995)).

¹⁶ Dalton, *supra* note 3, at 1005–06.

¹⁷ *Id.* at 1006.

¹⁸ For example, while many legal feminists criticized law for treating individuals differently based on their gender, other feminists questioned the limits of an equality analysis that could not reach structural inequalities between men and women. Debates about formal equality versus substantive equality and multiple efforts to transcend the debate dominated much feminist legal theory of this period. *See* Dalton, *supra* note 6.

¹⁹ Dalton, *supra* note 3, at 1001–03.

²⁰ *Id.* at 1007.

In the task of deconstruction, Clare also makes feminist insight central.²¹ The themes she chooses for organizing her process of deconstructing contract doctrine permeated the resurgent second wave of feminism thought within which Clare wrote. Two paradigmatic examples from different disciplines illustrate how Clare's study of contract law reflected developments altering vast fields of inquiry and drew upon methods of analysis and themes that appear in the path-breaking work of others. In philosophy, Simone de Beauvoir's pioneering work, *The Second Sex*, analyzed women's experience through the hierarchal duality of man/woman.²² In history, feminist historians explored the development of separate spheres ideology in the nineteenth century, revealing ways of thinking and structures relationships that marked off the public from the private and treated women's feelings as distinct from men's knowledge.²³ Clare's thematic choices reflect the feminist consciousness of the time and contributed to its expansion into legal academia.

In addition, the article brings a distinctive technique to the methodology of deconstruction: while her deconstructive methods draw upon the work of Derrida, her accounts of binaries within law take the form of stories.²⁴ This mode of analysis reflects the emergent feminist focus on storytelling that crossed disciplinary boundaries. Clare describes her scholarly deconstructive project as reshaping the telling of law's stories. She begins her article with an invocation of this project: "[l]aw,

²¹ *Id.* at 1009 n.23 (“[W]hen it comes to looking behind and beyond doctrine to ask what is perpetrated through it, my own first commitment is to assess how women are viewed and treated in legal context.”).

²² DE BEAUVOIR, *supra* note 11.

²³ For an example of such work, see generally CAROL SMITH-ROSENBERG, *DISORDERLY CONDUCT: VISIONS OF GENDER IN VICTORIAN AMERICA* (1984).

²⁴ In explaining how Derrida's metaphysical concerns can be translated into law, Jack Balkin credits Dalton with developing the metaphor of storytelling to explain how binaries work in law: “Law tells a story about what people are and should be.” Balkin, *supra* note 10, at 762. The binaries of public and private, objective and subjective, and form and substance appear not just as doctrinal rules but as stories about how law works to explain and order people's behavior and relationships.

like every other cultural institution, is a place where we tell one another stories about our relationships with ourselves, one another, and authority.”²⁵ In pursuing this project of deconstructing contract law, she demonstrates how analyzing stories within and about legal discourse can “expose the way law shapes all stories into particular patterns of telling, favors certain stories and disfavors others, or even makes it impossible to tell certain kinds of stories.”²⁶ In order to build feminism into the legal academy in a way that could be deep and integral, she shows how feminists can reveal hidden or displaced stories and tell new stories as ways of challenging those that dominate. For example, in telling how doctrines implicate the stories of relationships and not just discrete, atomized individuals, feminists can resuscitate buried accounts and construct new narratives that expose unrealized aspects or consequences of a particular doctrinal formulation. Through telling and retelling, critique and re-interpretation of law’s stories, and the revelation of stories hidden behind the stylized process of storytelling in legal discourse, Clare and other feminist legal academics sought to reshape through scholarship the meaning and experience of law. Further, recognizing that “those who dominate the legal forum only incompletely dictate the range of legitimate stories,” Clare takes from feminism the imperative of finding and creating “room for those who speak in a different voice and who can use that voice to critique the dominant one.”²⁷

To pull all these feminist strands together, Clare concludes with analysis of the doctrines implicated in the enforcement of cohabitation agreements between unmarried people. Using the understanding developed in the article of the doctrines of express and implied contract, manifestation and intent, and consideration and reliance, she shows how courts achieve a supposed resolution of arguments about how to treat these agreements. Her methodology applied in this setting of a particular kind of relationship reveals how, in the doctrinal treatment of

²⁵ Dalton, *supra* note 3, at 999.

²⁶ *Id.*

²⁷ *Id.* at 999 n.3.

cohabitation agreements, the creation and structuring of the dichotomies of public and private, objective and subjective understanding, and form and substance serve to displace underlying issues about the actual relationships, the interactions of unmarried people who enter cohabitation agreement, and the stance of the state toward those agreements and those people. To escape from “the stranglehold” of these doctrinal arguments “on our thinking about concrete contractual issues,”²⁸ Clare “bring[s] to life the underlying issues of power and knowledge that lie buried in the doctrine by focusing on the images of women and of human relationship that the doctrine presupposes.”²⁹ Clare constructs intellectual paths to generate analysis and debate about “commitments and concerns central to our society” that are pervasive in doctrine but that doctrinal discourse keeps at a “stylized distance.”³⁰ In “decoding the doctrinal formulations,” she fosters understanding about the real stakes for real people. She aims to present possibilities not just for critique of those particular doctrines, but for reimagining how law might be recast.³¹

It is clear in retrospect that feminist legal scholarship across many different theoretical orientations and in many different areas of substantive law has grappled with these concerns—regarding the connection between self and others, the distribution and operation of power, and the exclusion of women from or their marginalization in aspects of social life—that Clare articulated at a moment when feminist thought was transforming the academy generally, yet only beginning to challenge entrenched ways of analyzing law.³² It is also apparent that

²⁸ *Id.* at 1095 (“By ordering the ways in which we perceive disputes, these [doctrinal] arguments blind us to some aspects of what the disputes are actually about. By helping us categorize, they encourage us to simplify in a way that denies the complexity, and ambiguity, of human relationships. By offering us the false hope of definitive resolution, they allow us to escape the pain, and promise, of continual reassessment and accommodation.”).

²⁹ *Id.* at 1003.

³⁰ *Id.*

³¹ *Id.* at 1009.

³² The textbooks on feminist legal theory, many of which have gone through multiple editions, provide an entry point into this now vast

Clare's identification of these questions as central to feminist legal thought—although they differed from the more readily available issues concerning equality³³—generated and sustained further innovative inquiry.³⁴ This work has extended feminist legal critique in ways seemingly remote from particular contract doctrines or discrete areas of law and expanded feminist legal analysis to create new ways to explore the interplay of law with the operation of gender. With Clare's innovative work on contract doctrine, we were all better able to confront the weight of authority that appeared arrayed to resist challenges. With her concepts, approaches, and analysis, we proceeded with her as an ally in our minds and in our hearts.

This iconic article coupled with Clare's other scholarship did not secure tenure for her at Harvard,³⁵ just as extraordinary achievement has often failed to bring rewards "that would in all probability have fallen to the lot of equally determined and qualified men";³⁶ however, it achieved a different sort of success in feminist terms. It played a central role in securing for feminism a powerful and explicit presence in legal scholarship,

literature.

³³ Much early feminist legal thought, influenced by distinguished advocates, approached law as the site of inequality and the site for remedying that inequality. Justice Ruth Bader Ginsburg's now renowned work as a lawyer litigating the pioneering cases challenging sex-based classifications as part of the ACLU's Women's Rights Project and as a law teacher is only the most widely known and influential example of this strand of early feminist thought. Other early feminist legal advocates and academics, along with Clare, developed other feminist approaches. *See* Dalton, *supra* note 6.

³⁴ As feminists grappled with dilemmas around the treatment of pregnancy in anti-discrimination law and generated new approaches in feminist thought in the equality debates, feminist legal academics have found ways to continue to create new forms of analysis for critiquing how gender differences in caring for others and in household responsibilities can contribute to exclusion from social and political life or to economic vulnerability. *See, e.g.,* MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995).

³⁵ Patti Doten, *The Law Professor Who Sued Harvard Tells Why the Stack is Decked Against Women*, BOS. GLOBE, Oct. 25, 1993, at 36.

³⁶ Clare Dalton, *How It Was, How It Is*, 86 MICH. L. REV. 1346, 1346 (1988).

fostered new forms of feminist legal analysis, prompted recognition and respect that have endured the continually changing scholarly landscape, and became a source for critical legal thought up to the present.³⁷ Feminists across disciplines have drawn upon it,³⁸ traditional legal scholars have had to

³⁷ A quick citation check on Lexis reveals 370 citation references across legal fields, not to mention citations in many secondary sources and reprints in various collections. In 1996, it was listed as a most cited law review article of recent years. Fred R. Shapiro, *The Most-Cited Law Review Articles Revisited*, 71 CHI.-KENT L. REV. 751, 774 tbl.2 (1996).

³⁸ See, e.g., Susanne Baer, *A Different Approach to Jurisprudence? Feminisms in German Legal Science, Legal Cultures, and the Ambivalence of Law*, 3 CARDOZO WOMEN'S L.J. 251, 282-83 n.135 (1996); Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 835 n.18 (1990) [hereinafter Bartlett, *Feminist Legal Methods*]; Katharine T. Bartlett, *Gender Law*, 1 DUKE J. GENDER L. & POL'Y 1, 13 n.64, 14 n.71 (1994); Dan L. Burk, *Feminism and Dualism in Intellectual Property*, 15 AM. U. J. GENDER SOC. POL'Y & L. 183, 184 n.4 (2007); Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599, 1624 n.95 (1991) [hereinafter *Theory-Practice Spiral*]; Beverly Horsburgh, *Decent and Indecent Proposals in the Law: Reflections on Opening the Contracts Discourse to Include Outsiders*, 1 WM. & MARY J. WOMEN & L. 57 (1994) (arguing that the contracts curriculum disadvantages law students by its insistence on total objectivity and a separateness from the culture in which it is situated and applying Dalton's analysis to understanding how a partial or subjective view gets presented as universal); Christine A. Littleton, *Reconstructing Sexual Equality*, 75 CALIF. L. REV. 1279, 1283 n.24, 1322 n.225 (1987); Ramona L. Paetzold, *Commentary: Feminism and Business Law: The Essential Interconnection*, 31 AM. BUS. L.J. 699, 713 n.51 (1994) (applying Dalton's analysis to a feminist critique of commercial law, arguing that her analysis of the public/private duality is helpful in deconstructing various doctrines and the analysis of the objective/subjective duality reveals how questions of power dynamics get obscured); Kellye Y. Testy, *An Unlikely Resurrection*, 90 NW. U. L. REV. 219 (1995) (applying Dalton's analysis of contract law to lesbian legal theory, arguing that lesbians should seek to use contract rather than be used by it, by confronting the ambivalence and dualities).

acknowledge it³⁹—even if critical of it—and scholars from other critical traditions have relied on it.⁴⁰

II. TELLING STORIES IN CLASS: FEMINISM IN THE LAW SCHOOL CURRICULUM

Clare's work and the work of feminist legal academics transformed not only legal scholarship, although that transformation was necessary for feminism to survive and flourish in the legal academy. Were academic legal feminism confined to legal scholarship, however important scholarship

³⁹ See, e.g., Donald F. Brosnan, *Serious But Not Critical*, 60 S. CAL. L. REV. 259 (1987) (criticizing Dalton's use of deconstruction as inconclusive and as failing to provide guidance on how to construct rules that better organize private obligations); Joel R. Cornwell, *Legal Writing as a Kind of Philosophy*, 48 MERCER L. REV. 1091 (1997) (applying Dalton's analysis to the legal writing curriculum in arguing that the standard models of legal writing promote a disjunction between writing and thought); Chad McCracken, *Hegel and the Autonomy of Contract Law*, 77 TEX. L. REV. 719, 749 (1999) (in arguing for the autonomy of contract law, discusses Dalton's description of the tension between objective and subjective theories of contract law in relationship to the dialectic between individual and community in Hegel); Sky Pettey, *Power and Knowledge in Agreements to Arbitrate Statutory Employment Rights*, 14 OHIO ST. J. ON DISP. RESOL. 927 (1999) (using the treatment of power and knowledge in Dalton's dichotomies to analyze the arbitrariness of courts' preferences for arbitration clauses); Charles E. Rounds, Jr., *The Common Law Is Not Just About Contracts: How Legal Education Has Been Short-Changing Feminism*, 43 U. RICH. L. REV. 1185 (2009) (extending Dalton's analysis of quasi-contract to the concepts of agency and trust as reflective of the ways equity's private fiduciary relationships can address power and knowledge imbalances); Kenneth L. Schneyer, *The Culture of Risk: Deconstructing Mutual Mistake*, 34 AM. BUS. L.J. 429 (1997) (applying Dalton's methodology to the notion of mistake in contract doctrine and emphasizing the role of binaries in the development of mutual mistake).

⁴⁰ See, e.g., Mark Kelman, A GUIDE TO CRITICAL LEGAL STUDIES 25, 104–06 (1987); Balkin, *supra* note 10; Robert Batey, *Alienation by Contract in Paris Trout*, 35 S. TEX. L. REV. 289 (1994) (using questions posed by Dalton regarding the relationship between self and other to analyze the potential for alienation in the individualist bias of most modern conceptions of contract law that tends to overemphasize the threat posed by others and undervalue the promise of solidarity with them).

may be to educational institutions, it would have been little more than a bump in intellectual history. For feminism to alter the legal academy and thereby reshape understanding in the legal profession and in society, new understandings of law could not remain cabined in the realm of scholarly production; scholarly work had to be instantiated as curricular change.

Having embraced the task of reframing the narratives of law in her own scholarly writing, Clare enthusiastically joined the feminist effort to reconstitute the storytelling that pervades legal education. Through an engaged legal education, feminist academics could pass on to their students an understanding of how law's stories relate to the lives of women and to the core concerns of all people, concerns that demand the inclusion of women. Feminist thought had to be incorporated into the law school curriculum—not just as separate “women and the law” courses, but as part of the full range of law's stories as they emerge in different courses throughout the curriculum.⁴¹ In 1984, the Women and the Law Program at American University, Washington College of Law⁴² set out to build connections among feminists and others critical of dominant forms of legal education who often worked in isolation at their institutions. They sought to facilitate change in what was taught in classrooms and how it was taught, and, at deeper structural levels, to influence the structure and content of the curriculum.⁴³

⁴¹ Dalton, *supra* note 36.

⁴² The creation of the Women and the Law Program by the faculty of the Washington College of Law emerged from a rediscovery of the story of our founding in 1896 by two women, Ellen Spencer Mussey and Emma Gillett who began the only law school in the United States founded by women. Ann Shalleck, *Report of the Women and the Law Project: Gender Bias and the Law School Curriculum*, 38 J. LEGAL EDUC. 97, 97 (1988). For full accounts of this history, see Mary L. Clark, *The Founding of the Washington College of Law: The First Law School Established by Women for Women*, 47 AM. U. L. REV. 613, 614 (1998); VIRGINIA G. DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* (2001).

⁴³ The seeds of this current symposium honoring Clare Dalton were sown at the 1985 program. Feminist academics that preceded me and participated in this symposium were essential to conceptualizing and creating the workshop on Women's Rights and the Law School Curriculum, most notably Elizabeth Schneider. Conversations with Liz helped produce this project, and

In 1985, the Women and the Law Program instituted an annual workshop called *Women's Rights and the Law School Curriculum*, coordinated with the annual meetings of the Association of American Law Schools, designed to create a regularized yet distinctive feminist presence broadly accessible to interested faculty.⁴⁴ The program continued for the remainder of the century.⁴⁵ Clare was an enthusiastic and committed participant from the beginning. The first workshop “focused on those courses devoted primarily to examining the legal status of

Liz, already with significant experience in creating feminist change in practice and in legal academia, guided me into the existing academic feminist network. See Elizabeth M. Schneider & Cheryl Hanna, *The Development of Domestic Violence as a Legal Field: Honoring Clare Dalton*, 20 J.L. & POL'Y 343 (2012). At the 1985 workshop, my own academic work intersected with that of Clare, whom this symposium honors. Other academics from the 1985 program are participants in this symposium.

⁴⁴ Shalleck, *supra* note 42, at 98–99. The relationship to the AALS Annual Meetings changed over time as the format and structure of those meetings changed. For example, in the early years, the Women and the Law Program could be considered to be an allied organization and its workshop was treated as part of the programming done by those organizations. In 1986, the workshop presented by the Women and the Law Program was actually one of the AALS's Mini-Workshops. Later, with changes in the format of the annual meetings, the Women and the Law Program's annual workshops could not have these official or quasi-official designations, but, to facilitate participation, coordination of the workshops with the official meeting activities continued.

⁴⁵ Around this time, the AALS Annual Meeting had expanded in scope, including extended programming involving full-day workshops at the beginning of the meeting. It became increasingly difficult for those attending the meeting to participate in supplementary programming as the annual meeting itself became more extensive. In addition, as more women entered law teaching, the AALS Section on Women in Legal Education became increasingly active in developing its own programming on gender and the law. A specialized focus on feminism within the law school curriculum remains important as resistance to feminist theory and to a curriculum that fully incorporates theoretical, doctrinal, and clinical feminist teaching remains. Particularly as legal education goes through critical changes, sustaining efforts to retain feminist thought and practice as part of legal education takes on new meaning. However, the particular institutional structure for creating a setting for these discussions must be different.

women”⁴⁶—partly because feminists had first claimed a presence in legal academia through demands, primarily by women students, for these courses⁴⁷ and partly because these courses served as a base for many feminists within academia. By 1985, such women and the law courses had already served many purposes, among them operating as outposts for feminist thinking within the curriculum.⁴⁸ From this starting point, the Women and the Law Program, with the second workshop the following year, began in earnest to expand feminist thinking into all aspects of law and law teaching and, therefore, into all parts of the curriculum.⁴⁹

Moving from specialized courses often on the margins to the core of legal education, the second workshop concentrated on the first-year curriculum. As the announcement for the second workshop declared, “[i]ssues affecting women permeate the law but are often invisible in the law school curriculum outside of specialized courses in women and the law.”⁵⁰ It then marked as an historical phenomenon the efforts of those “who have begun to integrate this work into many courses throughout the curriculum.”⁵¹ The first-year curriculum, in the content of its courses and its methods of instruction, worked to signal what mattered to the development of students’ understanding of law and their ways of thinking about it. “Because the first year curriculum is basic to shaping a shared understanding throughout the legal profession of what the law is and how it operates, the program will focus on attempts to include issues about women in

⁴⁶ Program Announcement, Ass’n of Am. Law Sch., Mini-Workshop: Women’s Rights and the Law School Curriculum (Jan. 4, 1986) (on file with author).

⁴⁷ See Dalton, *supra* note 6, at 3–5.

⁴⁸ *Id.*

⁴⁹ The yearly workshop served not only as a space to share and develop ideas and to learn from others engaged in similar efforts, but also as a site for creating change. The number of women law teachers, while growing quickly during a period of expansion of legal education, remained relatively small, and feminists were a far smaller group. Situating feminist thinking in the curriculum, whether in specialized courses or embedded in other courses, was a contested enterprise.

⁵⁰ Program Announcement, *supra* note 46.

⁵¹ *Id.*

three standard first year courses: property, contracts, and torts.”⁵²

This early effort at addressing the exclusion of any explicit examination of the operation of gender at this formative point in students’ education involved asking basic questions and creating a broad dialogue among participants: Why did an exploration of gender matter in legal study? How did such inquiries affect students’ understanding of these areas of law? What goals did feminist law teachers seek to achieve in making change? What change was possible within the constraints of a standard first-year curriculum? What methods were available? What challenges did people face? What risks did they invite? This workshop created a space for framing and facing these basic questions and began an ongoing endeavor to explore how feminist thought could affect the approach to the most basic of law school’s material.

In light of Clare’s scholarly work, this workshop precisely suited her knowledge and her commitments. Along with Deborah Rhode and Patricia Williams, Clare led the discussion on contracts. In a letter following the workshop, she described the meaning of the workshop for her:

For myself, it was nothing short of thrilling to sit down with a group of people teaching in the contracts field, and compare notes and exchange suggestions about how to enrich our courses through a more concrete recognition of the women who are our students, and the women’s issues that for one reason and another have been left out of the traditional curriculum.⁵³

Consistent with her conviction that focusing on women illuminates questions regarding the most deeply embedded assumptions in law and the most basic ways of framing doctrinal questions, Clare was particularly drawn to how this project can “provide many more points of access to central questions about the role law plays in our society.”⁵⁴ Clare also cautioned: “[n]ow the question will be whether we can collectively sustain our

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

commitment to the project and move forward.”⁵⁵ The Women and the Law Program provided the “supporting and steering function”⁵⁶ that aggregated the work of individuals into a collective project so that feminist law professors could achieve more than discrete and idiosyncratic victories. With this 1986 workshop, the Women and the Law Program took a critical, albeit initial, step of “bringing us into touch with each other.”⁵⁷

To incorporate feminist ideals into the first-year curriculum, feminist academics needed to develop teaching materials that at least acknowledged, even if they did not fully embrace, the emergence of feminist approaches to and insights about legal thought. While a textbook with women’s names on the cover did not guarantee feminist perspectives, the near exclusion of women from authorship of the central materials shaping the story of the law that first-year students encountered revealed the daunting project of challenging legal education that feminists faced. At that time, with rare exceptions,⁵⁸ major casebooks in first-year subjects did not include women authors. The three fields of contracts, torts, and property on which the workshop focused had no women authors. In addition, whoever the authors, no texts included explicitly feminist perspectives nor offered the feminist critiques emerging in the literature of law journals. Feminist academics knew that if in first-year classrooms only feminist law professors told counter-stories of the law that contained women’s experiences, ones that operated as narratives of resistance to the text, they and their accounts would be discounted as partial, biased, marginal—or at best subsidiary.

Just as feminists had to publish their legal theories in law reviews, they also needed to appear in the authoritative material of the texts presented to students as embodying the corpus of the law, particularly the texts of first-year courses, which appeared as the most fundamental. The narrative of law told through the

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *See, e.g.,* BARBARA ALLEN BABCOCK & PAUL D. CARRINGTON, *CIVIL PROCEDURE: CASES AND COMMENTS ON THE PROCESS OF ADJUDICATION* (2d ed. 1977).

text needed to encompass feminist thought. Only with concerted effort would this domain, just as that of scholarly writing, allow entry to subversive accounts. Just as the academy viewed Clare's scholarship with suspicion, feminists who challenged the standard presentation of material in the first year risked skeptical responses from colleagues and students. Clare and other feminists promoted exchange and experimentation that could produce different materials. Over time these efforts could yield fully developed texts. Clare saw that the Women and the Law Program could help feminist academics "develop materials for our own and others' use" and explore when and how they might "supplement a traditional casebook," or, at some later time, "provide a complete substitute."⁵⁹

While the first-year curriculum continued as a focus of the Women and the Law Program through its annual workshops, the program also pursued other entry points into the law school curriculum, identifying those that at this point in history appeared amenable to change. While the established curriculum's weight and solidity were formidable, women students were flooding into law schools after years of exclusion.⁶⁰ Many of these students had the capacity and motivation "to exert some political muscle on behalf of other women, if they will,"⁶¹ and they had at their disposal the "growing body of empirical research into gender issues, and the growing body of formal and informal feminist and gender theory."⁶² These factors aligned to create the potential "that professional cultures themselves will begin to change in ways responsive to women's perspectives and experiences."⁶³ But these developments created only the possibility of change. The Women and the Law Program worked consistently with feminist legal academics to identify and foster strategies for creating a

⁵⁹ Letter from Clare Dalton, Professor of Law, Northeastern University School of Law, to author (Feb. 10, 1986) (on file with author).

⁶⁰ Dalton, *supra* note 36, at 1355 (citing Miriam Slater & Penina Migdal Glazer, *Prescriptions for Professional Survival*, DAEDALUS, Fall 1987, at 119, 132).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

different curriculum. As Clare stated, “[w]omen too solitary to count on the support of other women, women too nervous about their vulnerabilities as women to take the risk involved in identifying politically with other women, will find it difficult to provide that guidance.”⁶⁴ As the workshops continued to explore multiple facets of feminist work in the curriculum, participants found support and guidance in this collective project.

After Harvard denied Clare tenure and she won a significant settlement in her sex-discrimination lawsuit,⁶⁵ she moved to Northeastern where she expanded and broadened her efforts to transform the law school curriculum. She continued to integrate these efforts into the collective work of the Women and the Law Program. In 1992, at the sixth annual workshop on Women’s Rights and the Law School Curriculum, *Teaching about the Battering of Women: Women’s Experiences, Legal Responses and the Educational Project*,⁶⁶ Clare discussed two broad efforts among colleagues to change first-year stories of law that appeared in the curriculum: designing a torts class around domestic violence issues and using domestic violence to teach various subjects.⁶⁷ As in her previous work, she looked to experiences shared among many women, the experiences of domestic violence, as part of the material for the new stories in the first year. Clare and her colleagues grounded both projects to change the traditional narratives of the first year in the dynamics of relationships that affected the lives of many women in many ways.

The choice of this topic related to Clare’s work on founding and shaping the Domestic Violence Institute at Northeastern.⁶⁸

⁶⁴ *Id.*

⁶⁵ Deborah L. Rhode, *Litigating Discrimination: Lessons from the Front Lines*, 20 J.L. & POL’Y 340–41 (2012).

⁶⁶ Program Announcement, Ass’n of Am. Law Sch., Mini-Workshop: Teaching about the Battering of Women: Women’s Experiences, Legal Responses and the Educational Project (Jan. 6, 1992) (on file with author).

⁶⁷ Other presenters were Elizabeth Schneider and Margaret Mahoney. *Id.*

⁶⁸ As part of the settlement of her sex discrimination lawsuit against Harvard, at the center of which was her article, Clare obtained Harvard’s funding for the Domestic Violence Institute. Alice Dembner, *Harvard Law Ends Bias Suit by Agreeing on Institute*, BOS. GLOBE, Sept. 22, 1993,

Addressing domestic violence throughout the different subjects of the first year and within various doctrinal formulations exposed how discrete legal categories inadequately contain the multiple aspects of people's experience and relationships—a project fundamental to all Clare's work. Clare and her colleagues proceeded with complementary strategies: the first made the social reality of domestic violence central to the exploration of several doctrinal categories throughout all the sections of the basic torts class; the second used domestic violence as a topic for analysis across different subjects—criminal law, torts, and contract law, for example—that routinely compartmentalize people's experiences and students' understanding of how law works in discrete neat packages.

In the first project, the redesign of the torts course reflected how feminist principles can begin to transform the culture of legal education. In shaping the course, Clare and her colleagues did not want to make domestic violence merely an interesting, even gripping, example of a doctrinal point; feminists in law schools had long criticized the exploitation in texts and in classroom hypotheticals of scenarios in which women suffer profound harm. To avoid treating domestic violence as just a random, convenient topic or sensationalizing violence against women, the torts faculty adopted several approaches. First, in the torts class, discussion of domestic violence recurred within three doctrinal areas: the no-duty rule in negligence, self-defense rules in intentional torts, and immunity rules within the context of governmental action and within the family. Faculty connected the exploration in each doctrinal area to the others, showing how themes, such as the public/private distinction, appeared across doctrines and were used to justify doctrinal resolutions. Second, exploration of the issues implicated in situations of domestic violence went beyond doctrinal or policy debates. Classes explored the social contexts within which domestic violence occurs and the different meanings it has, the systemic issues that affect the legal treatment of domestic violence, and the work of advocates in devising legal strategies to address both systemic failures and harm to individuals. Third, professors presented

(Metro), at 11.

issues of battering not only through legal texts, but also with materials that could make social contexts meaningful in understanding the interaction of the legal world and the social world.⁶⁹

With this careful structure in place, Clare and her colleagues also developed teaching methods that reflected the messages they sought to convey. For example, they made the interactions among the students in the class central to the teaching mission and the teaching design. Knowing that “many students in the room . . . had violence touch their lives,” faculty “design[ed] experiences at the beginning of the year that alert[ed] students to the issues that [would] arise in class.”⁷⁰ In addition, they anticipated and planned ways to structure classroom discussions that acknowledged “the presence and the power of the anger evoked” in the discussions, while including discussion of the harm to men as well as women when battering occurs.⁷¹ To include students’ experiences and feelings in the pedagogy of the class was to acknowledge how lawyers are connected to the law they practice and students are connected to the material they learn. People in cases are not abstract legal subjects, and lawyers are not abstract legal advocates. As Clare sought to displace the autonomous, objective legal subject at the center of liberal legal thought, she and her colleagues devised ways to reconstruct the law school classroom with students and their experiences central to the educational inquiry.

In the second project, all professors in first-year courses collaborated to devote a day to domestic violence, demonstrating that issues of domestic violence transcend subject matter, with

⁶⁹ Social science literature about domestic violence, descriptions of how courts treat different kinds of cases involving domestic violence, and personal narratives of attempts to use the legal system in situations involving battering are examples of the types of materials that provided critical context for considering and assessing how legal doctrine frames and resolves complex aspects of social life.

⁷⁰ *Women and the Law Project’s Discussion Group at the 1992 AALS Annual Meeting*, AALS WOMEN & L. SEC. NEWSL. (Am. Ass’n of Law Sch., Wash., D.C.), Apr. 1992, at 3 [hereinafter *Women and the Law Project’s Discussion Group*].

⁷¹ *Id.*

each subject area limited in its capacity to address the complex social reality of partner abuse. This project, like Clare's work on contract doctrine,⁷² critiqued how legal structures constrict fundamental questions of self-definition and of relationships, but situated that analysis within a particular, pervasive, deeply troubling part of the social world and placed it at the center of inquiry in the first-year curriculum. The faculty devised small group exercises that enabled students to participate in activities through which they could, at least in the constrained and artificially limited setting of a simulation, experience aspects of the real-world meaning and consequences of the legal stories about domestic violence.

The power of Clare's account at the 1992 workshop came only partially from the particular initiatives she described. Rather, the workshop wove together her experiments in change with the compelling stories of other feminist academics working to create new forms of legal education through sustained, contextualized treatment of this one aspect of women's experience. The multiple accounts of disrupting the standard format of law school classes expanded the imaginations of law teachers about manageable, effective ways to bring feminist thought and teaching into the curriculum and increased confidence and desire to undertake similar experiments.⁷³ Perhaps the greatest tribute to Clare's work at the site of law school teaching and curriculum is that pedagogical practices such as hers and those of the other feminist academics who joined in the annual workshops on Women's Rights and the Law School curriculum now seem normal, regular parts of an expanded vision of legal education.⁷⁴ Specialized courses abound, even if not evenly distributed across law schools.⁷⁵ Many upper-level offerings⁷⁶ and clinical courses⁷⁷ routinely give serious attention

⁷² See Dalton, *supra* note 3, at 999–1000.

⁷³ *Women and the Law Project's Discussion Group*, *supra* note 70.

⁷⁴ Examples of these teaching innovations have been presented at Professional Development Programs of the AALS.

⁷⁵ For example, Women and the Law, Sex-Based Discrimination, Feminist Jurisprudence, Battered Women and the Law, and Reproductive Rights appear with some frequency across legal education.

⁷⁶ For example, courses at many schools in employment, education,

to gender, and courses examining a range of critical theories include feminist analyses.⁷⁸ At the same time, feminism has not swept away dominant structures and forms of thought from legal education. These remain, but less firmly in place and more susceptible to critique and reconstruction than when Clare entered legal academia more than thirty years ago.

III. CREATING THE NORTHEASTERN DOMESTIC VIOLENCE INSTITUTE

Clare's move to Northeastern and the monetary settlement she obtained in her claim against Harvard⁷⁹ afforded her another opportunity to transform law and legal education through feminist thought and action. Supported partially by the Harvard funds, Clare worked with others, most notably Lois Kanter, to establish the Northeastern Domestic Violence Institute.⁸⁰ The Institute was a feminist clinical program at the intersection of the

immigration, civil rights, human rights, criminal law, and family law address issues involving analysis of gender.

⁷⁷ For example, specialized clinics in women and the law, domestic violence, and sex discrimination appear regularly among a law school's clinical offerings. Clinics addressing lawyering across many spheres of law and practice—whether through specialized focus on areas such as immigration, human rights, tax, intellectual property, or disability rights or through general approaches to lawyering, such as civil practice, community lawyering, or community economic development—often give substantial attention to questions of law and practice that pose issues related to gender, race, inequality, and multiple forms of exclusion. *See generally* Margaret Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U. J. GENDER SOC. POL'Y & L. 161 (2005).

⁷⁸ For example, courses in critical race theory or sexuality and law routinely explore how gender operates in conjunction with other structures of exclusion, discrimination, and subordination.

⁷⁹ *See* Leigh Goodmark, *Clinical Cognitive Dissonance: The Values and Goals of Domestic Violence Clinics, the Legal System, and the Students Caught in the Middle*, 20 J.L. & POL'Y 301 (2012); Schneider & Hanna, *supra* note 43, at 344–45.

⁸⁰ *See generally* Lois H. Kanter, V. Pualani Enos & Clare Dalton, *Northeastern's Domestic Violence Institute: The Law School Clinic as an Integral Partner in a Coordinated Community Response to Domestic Violence*, 47 LOY. L. REV. 359 (2001).

law school and the community. Through advocacy, education, research in the community, and representation of women in violent relationships, the Institute provided legal education in which learning and understanding of law proceeded from students' immersion in and reflection on the social world of women who experienced abuse and the legal institutions and practices established to address that abuse. Through the educational structures of the Institute, students could learn to identify the implicit and explicit images of women in violent relationships, compare those images to their clients' experiences and understandings, and challenge the ways that the law and the legal system operate to cast women in violent intimate relationships as victims lacking in knowledge and judgment about their lives. They could engage in forms of legal practice that made options for acting beyond the limited possibilities enshrined in the legal process available to their clients. As with all that Clare did, the power of the Institute's approach came from its engagement with others in a collective effort to transform law, legal institutions, and lawyering through feminist thought and action.

As Clare was developing the Institute at Northeastern, clinical faculty—like feminist faculty—were challenging traditional visions of law, as well as forms and methods of legal education.⁸¹ Concepts and approaches shaped by these two overlapping groups of faculty drew on similar themes.⁸² The Domestic Violence Institute belonged to both projects. Proceeding from the early work of Clare and those in clinical education, the pedagogical structures and practices of such

⁸¹ Ann Shalleck & Muneer Ahmad, *Clinical Thought: Investigating the Contours, Urges and Trajectories* (unpublished manuscript) (on file with author); AN ORAL HISTORY OF CLINICAL LEGAL EDUCATION, PART I: SEEDS OF CHANGE (2006).

⁸² See generally Goldfarb, *Theory-Practice Spiral*, *supra* note 38. Feminists explicitly brought together clinical theory and feminist theory regarding domestic violence. See Phyllis Goldfarb, *Describing Without Circumscribing: Questioning the Construction of Gender in the Discourse of Intimate Violence*, 64 GEO. WASH. L. REV. 582 (1996); Ann Shalleck, *Theory and Experience in Constructing the Relationship Between Lawyer and Client: Representing Women Who Have Been Abused*, 64 TENN. L. REV. 1019 (1997).

clinics now aim to generate understanding of how law, lawyering, and legal institutions can both create possibilities for remedying harms to women who experience abuse, and also constrain how law and society address the experiences of domestic violence.⁸³ In the educational activities of the Institute, as in other domestic violence clinics, students' understanding of law grows from relationships with women struggling with the ambiguities in and complexity of their relationships with others. As advocates for these women, students learned to incorporate into client representation the possibilities of using law to help women address violence in their relationships, while recognizing its many problematic and harmful dimensions. In their representation and their other work in the community, students encounter the distortions and limits of law in individual cases and in systemic practices. They see how law can force a woman into leaving an intimate partner, even if that action poses dangers she understands better than others. They also learn how law can require a woman to cooperate in seeking incarceration for a partner, even if jail harms all members of her family, or can fail to secure the most basic forms of immediate help with jobs or income at a time of grave danger. With this understanding of law, students learn to expand their vision of the work of the lawyer to include engagement with institutions in the community that can be resources for individual women and can be important in creating systemic change.⁸⁴

⁸³ See Goodmark, *supra* note 79, for an analysis of how feminist thought and practice about domestic violence are reflected in this form of legal education. See Schneider & Hanna, *supra* note 43, for a discussion of the evolution of feminist approaches to violence against women since Clare and others established the Institute.

⁸⁴ Clinical academics analogously have structured legal pedagogy to highlight the relationship of individual and community. See generally, e.g., Sameer Asher, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 455 (2008); Susan Bennett, *Little Engines That Could: Community Clients, Their Lawyers, and Training in the Arts of Democracy*, 2002 WIS. L. REV. 469; Juliet Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333 (2009); Susan Bryant & Maria Arias, *A Battered Women's Rights Clinic: Designing a Clinical Program Which Encourages a Problem-Solving Vision of Lawyering that Empowers Clients and Community*, 42 WASH. U. J.

Clare made the Institute her central priority at the moment of transition not just from Harvard to Northeastern, but from institutional rejection to approval, and from a focus on doctrinal formulations to law in the context of the world of legal practice and social life. In her development, she expressed the central commitments that had guided her work since she wrote about contract doctrine: “how we should conceive relationships between people, how we should understand and police the boundary between self and other.”⁸⁵ She wrote about how the “inherent indeterminacy”⁸⁶ of law and legal argumentation can reveal these issues but cannot resolve them, and how we need to “reflect directly on the concrete aspects of social life that create the disputes and shape their resolution.”⁸⁷ At all the critical sites within the legal academy, she integrated these commitments into her work.

As a feminist legal academic, Clare experienced the importance of connection to other feminists and to feminism. She understood the different aspects of her work—as a scholar, a teacher, and a designer of curriculum—to be part of the task of feminist transformation of legal understanding, legal practice, and legal education. In the realm of legal scholarship, her writing helped to enrich the legal inquiry of feminist academics and to make the scholarly enterprise more inclusive of and accessible to all women. With each use of her work by others, her writing validated the importance of the development of feminist thought to all legal thought. But the very success of her article on contract doctrine exhibited the reality that individual achievement on its own will not bring about change. Merit alone could not secure tenure in a world of structural discrimination. However, the fruits of her battle against that discrimination through her litigation against Harvard secured the funding for a

URB. & CONTEMP. L. 207, 211–13 (1992); Susan Bryant & Elliott Milstein, *Reflections Upon the 25th Anniversary of The Lawyering Process: An Introduction to the Symposium*, 10 CLINICAL L. REV. 1 (2003); Gerald P. Lopez, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305 (1989).

⁸⁵ Dalton, *supra* note 3, at 1006.

⁸⁶ *Id.* at 1007.

⁸⁷ *Id.* at 1003.

Domestic Violence Institute based on feminist understanding, constructed with other feminists and supported by an institution in which feminism could flourish. Her own life thus reflected her analysis of the lives of other women who had sought professional fulfillment in worlds within which women were subordinate.⁸⁸ Clare wrote that women needed to remain cognizant of “the professional commitment to meritocracy as containing a substantial element of window-dressing.”⁸⁹ She therefore cautioned that women should

not accept the invitation to reinterpret experiences of prejudice and discrimination as experiences of personal inadequacy. They should not imagine that superperformance will be an amulet against such experiences. They should not accept the argument that women “choose” subordinate professional roles . . . without attention to the way these “choices” are culturally constrained.⁹⁰

In the multiplicity of its meanings, Clare’s contract article reminds us that even today, more than twenty-five years after its publication, feminist legal thought has an ambiguous and unstable place in the legal academy, simultaneously honored and marginalized, always in need of grounding in feminist support and action. Just as Clare urged, feminist legal academics continue to engage in collective effort not just to inhabit but to transform legal thought and legal education. Absent this grounding, Clare warned that women will be “stopped short of their full potential.”⁹¹ When they can “locate the problem firmly outside themselves,” however, and can feel “comfortable working politically with other women and sympathetic men, to combat the forces arrayed against them,” they will not have to bear the “personal cost” of the “denial of some of the realities of their lives.”⁹² With her guidance, feminist academics continue to build on the legacy that Clare explicitly and munificently bequeathed to them. They work in virtually every area of law both to continue

⁸⁸ Dalton, *supra* note 36.

⁸⁹ *Id.* at 1354.

⁹⁰ *Id.* at 1353–54.

⁹¹ *Id.* at 1354.

⁹² *Id.*

to elaborate the meaning of feminist legal theory in all its diversity⁹³ and to bring insights from feminist analysis to realms of legal education still resistant to feminist questions.⁹⁴

CONCLUSION

As we honor Clare's work with this symposium on *Challenging Boundaries in Legal Education*, we see the trajectory of feminists and feminism in the legal academy. We identify the moments when Clare, always along with others, created new visions of law and legal education and new practices to make those visions real. Feminist academics, along with those from other critical traditions,⁹⁵ have brought about something of a renewal of legal education. While partial, tentative, and fraught with contradictions, the multiple changes in legal education and broad discussion of the exciting possibilities⁹⁶ emerged in their current form largely because of the efforts of committed academics—feminists prominent among them—to remake the entire culture of legal education. This transformation creates not just possibilities for richer and more

⁹³ See, e.g., Baer, *supra* note 38, at 252 (discussing feminist approaches to German jurisprudence); Bartlett, *Feminist Legal Methods*, *supra* note 38, at 829 (identifying and critically examining feminist practical reasoning and consciousness-raising and describing the concept of positionality); Burk, *supra* note 38, at 185 (arguing that the feminist theory of oppositional pairs may show how intellectual property law contributes to determining and maintaining a pervasive set of power relationships in society); Littleton, *supra* note 38, at 1285 (describing the feminist legal scholars' reaction to the civil rights movement and sexual equality); Paetzold, *supra* note 38, at 713–14 (applying feminist ideas to business law).

⁹⁴ See JUDITH G. GREENBERG, MARTHA L. MINOW & DOROTHY E. ROBERTS, *MARY JO FRUG'S WOMEN AND THE LAW* (3d ed. 2004); see also sources cited *supra* note 38.

⁹⁵ Critical legal studies and clinical theorists have been the most prominent, although her work also intersects with that of law and society and critical race theory.

⁹⁶ The vibrancy of both the critiques of legal education and the possibilities for change are captured most recently and prominently in WILLIAM M. SULLIVAN ET AL., *THE CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

engaged educational experiences, but also for a legal profession and a society that can deploy law better to address “commitments and concerns central to our society.”⁹⁷

⁹⁷ Dalton, *supra* note 3, at 1009.