FEMINISM AND THE USES OF HISTORY: AN ESSAY ON THE LEGACY OF JANE E. LARSON

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ABSTRACT

Jane Larson defined herself initially as a legal historian, specifically as a feminist legal historian, and she was highly skilled in this craft. She brought her talents to bear not only in order to understand the past (for example, the 19th century age of consent campaign) but also to design remedies for the present (revisioning the tort of seduction as a modern-day tort of sexual fraud) and to attempt to influence the law (by writing op-eds and assisting in preparing the Historians' brief in *Planned Parenthood v. Casey*). This essay will assess the many creative insights that Larson's research and writing in these areas brought to feminist legal theory.

INTRODUCTION 195
I. JANE LARSON AS FEMINIST LEGAL HISTORIAN 196
II. JANE LARSON AS FEMINIST LEGAL SCHOLAR 200
III. JANE LARSON AS ACTIVIST-HISTORIAN 202
IV. THE CONTRIBUTIONS OF JANE LARSON'S HISTORICAL WORK TO FEMINIST LEGAL THEORY 204

INTRODUCTION

Although a woman of multiple talents, Jane Larson defined herself initially as a feminist legal historian. She was a highly skilled and careful historian.[1] Honed also by feminism and several years of legal practice, she was acutely aware of the consequences of the law and realistic about the potential for change through the legal system. This essay will focus on this one of the many areas in which Larson wrote, discussing two articles that are self-consciously historical – her article revisioning the tort of seduction as a cause

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1. Larson received her B.A. in History with Highest Honors and the Katherine Rock Hauser Award in Women's History from Macalester College in 1980.

of action for sexual fraud[2] and her piece about the nineteenth-century campaign to raise the age of consent to sex[3]—as well as her involvement in brief-writing as an historian and her many forays into the popular press.

Jane Larson brought her formidable talents to bear upon history not only in order to understand the past but also to design remedies for the present and attempt to influence the case law in the future. In Part I of this essay, I describe her most important historical research and discuss how it revised our understanding of the activism and legal reforms of nineteenth-century feminists, emphasizing its early timing, the breadth of subjects addressed, attitudes toward sexuality that were not confined to sex-repressive ideas, and the major areas of continuity between the feminisms of the nineteenth and twentieth centuries. In Part II, I discuss Larson's related work as a legal scholar, a decidedly feminist one, and in particular her attempts to design legal remedies for the present based on both her study of the past and insights from the developing field of feminist legal theory. In Part III, I describe the various ways in which she brought history to bear upon the present, by writing about sexual fraud and other issues in the popular press, becoming an expert composer of op-eds, and working on the Historians' briefs in important abortion cases before the Supreme Court. Finally, in Part IV, I attempt to summarize some of the many creative insights that Larson's research and writing in these areas brought to feminist legal theory.

I. JANE LARSON AS FEMINIST LEGAL HISTORIAN

Larson's first major foray into feminist legal history resulted in a 100-page article on the tort of seduction published in the *Columbia Law Review* in 1993.[4] The article is so long not only because of the immense amount of legal research that went into it but also because legal and historical archives were not the only sources of data for its polymath author. In addition to the case law and commentary, old and new, Larson drew upon opera, literature, philosophy, political theory, and popular culture, including nineteenth-century melodramas, to understand the meaning of seduction. The conclusions she drew were new in many ways, and spurred her to discuss legal reforms in the present as well as in the past.

The first sections of the seduction article described and deconstructed the changing importance of the tort of seduction in the nineteenth and early twentieth centuries.[5] Originally a cause of action brought by fathers for the loss of their daughters' virginity, a total of 19 states codified the common law tort between 1846 and 1913 and also allowed the seduced woman to be the

2. Jane E. Larson, *"Women Understand so Little, They Call My Good Nature 'Deceit'": A Feminist Rethinking of Seduction*, 93 COLUM. L. REV. 374 (1993) [hereinafter *Rethinking of Seduction*].

3. Jane E. Larson, *"Even A Worm Will Turn at Last": Rape Reform in Late Nineteenth-Century America*, 9 YALE J.L. & HUMAN. 1 (1997) [hereinafter *Nineteenth-Century Rape Reform*].

4. *Rethinking of Seduction*, *supra* note 2.

5. *Id.* at 382

plaintiff.[6] At this point the cause of action was particularly useful for young working class women, who were especially vulnerable to sexual abuse in the workplace;[7] it also provided middle class women with a type of female regulatory power over male sexual conduct – one that depended not upon private beneficence or chivalry but upon the power of the state.[8] New attitudes toward sex current in the Progressive and New Deal eras, however, led feminists to reject the seduction tort as a relic of Victorianism; they joined with male activists, who emphasized the dangers of blackmail by scheming women, in the "anti-heart balm" movement that resulted in the abolition of this cause of action, among others such as breach of promise to marry, from 1935 on.[9] Modern feminists inherited this interpretation of the tort of seduction as an outmoded, paternalistic, and puritanical legal action.

Jane Larson's treatment of this area of law constituted a revision of much of the accepted historical wisdom about seduction. It pushed back our understanding of when women's legal reform efforts in the nineteenth century began. A decade before the suffrage movement commenced in Seneca Falls, women's "moral reform" groups were active and succeeded in passing anti-seduction laws in New York and Massachusetts.[10] Moreover, this movement was not, as almost universally understood, anti-sex; instead, its members recognized the connections among sexual exploitation, paternalism, and the status of women, and they sought effective legal remedies that would give them some measure of power over their lives.[11] Once women were able to sue on their own behalf, the action became available, at least theoretically, to sexually active women as well as to those who were seduced as virgins.[12]

Larson's rehabilitation of these nineteenth century moral reformers was at the same time a realistic one. The middle-class women who led the movement did not in fact envisage seduction as a remedy for women who were "fallen" – for prostitutes, or immigrant and racial groups considered to be naturally promiscuous.[13] And working class women who were sexually active were unlikely to be rewarded with damages unless they had suffered serious physical damage from being deceived into consenting to sexual relations.[14]

Larson continued her exploration of many of these revisionist themes in her 1997 article about the age of consent campaign, which was based upon extensive archival research into the records of the Women's Christian Temperance Union (WCTU) between 1885 and 1900, and especially records about the campaign to raise the age of consent in the District of Columbia.[15]

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6. *Id.* at 382-87.
7. *Id.* at 383-85.
8. *Id.* at 390.
9. *Id.* at 394-400.
10. *Rethinking of Seduction*, *supra* note 2, at 391.
11. *Id.*
12. *Id.* at 393.
13. *Id.* at 390.
14. *Id.* at 387.
15. *Nineteenth-Century Rape Reform*, *supra* note 3, at 2-3. A cursory review of the footnotes in this article reveals that Larson reviewed the WCTU's extensive notes on

Often thought of as a group focused solely upon the prohibition of alcohol, the WCTU was in fact a large national mass women's political organization with multiple goals, which became more explicitly feminist as time passed and its members experienced the resistance of male legislators to their demands.[16] Indeed, to Frances Willard, its president, "temperance" was a wide net, including temperance in passions of all sorts.[17] The group sought broad-based reforms that would empower women, including in the sphere of employment and, of course, the right to vote.[18]

Larson's article focused on the WCTU's campaign to raise the age of consent to sex from as low as 10 years old in some states to 16 or 18 in state after state. Women who had not spoken in public before, lacked a vote, and had no previous political experience gave lectures, held mass meetings, went from door to door with petitions, wrote to legislators, solicited letters of support, encouraged the press to cover their issue, and organized mothers' meetings to teach women how to educate their children (especially their boys) about sex and personal morality.[19] In an era when polite women did not talk about sex, these women discussed incest, child sex abuse, rape, prostitution, sexual harassment in the workplace, and the double standard of sexual conduct for males and females, which they blamed for many of these moral ills.[20] By 1900, 32 states had raised their age of consent to 16 or older.[21]

While the movement was a success in bringing about legal reform, Larson concluded, it was seriously lacking as an exercise of feminist politics.[22] Although intended to attack the problem of rape, the new statutory rape laws protected only young women and girls; they did nothing to extend protection to adult women. Moreover, law enforcement personnel and the judiciary made young victims prove their chastity and allowed mistake of age as a defense; and cases were brought by parents and prosecutors even in cases of truly consensual if underage sex.[23] Indeed, in the new era of the juvenile court, girls were adjudicated delinquent for underage sex.[24] While attempting to ally with women of other classes and even to empathize with "bad" women, the WCTU was also segregated; and Frances Willard openly shared the racism of many middle-class women of her time, leaving African American women to their own resources to deal with their pervasive exposure to sexual exploitation.[25]

In telling, or retelling, this story, Larson again provided important revisionist insights and confirmed others developed in her earlier article on

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legislative debates as well as the voluminous literature published by this movement, including the WCTU national newspaper, the *Union Signal.*

16. *Id.* at 3-7, 28.
17. *Id.* at 22-23.
18. *Id.* at 28-29, 43-44.
19. *Id.* at 38-41.
20. *Id.* at 12-18, 27, 29-30.
21. *Id.* at 37.
22. *Id.* at 69.
23. *Nineteenth-Century Rape Reform, supra* note 3, at 63-64.
24. *Id.* at 65.
25. *Id.* at 29-30, 45-52.

seduction. She demonstrated, with plentiful evidence, that this mass movement of women in the nineteenth century was broad in scope and shared important continuities with Second Wave feminism. Although the issues of incest, child sex abuse, teen pregnancy, child prostitution, sexual harassment, and nonconsensual sex were rediscovered in the 1960s, it was certainly not the first time they had been discussed.[26] The age of consent campaign was aimed at making it easier to prosecute all of these offenses, by doing an end-run around the defense of consent for women below a certain age and making sex with them into a strict liability crime.[27]

Larson also directly refuted the argument that the stories publicized by the age of consent campaigners represented "seduction narratives" – that is, myths propagated to reinforce conservative values, scare respectable women away from sex, and police the sexuality of working class women.[28] Instead, Larson showed, these stories were of real life forcible rapes, sexual abuse, incest, and workplace sexual harassment.[29]

Moreover, she attacked the common notion of the age of consent movement, like that for remedies for seduction, as profoundly anti-sex. Although very few of the reformers favored free love, they did share a profound understanding of sexuality under the prevailing social and political circumstances as an instrument of male power and female subordination, which the law supported by its lack of effective remedies for sexual assault; and they aimed to disclose the dangerous truth underlying Victorian myths of family and male protection and alter male sexual behavior as a necessary condition for the advancement of women's economic and social status.[30]

Yet feminists involved in the anti-heart balm movement in the 1930's and after, as well as later feminist legal theorists opposing gender-specific statutory rape laws (or statutory rape laws in general), interpreted the cause of action sought by the WCTU as primarily conservative and puritanical, committed to protecting women only if they stayed in their proper, and asexual, place.[31] It is impossible to reach this simplistic conclusion after reading Larson's article on the age of consent campaign, even if one's attitude toward statutory rape may remain conflicted.

Feminist history becomes smoother and more continuous once this fuller knowledge is incorporated in it. Far from being cut off from a First Wave of feminism that focused increasingly narrowly upon suffrage and died of exhaustion once that goal was attained, women of the Second Wave were heirs to a rich and continuous history of activism against rape and sexual abuse of all sorts, carried out by the great-grandmothers we all thought of as straitlaced in

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26. *Id.* at 5.

27. *Id.* at 15, 19-20.

28. *See* MARY E. ODEM, DELINQUENT DAUGHTERS: PROTECTING AND POLICING ADOLESCENT FEMALE SEXUALITY IN THE UNITED STATES, 1885-1920, at 4-5 (1995).

29. *See Nineteenth-Century Rape Reform*, *supra* note 3, at 12-18.

30. *See, e.g.*, *id.* at 4-7.

31. *See, e.g.*, ODEM, *supra* note 26, at 16-17; M.B.W. Sinclair, *Seduction and the Myth of the Ideal Woman*, 5 LAW & INEQ. 33, 33, 90 (1987).

mind as well as dress. Larson also carried on their struggles in the context of today.

II. JANE LARSON AS FEMINIST LEGAL SCHOLAR

Larson was not content to stop at an improved understanding of the past from a feminist perspective; her eye always remained on what could be done to benefit persons who were vulnerable today. She explained a good deal of gender-based violence as rooted still in nineteenth-century notions of women as property, as objects rather than autonomous sexual beings, and was eager to find ways to address this problem.

As a legal scholar, this included her proposed tort of sexual fraud, a definition of which she suggested for inclusion in the *Restatement (Second) of Torts*:

> One who fraudulently makes a misrepresentation of fact, opinion, intention, or law, for the purpose of inducing another to consent to sexual relations in reliance upon it, is subject to liability to the other in deceit for serious physical, pecuniary, and emotional loss caused to the recipient by his or her justifiable reliance upon the misrepresentation.[32]

The cause of action was carefully limited by the requirements that accompany any action for intentional misrepresentation, such as in commercial transactions. First, the misrepresentation, whether by words or other modes of communication, must be intended to deceive another party into consenting to sex. Even silence could qualify as misrepresentation where an affirmative duty to disclose arises by virtue of knowing about the reliant party's special vulnerability.[33] Second, the misrepresentation must be of a material fact. In other words, the issue is whether reasonable persons would rely upon the statement in deciding whether to consent to sex—such as claims that the person seeking sex was unmarried, or sterile, free of sexually transmitted disease, or using contraception.[34] Third, of course, the other party must reasonably rely upon the statement to her (or his) detriment. Finally, unlike the few cases that had already been decided under a similar cause of action, the harms to be compensated included not just physical and economic loss but also emotional harm, which was in many ways the more foreseeable type of damage.[35] And, the judgment was to be made under a reasonable victim or reasonable woman standard.[36]

What was required – and what Larson was seeking to initiate – was quite simply to revise common expectations about sex – the rules of the game – to

32. *Rethinking of Seduction*, *supra* note 2, at 453.
33. *Id.* at 456-58.
34. *Id.* at 462-67.
35. *Id.* at 459-61.
36. *Id.* at 468-71.

"craft[] a sexually non-repressive, yet interventionist, regime of sexual regulation in the interests of women."[37] From the point of view of everyday sexual interactions, this would require that any would-be deceiver must consider in advance what kind of reliance his or her words and/or conduct will likely create, and to do so from the perspective of the person to whom they are addressed.[38] In a world of equality between males and females comfortable with their sexuality, this would amount to a substantial change in the concept of consent to sex, based on "a coherent normative theory of the mutual obligations to be shared by equal sexual partners."[39]

The popular media went wild at this clearly unreasonable, if not lunatic, suggestion. Larson's picture was on the front page of the *Wall Street Journal*, and there were articles about her proposal in magazines ranging from *Glamour* to *Playboy*.[40] A columnist at *Playboy* called the tort of seduction "unfair to men," and Camille Paglia called it "craziness" and "a wild excess of feminist puritanism," asking "Don't these feminists know that everything in romance is lying and delusion?"[41] Larson responded simply that "The law of the jungle should not apply to sexual relationships."[42] Her own opinion, expressed in the *Columbia Law Review* article, was that equality and openness in sexual relationships would in fact lead to more satisfying, and probably *more*, sex.[43] The uproar in the press put Larson's theory very much in the public eye, leading to radio and television appearances and provoking debate among an audience much broader than usual for articles published in academic journals – precisely the intended effect of her proposal.

Far from being afraid of bringing the government into the bedroom, Larson took a stand in favor of interventionist feminism, that is, appealing to the power of the state to remedy inequalities and injustices in the heretofore private sphere.[44] Here she parted company from many liberals, and definitely with both sexual libertarian and postmodern feminists, retorting that the only alternative was "to cede governance of that sphere to private regimes of power," which were stacked against women.[45] Larson, though developing her

37. *Id.* at 381.

38. *Rethinking of Seduction*, *supra* note 2, at 469.

39. *Id.* at 411.

40. *See* Ellen Joan Pollock, *As Remedy for Certain Broken Promises, Professor Proposes 'Sexual Fraud' Suits*, WALL ST. J., June 11, 1993, at B1; *Should the Law Punish Lovers Who Lie?*, GLAMOUR, April 1994, at 133; Ted C. Fishman, *The Law & Love: When Brokenhearted Lovers Hire Attorneys*, PLAYBOY, Aug. 1, 1994, at 46. This caused Larson's then dean, who was also this author's dean, to call her his "rock star."

41. *See* Shulamith Gold, *Don Juan in Court: Would Reviving Seduction Suits Keep Lovers Honest?*, CHI. TRIB., Jan. 5, 1993 (Tempo sec.), at 1.

42. *Id.*

43. *Rethinking of Seduction*, *supra* note 2, at 438.

44. *Id.* at 430-44.

45. *Id.* at 439.

own unique body of research and theory, remained an especially adept student of Catharine MacKinnon.[46]

Larson's contribution to the feminist legal theory of sex developed creatively upon that of her mentor. As she stated upfront in the seduction article, her goal was to design a theory that "challenges the adversarial image of sexual relations between women and men that currently prevails in the law, and counterposes a model of mutuality and reciprocity in the form of a minimal obligation to deal fairly and honestly with a sexual partner."[47] This was an ambitious project indeed, and a goal Larson developed further, and arguably accomplished, in her collaboration with Linda Hirshman on their book *Hard Bargains: The Politics of Sex*, published by Oxford University Press in 1998.

III. JANE LARSON AS ACTIVIST-HISTORIAN

Larson was not content to disseminate her ideas only in law reviews and workshops for law faculty. As noted, she was eager to comment in outlets more likely to reach a larger audience. As part of this determination, she became especially adept at the art of writing op-ed articles, a particularly difficult skill for an academic used to having more than 700 to 800 words in which to make a complex point. Larson was terrific at it. She could turn out an op-ed in a few hours, and her talents quickly became in demand. She made her points in a few pithy phrases. Here, for example, is the conclusion to one piece about her proposal for a tort of sexual fraud:

When we as a society set ground rules for sexual relations – no force, no threats, no unconsented-to touch, no "sexual shakedown" on your job, no exploitation of children, and now no fraud – we're not legislating the heart. We're legislating intentional conduct. Not feelings. Not desires. But knowing and intentional conduct with serious social consequences. There isn't any reason to place special legal obstacles in the path of innocent victims of sexual fraud.[48]

Larson wrote op-eds on a wide variety of subjects, not just based on history and law, but all of them having to do with persuading the public about issues of injustice, especially to women and other vulnerable groups. She wrote, for example, to urge the appointment of more women to the federal courts at a time when there were virtually none on that bench in Northern Illinois.[49] With co-author Jonathan Knee, she wrote about remedies for victims of sexual harassment and to oppose weakening hate-law crimes.[50] And with

46. Professor Catharine A. MacKinnon taught Jane Larson at the University of Minnesota Law School in the mid-1980's.

47. *Rethinking of Seduction*, *supra* note 2, at 380.

48. Jane E. Larson, *Sex, Lies and the Right to Sue*, CHI. TRIB., Oct. 5, 1993 (Perspective Sec.), at 19.

49. *See* Cynthia Grant Bowman & Jane E. Larson, Op-Ed, *Where Equity Is Still Only a Shadow*, CHI. TRIB., May 5, 1994 (Perspective Sec.), at 31.

50. Jane E. Larson & Jonathan A. Knee, *Don't Weaken Hate-Crime Laws*, CHI. TRIB., Feb. 5, 1993 (Perspective Sec.), at 23; Jane E. Larson & Jonathan A. Knee, *We Can Do Something About Sexual Harassment*, WASH. POST, Oct. 22, 1991, at A21; Jonathan A. Knee

Linda Hirshman, she wrote simply, directly, and persuasively about hostile environment sexual harassment claims as a cause of action for sex discrimination in employment.[51]

Larson also became involved in more direct attempts to influence the law, by contributing to the preparation of *amicus curiae* briefs on issues of importance to women before the Supreme Court. With Sylvia Law and Clyde Spillenger, she helped prepare the "Historians' briefs" filed in the *Webster* and *Casey* cases, when the right to abortion outlined in *Roe v. Wade* hung in the balance.[52] These briefs presented an account of the history of abortion in the United States as widely accepted, punished at most as a common law misdemeanor, until the campaign of the American Medical Association in the mid- to late 1800's, which was intended to drive out midwives and professionalize the practice of medicine; the AMA appealed to racist, nativist, and sex discriminatory arguments in support of its argument. These briefs evoked controversy among historians, some of whom argued that they were essentially political documents and not reputable history.[53]

Larson and Spillenger responded to these criticisms in a 1990 article in *The Public Historian*.[54] They first explained the advocacy-based goals of the *Webster* brief – "to make it impossible for the Court to employ an argument that throughout this nation's history abortion had been either uniformly condemned in law or avoided in practice."[55] After adverting to the social construction of all knowledge, they went on to discuss the standards of historical scholarship in the academy and to contrast them with the requirements of legal advocacy within the constraints and in the form of a brief. Historical scholarship emphasizes complexity and the confrontation of conflicting views of the truth, they said, and reflects "a desire for order and consensus over conflict and confrontation," which leads to centrist positions.[56] Legal argument, by contrast, is embodied in forceful, non-tentative language and is subject to severe limitations of length and form.[57] In the Historians' Brief, this resulted in the omission from the brief of the fact that nineteenth-century feminist leaders supported regulation or prohibition of abortion (and,

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& Jane E. Larson, *The Wrong in Dole's "Rights" Bill*, CHI. TRIB., Apr. 17, 1991 (Perspective sec.), at 19.

51. Linda R. Hirshman & Jane E. Larson, *Through the Courts, Up the Ladder: How Much Must a Woman Put Up With?*, CHI. TRIB., Nov. 17, 1993 (Perspective sec.), at 21.

52. Brief of 250 American Historians, et al. as Amici Curiae in Support of Planned Parenthood of Southeastern Pennsylvania, Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992) (Nos. 91-744 and 91-902). Brief of 281 American Historians et al. as Amici Curiae Supporting Appellees, Webster v. Reproductive Health Services, 492 U.S. 490 (1989) (No. 88-605).

53. *See* Jane E. Larson & Clyde Spillenger, *"That's Not History": The Boundaries of Advocacy and Scholarship*, 12 THE PUBLIC HISTORIAN 33, 33 n. 3 (1990).

54. *Id.* at 33.

55. *Id.* at 35.

56. *Id.* at 39, 41.

57. *Id.* at 39-42.

indeed, of birth control).[58] Although it was possible to explain this opposition without fatally undermining the brief's argument, there was not enough space to do so.

This omission left the Historians' Brief open to attacks based on the writings of respected early feminists, which featured in the brief filed by the Feminists for Life.[59] While accepting their criticism, Larson and Spillenger argued that historians must not renounce their public responsibility by insisting on importing the standards of historical complexity into historically-based advocacy. "The 'knowledge professions,'" they concluded, "must be prepared to translate their understandings into the less rarefied language of politics where those understandings have consequences for power."[60] It is not easy to walk the line between adherence to high standards of historical scholarship, while at the same time entering the arenas of power and using historical data to influence decisions with serious impact on the lives of women. Yet Jane Larson strongly felt the obligation to do so, and it was a responsibility she did not shirk.

At the same time, Larson was not naïve about the chances that her liberatory notions of sexuality and reproductive freedom would be realized in the immediate future. She understood that it was unlikely that her proposed tort of sexual fraud would be incorporated into the next edition of the *Restatement of Torts* or, if it were adopted, that deeply ingrained patterns of sexual interaction would change very soon. But she continued to insist upon the power of what she called "the effects of even wholly symbolic legal reform victories."[61] Although raising the age of consent to sex had not conquered the problems of child sexual abuse, incest, and abuse of authority over the young, she concluded, "such laws do express the moral expectation that adults will accept responsibility to protect the young from sexual violence, abuse, and overreaching, even at the expense of their own sexual liberty."[62] And that was worth the investment of her labor and her passion.

IV. THE CONTRIBUTIONS OF JANE LARSON'S HISTORICAL WORK TO FEMINIST LEGAL THEORY

One way to measure the influence of a scholar like Jane Larson is to examine how the conversation about the subjects upon which she wrote was different after her articles were published than before. In one article published in 1987, for example, its law professor author stated that "As twentieth century women achieved a measure of sexual autonomy, the tort of seduction became

58. *Id.* at 39. On the attitude of nineteenth-century feminists to birth control, *see* LINDA GORDON, THE MORAL PROPERTY OF WOMEN: A HISTORY OF BIRTH CONTROL POLITICS IN AMERICA 57-67 (rev. ed. 2002).

59. *See, e.g.,* Brief of Feminists for Life of America, Professional Women's Network, et al., as Amicus Curiae in Support of Petitioners, Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993) (No. 90-985).

60. Larson & Spillenger, *supra* note 53, at 43.

61. *Nineteenth-Century Rape Reform*, *supra* note 3, at 71.

62. *Id.*

'as musty and out-of-date as Tennyson's "Lady of Shalott."'. . . Today the tort seems moribund" and that "The sexually autonomous woman brooks no such patronizing."[63] In other words, the seduction tort had no place in a world of sex equality in the opinion of this author.[64] By contrast, scholars writing subsequent to the publication of Larson's 1993 *Columbia* article responded to her "call for a more positive appraisal of 19th-century sex reform and its legislative outcomes" in this area.[65] No one could write about the tort of seduction today without taking Jane's contribution into account.

A very rough measure of the influence of a scholarly article may be provided by a citation count. Larson's seduction article has been cited by at least 108 subsequent authors.[66] Perhaps more important to her law reform goals, it has also been read by judges and their clerks, having been cited by one federal court of appeals on two occasions, one federal district court, the Supreme Court of Georgia, and appellate courts in New York, Massachusetts, and California.[67] Jane Larson's legacy will undoubtedly continue to inform scholarship on feminist legal history and on the regulation of sexuality in the future.

I am not equal to summing up Larson's contribution to feminist legal theory in general — or even on the particular subjects of this essay. What I can describe, though, are a few of the things I, as one feminist legal theorist, learned from Jane Larson – both from reading her work and from personal interactions with her as a colleague. I learned to take nothing at face value, to question the meaning of each case or law or idea, and to turn each fact over and over before reaching even a tentative conclusion. I learned to examine each idea anew, from the perspective of the impact it might have on the lives of women in both the short and long run, and, within the area of sexuality, not to accept the terms of engagement we have inherited but to create my own, ones designed to further my own unique preferences and personhood. I learned to think of sexuality in a more complex fashion by absorbing Larson's concept of sexual autonomy as consisting of three aspects: (1) bodily integrity, (2) sexual self-possession, or the interest in self-expression through acts and with partners that satisfy one's present desires and purposes, and (3) sexual self-governance, or the power to shape sexual expression in ways that support and advance one's personality and life projects, despite all the complex forces that may

63. Sinclair, *supra* note 31, at 33, 90.

64. *See also id.* at 97.

65. *See, e.g.*, Brian Donovan, *Gender Inequality and Criminal Seduction: Prosecuting Sexual Coercion in the Early-20th Century*, 30 LAW & SOC. INQUIRY 61, 83 (2005).

66. Information obtained by "Shepardizing" *Rethinking of Seduction* on Apr. 23, 2013. As of that same date, *Nineteenth-Century Rape Reform* had been cited by 33 law reviews and periodicals.

67. Wildey v. Springs, 47 F.3d 1475, 1479 (7th Cir. 1995); Hartmann v. Prudential Ins. Co. of Am., 9 F.3d 1207, 1214 (7th Cir. 1993); Fox v. Sierra Dev. Co., 876 F. Supp. 1169, 1175 (D. Nev. 1995); Franklin v. Hill, 444 S.E.2d 778, 782 (Ga. 1994); Askew v. Askew, 28 Cal. Rptr. 2d 284, 290 (Cal. App. 1994); Conley v. Romeri, 806 N.E.2d 933, 936 (Mass. App. 2004); Colon v. Jarvis, 742 N.Y.S.2d 304, 307 (N.Y. App. Div. 2002).

overshadow personal choice in this area.[68] And, I learned to be willing to take controversial stands – not just in the popular media[69] but also within the legal academy, and, perhaps most frightening, within the feminist legal community that had become home.

I've also learned to take the insights of different and contending "schools" of feminist legal theory and to gain wisdom from them all. Jane modeled this nicely in her seduction article, where she draws on the insights of relational feminism – of Jennifer Nedelsky, Robin West, even Ian MacNeil's relational contracts theory – in designing her concept of sexual autonomy,[70] while maintaining what some might consider a contradictory conviction that MacKinnon was right on most of these issues. Finally, I learned not to fear invoking the power of the state, though it is a blunt and often repressive instrument, to protect those who are vulnerable within our society, including women subjected to sexual violence. In short, I learned not to assume, as Jane so aptly put it, that the choice is between Orwell or Hobbes.[71]

68. *Rethinking of Seduction*, *supra* note 2, at 425.

69. I was mocked in *The New Republic* and on radio talk shows when I proposed a legal remedy for the sexual harassment of women. Cynthia Grant Bowman, *Street Harassment and the Informal Ghettoization of Women*, 106 HARV. L. REV. 517 (1993). *See also* Mickey Kaus, *TRB from Washington: Street Hassle*, THE NEW REPUBLIC, Mar. 22, 1993, at 4.

70. *Rethinking of Seduction*, *supra* note 2, at 425-30.

71. *Id.* at 432.