

“FULL OF ZOOM”:

**BARBARA NACHTRIEB ARMSTRONG,
FIRST WOMAN PROFESSOR OF LAW**

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Barbara Nachtrieb Armstrong, First Woman Law Professor

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PREFACE

Barbara Nachtrieb Armstrong lived without regard to recording history, perpetually looking forward to the next challenge rather than backward to the last victory. Unconcerned with the preservation of life's details, Armstrong did not maintain detailed personal files nor records of her professional work. "Most of my stuff I've thrown out of my files," she said. "I haven't enough room for it. I've lived too long, and I just couldn't have all that material in my files. I didn't know anything about the future of oral history, and I couldn't see a reason for keeping it."¹

What gaps are left by the absence (or nonexistence) of Barbara Armstrong's personal and professional papers are far outweighed by the rich body of scholarship that she created, and the extensive array of colorful anecdotes, vivid stories, tall tales, and fond remembrances that are her living legacy. From the recountings of those who adored her (as well as from her own oral history on the Social Security Administration) emerges a portrait of a brilliant, beautiful, and quick-witted woman, with a razor sharp tongue and devilish sense of humor. Devoted to teaching, passionate about her work, and deeply committed to her family she was, as one of her nephews described her, "passion and reason rolled into one."

Wherever possible, I have used Barbara's words rather than my own, so that she can bear witness to her own fantastic life story. To this I have added the words of her family and friends, many of whom have embellished on Barbara Armstrong's own words.

The retelling of these small bits of Barbara Nachtrieb Armstrong's incredible life have stolen my biographer's cool remove. As Frances Perkins indicated in the preamble of her book on Franklin Roosevelt, absent such cool impartiality, biography quickly metamorphoses into memoir. As Perkins explained, "This [work] . . . is biased in [Roosevelt's] favor. I am bound to him by ties of affection, common purpose, and joint undertakings. . . . All doubts have been resolved in his favor."²

I must make the same admission: I am not unbiased where Barbara Nachtrieb Armstrong is concerned. All doubts have been resolved in her favor.

¹ COLUMBIA UNIVERSITY ORAL HISTORY COLLECTION, REMINISCENCES OF BARBARA NACHTRIEB ARMSTRONG 15 (1984) [hereinafter ORAL HISTORY]. Although Armstrong's daughter, Patricia Symmes, does not specifically recall seeing any of Armstrong's legal papers, she indicated that what papers existed (if any) would have been lost in the 1989 Loma Prieta earthquake. Telephone interview with Patricia Symmes, Barbara Nachtrieb Armstrong's daughter (Feb. 3, 1998). Dean Herma Kay Hill indicated the same. Interview with Herma Kay Hill, Dean of Boalt Hall Law School, University of California, at Boalt Hall (Dec. 19, 1997).

² FRANCES PERKINS, THE ROOSEVELT I KNEW 4, 7 (1946).

I believe that women will change the nature of power rather than power change the nature of women. — Bella Abzug³

“A government can be judged by the humanity with which it affords insurance against catastrophe.”
—Barbara Nachtrieb Armstrong⁴

“How would you like to be described as a chattel? Some day you’ll set out for your courting with a basket of fee tails and there’ll be a sign on the cottage door that Annie doesn’t live there any more. Annie’s set forth to see the world she never made and that maybe she’ll make over.”

— Armstrong, questioning a “property minded man,” as recounted by Roger Traynor⁵

1. INTRODUCTION: A LIFE “CREATED MORE THAN EQUAL”

When Barbara Armstrong was born in 1890, there were a mere 75 women lawyers in the country. When she entered law school in 1913, women law students comprised less than 3 percent of law students and 2 percent of lawyers.⁶ At that time, women remained the property of men: unable to contract and unable to vote.

By Armstrong’s death women had become a familiar feature of the legal profession. Today, we occupy half of the seats in American law schools. We have entered not only the academy, but the judiciary, the legislature, law firms, and government agencies as well. In short,

³ AMERICAN BAR ASSOCIATION COMMISSION ON WOMEN IN THE PROFESSION, UNFINISHED BUSINESS: OVERCOMING THE SISYPHUS FACTOR 25 (1995).

⁴ Roger J. Traynor, *The Light Years of Barbara Nachtrieb Armstrong*, 65 Cal. L. Rev. 920, 922 (1977).

⁵ *Id.*, at 923.

⁶ Herma Hill Kay, *The Future of Women Law Professors*, 77 IOWA L. REV. 5, 5-6 Some commentators have estimated this to be an undercount of women lawyers, due to the fact that so many women with law degrees did not actually practice law, or practiced it independently of their fathers or husbands, leading to the possibility that many would be missed by the census takers. See VIRGINIA DRACHMAN, SISTERS IN LAW 173 (1998).

the achievements of women like Barbara Armstrong made possible the explorations of women like myself.

Armstrong graduated from the University of California in 1913 with a B.A. in Economics. She was one of only two women in her class when she entered law school that same year, graduating with a J.D. in 1915. Four years later, when she was only 29 years old, Armstrong was appointed as a Lecturer in the Boalt School of Law and Department of Social Economics. With this appointment, she became the nation's "first woman law professor."⁷ While her presence in law school had itself been a rarity, her appointment to the faculty was an unparalleled accomplishment.

She went on to earn her Ph.D. in Economics from Berkeley in 1921, becoming an Assistant Professor of Law and Social Economics in 1923, an Associate Professor of Law in 1928, and a full Professor of Law in 1935.⁸

But Barbara Armstrong was far more than the sum of her academic credentials. An architect of Social Security, advocate of universal health insurance, and authority on family law and community property, Barbara Armstrong was a visionary leader. Her life shaped the parameters of what was possible for women in the law, showing men what women could achieve and teaching women what they should expect of themselves.⁹

⁷ *First Woman Law Prof in U.S. Dies*, THE RECORDER, January 21, 1976, at 1.

⁸ SANDRA P. EPSTEIN, LAW AT BERKELEY: THE HISTORY OF BOALT HALL 84 (1997).

⁹ *Id.*, at 319.

A pioneering woman lawyer, Armstrong crusaded for causes, but not for herself. Outspoken, vivacious, physically beautiful and “articulate when common sense needs expression,” her quick wit and sense of humor won her the respect of both her students and her colleagues. As her former student Roger Traynor said of Barbara upon her death, “Barbara Armstrong . . . was created more than equal to the life that she would live. The spirit of freedom that animated her disciplined work transcended catalogues of degrees and awards and defied execution in leaden portraiture of whatever wingless spread.”¹⁰

II EDUCATION AND EARLY FAMILY LIFE

Barbara Nachtrieb was born on August 4, 1890 in San Francisco, California to Anna Day and John Jacob Nachtrieb.¹¹ The third of four children, (Howard, Florence, Barbara, and Harold), Barbara was close to her siblings. Although her older brother Howard died at age 16, of peritonitis, Barbara would later speak of being raised “with two brothers,” with whom she was close.¹²

Little is known about her parents or grandparents, who immigrated from Germany to the Midwest, and then made the long and treacherous journey westward. According to Barbara, her pioneer grandmother walked the entire distance from Louisiana to Salt Lake City, so that weaker

¹⁰ Traynor, *supra* note 4, at 920.

¹¹ Barbara Armstrong died at age 85, in January of 1976, at her home in Oakland, California.

¹² ORAL HISTORY, *supra* note 1, at 278 .

women would have their turn to ride.¹³ Barbara inherited this fierce independence and concern for the welfare of others, qualities that are reflected in her more than four decades of work in social insurance and family law.

¹³ Kathryn Gehrels, *Barbara Nachtrieb Armstrong* *In Memoriam*, 65 CAL. L. REV. 920, 935.

Barbara’s immediate family shared an insatiable love of learning and the arts, particularly music. Curious and bold, Barbara yearned to explore the world around her. “I wasn’t allowed out on the sidewalk,” Armstrong later recalled. “My family had a big yard for me and I had to stay in there, and I loved to get out in the world more than anything.”¹⁴

Once out in the world, Barbara took on adventures—big and small—with purpose and conviction. Unfazed by challenges or new situations, she addressed problems straight-on, staring down those who might stand in her way. As she explained,

When I was a little girl my aunt had a neighbor who had a girl who was just my age . . . I used to look through the knot hole in the fence . . . And this little girl had come out evidently with instructions to get the [stray] cats [to go] away. There were awful cats in San Francisco when I was young . . . all over the place . . . half wild cats and very unpleasant. [The little girl] had a very dainty little dress and an organdy apron. She was not dressed for play the way I was dressed . . . She came out and she shook her apron . . . and said ‘Go away, cats. Go away.’ And I put my mouth to the know hole and I said, “You have to do it differently. Take up a rock and rock them. They don’t go when you speak nicely to them.” And I peeked again and she looked scared. And I said, “I’m just a little girl on the other side of the fence, but you can’t get them to go that way.” And ever since then we’ve always said, in the family, “Go away cats,” of an ineffectual way of coping with a problem.¹⁵

Schooled entirely in the Bay Area public schools, Barbara graduated from the University of California at Berkeley in 1913 with a Bachelor’s Degree in Economics. Even as an undergraduate, Barbara focused on the economics of social insurance, a term used to refer to the economic safety net comprised of old-age, health, and unemployment insurance. Interested in the viability of comprehensive social insurance programs, Armstrong wanted to continue studying the

¹⁴ ORAL HISTORY, *supra* note 1, at 178-79.

¹⁵ *Id.*, at 197-98.

field. Aware that she would need either a J.D. or Ph.D. to be taken seriously, she applied to law school.¹⁶

¹⁶ Interview with Herma Hill Kay, *supra* note 1.

III. A LAWYER'S LIFE IS A HE-MAN'S GAME: ENTERING LAW SCHOOL

Barbara entered law school in 1913, amidst a raging battle over suffrage, at a time when the nation's attention seemed focused on the extent of a woman's ability, or limitation.¹⁷ Many believed women to be dependent, fragile creatures, incapable of independent subsistence and unsuited for linear intellectual analysis. As one commentator suggested in 1918 (a full 3 years after Barbara's graduation from law school),

. . . [W]oman is dependent whether she likes it or not, and all the laws that could be written never would alter the fact. In the plant, animal, and human kingdom alike, in all the fundamental, instinctive family relations, the female is bound in the very nature of things to be dependent. The tyranny of man, the old common law of England, and acts of parliament are not responsible for the fact that the male creature is always the leader, the protector, and the ruler of his kind. An act of Congress, it maintains, will not alter the fact that women instinctively seek and glory in the protection of men, that will lead, will control and dominate and rule, and that normal women will be content in the masterful domination of their men; that all the laws in Christendom could not alter these elemental instincts. It is not cruel legislation that has made the female of the species dependent everywhere, among the flowers of the earth, the beasts of the field, the birds, the savages, and at the family hearth, and no amount of legislation can undo it. All the king's horses and all the king's men are helpless in the face of elemental instincts."¹⁸

¹⁷ The right to vote was extended to women in California by referendum in 1911, prior to the passage of the Nineteenth Amendment.

¹⁸ KIRK H. PORTER, A HISTORY OF SUFFRAGE IN THE UNITED STATES 249-50 (1918).

The Academy was similarly skeptical about whether women possessed the requisite temperament and intellectual capacity to compete in the rigorous law school environment. Although several law schools—notably those in the Midwest—had been open to women since the late 1800's, the elite law schools of the East remained vigorously opposed to coeducation, resisting it with often blatant hostility.¹⁹ For example, when asked in 1922 why Columbia School of Law did not admit women, Dean Harlan Stone replied curtly, “We don’t because we don’t.”²⁰

Although somewhat easier to secure on the East (not entirely closed to women), a legal education was by no means accessible to women on the West Coast. Although the California legislature had repealed a law prohibiting women from practicing law in the state in 1877, “first lady lawyers” Clara Shortridge Foltz and Laura DeForce Gordon subsequently fought a long and bitter battle for the right to learn and practice law in California.²¹

¹⁹ EPSTEIN, *supra* note 8, at 278, 303-05. Women were expressly denied entrance to Yale until 1918, Columbia until 1927, and Harvard until 1950. A number of other Universities, including Howard University, University of Michigan, Union Law School of Chicago, University of Texas, University of Buffalo, and the National School of Law, among others, were open to women substantially earlier than the elite law schools.

²⁰ VIRGINIA DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* 143 (forthcoming, Harvard University Press, 1998).

²¹ See Barbara A. Babcock, *Clara Shortridge Foltz: Constitution Maker*, 66 *INDIANA L. J.* 4 (Fall

1991). Hastings finally admitted its first female student, Mary McHenry, who graduated in 1882, paving the way for those who followed. The first woman graduate from Berkeley was Emmy Marcuse. EPSTEIN, *supra* note 8, at 306.

The University of California at Berkeley had a comparatively friendly attitude towards the inclusion of women in the legal classroom. The UC Berkeley School of Jurisprudence had always admitted women on an equal basis as men, evidence of at least a conceptual acceptance of coeducation. Berkeley graduated its first woman, Emmy Marcuse, from the law school in 1906, and one or two women enrolled each year thereafter throughout the early 1900's. The consistent enrollment of women, although small in number, put Berkeley at the forefront of women's legal education. From early on, Boalt prepared, at least superficially, for the changes that would come with the increasing admission of women. In the 1910's, as new law school facilities were being built, Boalt Hall specifically commissioned "[a]n inviting little room . . . reserved especially for [women students]." Administrators "expected that it will furnish an incentive to ambitious co-eds who have up to this time hesitated to study law on account of the forced association with the men."²² In 1915, with its enrollment of 6 women, Berkeley tied with University of Washington for the largest enrollment of women law students in the nation (Chicago placed first with 12 female students).²³

Despite their inclusion in law classrooms, women law students remained a small and isolated minority. In 1913, the year Barbara entered law school, women law students comprised a mere three percent of law students in the United States and little more than 2 percent of lawyers.²⁴

At Berkeley, Barbara was one of only two women in her class. Although technically welcome, the pioneering women who opened the doors of the male academy to women, faced difficult, and

²² EPSTEIN, *supra* note 8, at 306-07.

²³ *Id.*

²⁴ *See Kay, supra* note 6, at 2.

often lonely paths.²⁵

²⁵ EPSTEIN, *supra* note 8, at 321.

The atmosphere—both in and out of class—was “often neither hospitable nor kind” for women students.²⁶ While male faculty tolerated women students, they made little effort to conceal their prejudice against them, saving for the women discussions of the most difficult—or embarrassing—cases.²⁷ Male faculty resented the need to modify their jokes and hypotheticals, and even when women were not directly called on, they were often disrespected or intellectually ignored.²⁸ Many male students, believing that women were not as serious about using their training to pursue a professional career, condescended to, and excluded from the general club of law school life.²⁹ Some believed such attitudes came from the faculty on down, citing a poem that, although written anonymously, was likely the work of “Captain” Kidd, a popular criminal law professor:

Oh — Portias — list to the captain’s bawl —
 You’re in for a tremendous fall.

A librarian or a secretary you may be —
 But think not a client you can tree.

If you would rise — forsake the book;
 Take on the stove and be a cook.

For a lawyer’s life is a he-man’s game,
 And the Captain’s rules leave out the dame.

Very anon.³⁰

²⁶ *Id.*, at 310.

²⁷ *Id.*

²⁸ *Id.*, at 311.

²⁹ *Id.*, at 312.

³⁰ *Id.*, at 310-11.

Amidst this atmosphere, women law students needed to establish a flawless record to ensure their continued acceptance, and they knew it. Those who could not perform, dropped out.³¹ Those who could achieve shined brilliantly.³² As the San Francisco Enquirer later reported,

³¹ Although enrollment was high—as many as six or eight women began their studies with each first year class—attrition was also high. It was rare if more than one or two women remained to graduation. *Id.*

³² Armstrong's contemporaries achieved similarly amazing achievements. Louise Cleveland ('15) was first woman to teach law, Armstrong ('15) was first to be appointed full time law professor at an ABA approved school, Wilson ('21) was first woman deputy attorney general in Alameda county. *Id.*, at 308-09.

“Husbands or juries—no one knows which will be yielding to the persuasive powers of the twenty girl barristers whose smiles brighten up Boalt Hall on the University of California campus. But it is certain that someone will be yielding, for no 20 men in the legal school of 350 finished their term’s work this spring with such brilliance or with so many honors as the lawyerettes.”³³

Scholars such as Barbara Nachtrieb had paved the way and helped high standards for Boalt’s lady law students. Although she entered law school with no intent to practice law, Barbara immediately distinguished herself by her outstanding scholarship, proving that any reservations about women’s capabilities were not only folly but outright fallacy.³⁴ Barbara’s love of the law and incredible drive earned her a place on the California Law Review, a male-dominated enclave within the already male-dominated academy.³⁵ Intolerant of anything short of

³³ *Brilliant U.C. Lawyerettes Who Outshine Mere Men*, San Francisco Enquirer, May 12, 1928. This trend continued after the early 1900’s as well. Interestingly, a Boalt Hall alumni publication reported that class standings in June of 1967 revealed that the first two class positions of the graduating and second year classes were occupied by women, and the first rank in the first year class was also a woman. “The statistics are in,” the article marveled, “and there is no doubt of it, the girls are taking over!” EPSTEIN, *supra* note 8, at 321.

³⁴ *Id.*, at 309.

³⁵ The *California Law Review* had included women since its inception, when Marguerite Ogden was selected as a student member of the board of the first volume the Review. In 1917 the first woman,

a flawless performance, Armstrong graduated Order of the Coif in 1915, a mere two years after she had entered law school.³⁶

Esther B. Phillips was elected as student editor-in-chief, marking the first woman to edit law journal in any American university. *Id.*, at 309.

³⁶ Later that same year, she was admitted to the Bar.

Barbara had exceptional success, both in the classroom and within the Boalt Hall community at large. Her extraordinary acceptance by those around her was likely a function of the fact that, although she possessed decidedly feminine beauty and charm, she was—first and foremost—one of the boys.³⁷ As a former colleague, Sam Kagel, explained, “she was outspoken, like one of the guys. The fact she was a woman made no difference. She was respected highly. She was a bright star.”³⁸

IV. FULL OF ZOOM: THE CALIFORNIA SOCIAL INSURANCE COMMISSION

While at Boalt Hall, Armstrong focused on legal approaches to poverty prevention. In her last year of school, while at a social welfare conference in San Francisco, she had the pleasure of meeting Catherine Felton, the Director of one of San Francisco’s largest poverty relief organizations and a personal friend of California Governor Johnson. Armstrong and Felton immediately recognized their shared interests and visions. “[Felton] hated relief,” Barbara later explained, “and she wanted to prevent having to have public relief of destitution by preventing destitution itself. And she knew how I felt.”³⁹ Impressed by Armstrong’s brilliance, poise, and enthusiasm, Felton had Armstrong come speak to her social workers about social insurance.

³⁷ Interview with Herma Hill Kay, *supra* note 1.

³⁸ Telephone interview with Sam Kagel, former colleague of Barbara Nachtrieb Armstrong’s (March 5, 1998).

³⁹ ORAL HISTORY, *supra* note 1, at 3.

While compulsory social insurance laws had long been implemented in European countries (Germany had implemented them in the late 1880's), the concept of social insurance had just started to attract attention in the United States.⁴⁰ Several states—including California—were exploring the possibility of implementing social insurance of some sort, an undertaking which required a firm understanding of the demographics and causes of poverty. To explore these issues, then Governor Johnson—at the urging of Catherine Felton—appointed an unsalaried commission to study the underlying, causes of poverty in California.⁴¹ Felton insisted that she knew “just the person” to run the Commission, “just out of law school and full of zoom and very interested in this.”⁴²

On Felton’s recommendation, Johnson appointed Barbara Armstrong to be the Executive Secretary of the California Social Insurance Commission. Upon her graduation, Barbara accepted the position, which she held until 1919.⁴³ To support herself, Barbara also practiced law with her

⁴⁰ KENNETH S. DAVIS, *FDR: THE NEW DEAL YEARS* 437 (1979).

⁴¹ ORAL HISTORY, *supra* note 1, at 3-4.

⁴² *Id.*, at 4.

⁴³ The Commission was scheduled to end in 1917, but was continued by the legislature for two additional years, until 1919. *Id.*

classmate Louise Cleveland, who had started a private practice in San Francisco.⁴⁴

⁴⁴ Louise Cleveland was the first woman to teach law in California when she was selected by the University of California to deliver a series of lectures at the UC Extension on business for lawyers. EPSTEIN, *supra* note 8, at 308.

Characteristically, Barbara immediately threw herself into her work with the Commission. “I was a very tough person, “ she later explained, “[l]ike an ox I was, and I could do a lot of things and I loved to work .”⁴⁵ She was also insistent on being taken seriously, despite her youth and her gender. Committed to the ideals of equality, Armstrong defied those who attempted to ignore her work or restrain her potential. When the Commission hired Issac Rubinow—an M.D. and expert in social insurance—to help write the Commission’s final report on poverty, Armstrong struggled to retain her authority. As she later recalled, “Either he had to take over the whole work of the Commission and I was to be his office girl, which I of course had no intention of being, or else there was going to be war.”⁴⁶ Armstrong opted for “war,” making it clear that she was not there merely to serve Rubinow’s interests. This attitude, in turn, made friendship impossible. “He resented the fact that I was just out of law school,” Armstrong said, “and a young thing that he thought really didn’t know much, and I suppose I was bumptious—we all are at a certain age—and I’m not above having been just that.”⁴⁷

Armstrong’s refusal to be dismissed—or used—was complemented by her utter lack of fear of confrontation. A masterful actress—she had been active in the theater as an undergraduate often playing the lead role in productions at the Greek Theater⁴⁸—with a razor-sharp wit and quick intellect, Barbara Armstrong quite enjoyed a good fight. “There’s nothing like a good fight on the right side,” she once said, “even when you lose, it’s a good fight sometimes and when you

⁴⁵ ORAL HISTORY, *supra* note 1, at 8.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Telephone Interview with Harold Carothers Nachtrieb, Barbara Nachtrieb’s Nephew (March 29,

win it's wonderful."⁴⁹

But Barbara Armstrong knew when to abandon a fight as well. Not one to hold grudges or seek revenge, Barbara disliked only those who earned it through their own egregious deceptions or lies. Although she railed against what she perceived as Rubinow's lack of cooperation and condescension, she also sought him out several years later when he was not invited to participate in the Social Security planning process. Barbara traveled to visit Rubinow—who was by then extremely ill—at his home, to tell him how valuable his work had been to the Social Security planning process.⁵⁰

1998).

⁴⁹ ORAL HISTORY, *supra* note 1, at 168.

⁵⁰ *Id.*

V. APPOINTED TO THE ACADEMY

As happened so often in Barbara Nachtrieb Armstrong's life, new opportunity followed on the heels of the old—all while Barbara's attention was focused elsewhere, on her vision of universal and compulsory social insurance. And so, when she was appointed to a joint position as a lecturer in the School of Law and the Department of Social Economics at Berkeley, she accepted, not because it would make her the "nation's first woman professor of law," but because it would allow her to continue to pursue her life's work in social insurance.

With her appointment, however, Barbara Armstrong *did* become the first woman in the nation to be appointed to a full time position in an ABA-approved AALS member school. She held the position while completing her Ph.D. in Economics (in 1921), advancing to Assistant Professor of Law and Social Economics in 1923.⁵¹ After moving to the law school full time in 1928, into a tenure track position, she became an Associate Professor in 1929, specializing in family law (then called "Persons") and labor law (called "Industrial Law").⁵² In 1935—fully sixteen years after her initial appointment—Barbara Nachtrieb Armstrong finally gained tenure.⁵³ She was appointed to the A.F. and May T. Morrisson Professor of Law in 1955.

⁵¹ Kay, *supra* note 6, at 5

⁵² *Id.*

⁵³ While Armstrong was the first woman professor to be appointed to a tenure track ABA-approved, AALS-member school, Harriet Spiller Daggett of Louisiana State University actually received tenure before Armstrong. Her appointment was in 1926 and her full tenure was in 1931, a mere 5 years later. *Id.*

Armstrong's appointment was unprecedented. Boalt Hall had produced few male full time law professors (prior to 1930, only 26 Boalt Hall graduates entered legal academia full time),⁵⁴ and teaching jobs for women were nonexistent. Between 1900, when the AALS was founded with a charter membership of 32 schools, and 1945, when WWII ended, only 3 women held tenure or tenure-track appointments in member schools.⁵⁵ Progress for women in legal academia was measured in inches, not feet, and Boalt Hall became the nation's leading law school for hiring women faculty when, in 1926 it had two of the nation's three full time women law professors: Barbara Nachtrieb Armstrong and Rosamund Parma.⁵⁶

Women were an anomaly in legal academia in part because their "proper" role in the law remained a subject of heated debate. Even Dean William Carey Jones, who was responsible for Barbara's appointment, publically expressed his belief that women were fundamentally unsuited for certain types of law practice: namely trial work. As Jones explained,

When male and female minds clash in the courtroom the woman naturally gives in; she becomes confused; she cannot stand the strain of conflict. Women are almost too emotional to cope with criminal cases and, in fact, I doubt whether women, as a rule, can ever argue a case in court successfully. I believe that women should take up property law and probate cases. Their mental capacities are such as to enable them to better arbitrate cases in their offices than to decide justice in court. . . . They have a hard experience before them. They

⁵⁴ EPSTEIN, *supra* note 8, at 144. Prior to 1920, most law professors taught part-time, as lecturers, and most remained in private practice. After 1920, a small and growing number of alums chose full time teaching as a career. Of the 26 Boalt Hall alumni who graduated prior to 1930 who pursued full time positions in academic law, three accepted deanships at other law schools, while 17 accepted appointments at Berkeley. Of this 17, Barbara Nachtrieb Armstrong was only the third Boalt Hall graduate to be offered and accept full time positions at the University of California. *Id.*

⁵⁵ Kay, *supra* note 6, at 2. These include Armstrong, Daggett, and Margaret Harris Amsler, who became a full-time instructor at Baylor University Law School in 1941. Between 1941 and 1959, considered a period of growth and opportunity for women in legal academia, the number of full-time, female tenure or tenure-track law professors in ABA-approved, AALS member schools rose "rapidly," from only 3 to a mere 13. *Id.*

⁵⁶ Epstein, *supra* note 8, at 315-16.

surely have their place in law if they can find it, but I do not think women's minds are temperamentally fitted to clash with men.⁵⁷

Perhaps Jones thought that women were better suited for the reflective work of academic law. Or maybe he believed that men would be slower to question or less willing to challenge a woman's opinions in the classroom than in the courtroom. He might have thought the academy a kinder gentler place than the judiciary. But if he believed the female mind less agile, her scholarship less exacting, or her vision less true than that of men, he was severely mistaken, particularly where Barbara Armstrong was concerned. She was every bit as qualified—and as tough—as her male counterparts.

⁵⁷ *Id.*, at 302-03.

Despite this fact, Armstrong was neither paid nor promoted equally with her male counterparts.⁵⁸ Although appointed in 1919 and promoted to Assistant Professor of Law in 1923, Armstrong was not granted tenure until 1935.⁵⁹ This prolonged tenure track was not shared by her contemporary William Ferrier, who graduated from Boalt in 1914 and returned to the University in 1923 as an Assistant Professor. In 1923, the same year that Armstrong was promoted to Assistant Professor, Ferrier became an Associate Professor, gaining tenure in 1928, a full seven years before Armstrong.⁶⁰ Eventually, such disparities in Armstrong's treatment and that of other faculty became a source of deep embarrassment to the law school. In 1934, Dean McMurray requested that President Sproule approve Armstrong's promotion to full professor, even if it came without a corresponding salary increase.⁶¹

⁵⁸ Parma graduated from the University in 1908 and was hired in 1911 as a combination librarian, administrative assistant, and secretary, a job that required that she work 14 hours daily, 6 days per week. EPSTEIN, *supra* note 8, at 316. Although she enrolled in classes and earned a J.D. in 1911, Parma did not receive an appointment as a lecturer in legal biography until 1922. *Id.*

⁵⁹ *Id.*, at 317.

⁶⁰ *Id.*, at 318.

⁶¹ *Id.*

While Armstrong received the promotion, her salary lagged far behind male faculty of comparable rank, long after she gained tenure. In 1941, Armstrong was the lowest paid professor in the law school. In 1953, nearly twenty years after she had gained tenure, her salary was lower than the average pay for Boalt Hall law school professors.⁶² Outraged at this discrepancy, Dean Prosser approached the University to advocate for a pay raise for Armstrong. Shocked at how unfairly Armstrong was being treated, Dean Prosser walked into the President's office, slammed Armstrong's two volume tome on family law on his desk and exclaimed, "If anyone else had done this [amount of work] they would be paid more!"⁶³

Armstrong's delayed grant of tenure and lower pay can not be reconciled with the outstanding body of scholarship she produced along the way to gaining tenure. Theoretically, any number of factors might have slowed her promotion: Her initial appointment to two departments; her pursuit of a Ph.D. while teaching full time; her leave of absence to serve the Roosevelt Administration; the fact that she became a mother in her early teaching years. Yet none of these explanations is wholly satisfying: Her scholarship was extensive and outstanding; her time in the Roosevelt administration was brief (less than one year); and, although she was a mother, she was a constant presence at the Boalt Hall, valued not only for her teaching but also for her service to the law school.

⁶² *Id.*

⁶³ Interview with Dean Herma Hill Kay, *supra* note 1.

Undoubtedly Armstrong's delay was due to the fact that she was a woman in a male-dominated field, a fact which I expected would have upset her greatly given her insistence on equality. Nevertheless, everything I read and everyone I spoke with indicated that Armstrong was far more concerned with realizing a comprehensive social insurance program than she was with obtaining tenure.⁶⁴ She was devoted to her work not as an entity unto itself—a *career*—but because she believed in the underlying subject matter.

3. Weaving the Safety Net: Barbara Armstrong's Scholarship

Armstrong was prolific, producing a body of scholarship that was fresh and compelling. Her writing was not contrived to gain her tenure. Rather, moved by her deep commitment to social equality and dismayed by the growing poverty of the depression, she wrote to be heard, to advocate for what she believed was vital and necessary to the nation's well being.

Armstrong's work with the Commission had a profound and lasting impact on her, reaffirming her opinions about the vital importance of social insurance.⁶⁵ "It was my first job," she later explained, "I believed so thoroughly in what we found out . . . [I]t was stupid, positively stupid, on the part of society to destroy what was most important to it and that is a man's self-respect. That is what a society that is a healthy and wholesome society has to build on."⁶⁶

Armstrong's vision was grounded in the European model, which included universal employment and health insurance. These things, she asserted, made sound economic sense. "Instead of

⁶⁴ Telephone interview with Howard Mel, Barbara Nachtrieb Armstrong's nephew (March 30, 1998).

⁶⁵ ORAL HISTORY, *supra* note 1, at 14.

waiting for the inevitable to happen and have people end up with nothing when they get to be old, they should be insured and it should be compulsory.”⁶⁷

⁶⁶ *Id.*, at 16-17.

⁶⁷ *Id.*, at 20.

Armstrong was committed—to the point of obsession—with the need for compulsory social insurance.⁶⁸ “[I]t was my first love,” she would later say, reflecting on her years with the California Commission on Social Insurance. She had little tolerance for the public’s apathy for public problems,⁶⁹ insisting that it was a matter of national integrity and personal responsibility to provide a safety net for those in need. Establishing this net became both her guiding vision and her lifelong goal. As she later explained, “I was going to have it if it was my last act.”⁷⁰ When she accepted the position at Berkeley, it was with the expectation that she would build on her previous work by focusing her scholarship on advocating for the implementation of social insurance in the United States.

Once appointed to the faculty, Armstrong became increasingly interested in the possibility of pursuing a Ph.D. The opportunity to do so, while creating a seamless link between her past and present scholarship, presented itself soon after her arrival, when a faculty member in the Economics Department encouraged her to submit the report she had authored for the Social Insurance Commission to fulfill the thesis requirement for her Ph.D. Barbara immediately enrolled in the requisite courses and revising her Commission report. She received her Ph.D. in

⁶⁸ *Id.*, at 16.

⁶⁹ Traynor, *supra* note 4, at 923.

⁷⁰ ORAL HISTORY, *supra* note 1, at 15.

1921.⁷¹

⁷¹ *Id.*, at 20.

1. Passion and Reason, Rolled Into One

While social insurance remained her first love, the years after her Ph.D. were rich in personal as well as professional productivity. Blessed—or cursed—with more energy than most other human beings,⁷² Armstrong threw herself into beginning her scholarship, teaching her courses, and trying to cultivate a life.

Barbara Nachtrieb married her first husband—classmate Lyman Grimes—in the mid nineteen-teens (the exact year is not precisely known). Together they had a daughter—Barbara’s only child—Patricia, in 1922 (the same year Barbara was advanced to an Assistant Professor). A mere two years after Patricia’s birth, in 1924, the couple divorced.⁷³

Although stubbornly independent, Barbara was not single for long. She soon met, and later married, Ian Armstrong, a handsome and boisterous Scotsman. Ian, who had not been schooled past 14, had traveled the world. “He was a colorful, marvelous character,” Armstrong’s nephew recalls, with a terrific “scotch brogue.”⁷⁴ A businessman who worked with foreign trade companies, Ian was immediately taken by Barbara’s beauty and her fiery personality. Recounting what he so loved in Barbara, Ian once retold a story from their courting. He had angered Barbara by teasing her, and she came rushing at him, stopping just shy of him and raising her skirt just a

⁷² Gehrels, *supra* note 13, at 933.

⁷³ I was unable to find a precise date for this. While I had assumed that Patricia was born to Ian and Barbara, she was in fact Lyman Grimes’ daughter. Since Barbara married Ian in 1926, it is clear that the divorce happened some time in between 1923 and 1926, but it is unclear exactly when.

⁷⁴ Telephone interview with Howard Mel, *supra* note 64.

bit—so as not to trip—before she kicked him.⁷⁵ It was this combination—of “passion and reason rolled into one”—that charmed him into loving her.

As for Barbara, Ian swept her off her feet with his grace, good humor, and patient temperament.⁷⁶ Married in 1926, their love affair was intense, and lasting. Ian, a handsome, physical man, built Barbara a cabin shortly after their marriage (“from scratch!” a relative exclaimed)—the “Little Cabin” at Lake Tahoe—on the campsite where Barbara had gone as a child.⁷⁷ A warm and wonderful place, Ian and Barbara spent many of their summers together at the cabin, with family and friends.

Together Ian, Barbara and Patricia had a rich family life. A former student and friend of Barbara’s—Katherine Gehrels—later recounted how Barbara would come to class each day wearing a tiny rosebud in her buttonhole and a hat of a matching color. Curious about this practice, the class somehow found out that Barbara and Ian parted each morning by picking a rose from their garden for each other’s buttonholes.⁷⁸ Gardening was Barbara’s refuge from the law (as was reading “whodunit” mystery novels), and she continued to tend roses throughout her old-age, although they sat on her windowsill, rather than in her garden.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Gehrels, *supra* note 13, at 935.

⁷⁸ *Id.*, at 934.

Armstrong tended to her teaching as diligently, carefully, and lovingly as she tended to her garden. As her work researching the principles and programs involving social insurance progressed, Armstrong increasingly integrated economic, sociological, and legal principles in her law classroom. Boalt Hall was just joining the movement to join the study of law with its application to social problems and issues.⁷⁹ Where law had traditionally been regarded as a means of social control, a trend emerged in legal teaching to integrate the study of theoretical law with principles of social science and social change.⁸⁰

Armstrong embraced this movement. In 1928 she offered two such integrated courses: Industrial Law and Law and the Problems of Poverty.⁸¹ These courses addressed the fundamentals of laws governing domestic relationships, the rights of children, landlord-tenant and employer-employee interactions, and their teaching brought renewed vigor to Armstrong's classrooms.⁸²

⁷⁹ EPSTEIN, *supra* note 8, at 107.

⁸⁰ *Id.*, at 67, 107.

⁸¹ *Id.*, at 107. These courses departed from orthodox offerings, but did not approach the more radical departures taken by other law schools such as Columbia. To Dean McMurray took a middle course, to preserve a "balance [between] the basic needs of professional practice and the development of law as a social science . . . neither aim must be neglected." *Id.*

⁸² Armstrong's Law and Poverty course was open to undergraduates, and it is unclear how well attended it was by law students. Since most law students pursued a traditional academic path, many saw reform activity as the province of the legislator, not the practitioner, avoiding courses that focused on those issues. *Id.*, at 167. By 1977, such "integrated," multi-disciplinary course offerings became so popular as to

C. Insuring the Essentials

allow Berkeley to offer a program in Jurisprudence and Social Policy. *Id.*, at 289.

As if presaging the great depression, Armstrong started working on a major book on social insurance in the 1920's, continuing her work tirelessly throughout the decade. A perfectionist and “constant worker for whom time was precious,”⁸³ Armstrong held herself to a standard higher than that she expected of those around her.⁸⁴ She rose to meet her own expectations when she completed *Insuring the Essentials*, a work which was to be her magnum opus, establishing her as a visionary national authority on social insurance.⁸⁵

From the project's inception, Barbara Nachtrieb Armstrong understood that her vision of compulsory insurance was “way before its time”—and somewhat scandalous in its socialist implications. She nonetheless felt that a book had to be written outlining the causes of poverty and the necessary safeguards. She began the book over the protests of her friend and Dean of Boalt Hall Orrin Kip McMurray, who implored her not to waste her time. “Your grandchildren may be interested in this,” he exclaimed, “but this is not the time . . . Working like this is a waste.”⁸⁶ While Armstrong agreed with him in principal, she also believed it was essential for an American scholar to explore the viability of an American social insurance program. “I made up

⁸³ Traynor, *supra* note 4, at 924.

⁸⁴ *Id.*, at 933.

⁸⁵ BARBARA N. ARMSTRONG, *INSURING THE ESSENTIALS* (1932).

⁸⁶ ORAL HISTORY, *supra* note 1, at 27.

my mind right then that I was going to write a book," Armstrong later recalled, "an American book written by somebody that cared . . . and I started to work."⁸⁷

⁸⁷ *Id.*

The book—which was more than 700 pages long—took her almost 10 years to complete. (Barbara, a terrible typist, left all the typing to Ian who was “a whiz” on the typewriter).⁸⁸ In it Armstrong asserted that the combination of minimum wage, *plus* social insurance for times of hardship, equaled a truly living wage. If the floor of either the wage—or the insurance—was too low it would destroy the ideal of the program. As such, she insisted that those working but making too little to survive should be paid what was necessary to make their work viable, drawing either from general fund subsidies of the government or from the wages of middle and upper level workers.⁸⁹ She also believed that such programs should be compulsory, national in scope, and gradually implemented. To reach the ideal of old-age insurance, for example, Armstrong believed that the program should grow from the framework used for workman’s compensation. The ideals—and plans for their implementation—were revolutionary, and timely.

By the book’s completion—in the late 1920’s—the depression had “cast its long shadows over the land.”⁹⁰ As Traynor later said of the times, “countless human beings sought to salvage dignity from unemployment by offering apples for pennies to a public without buying power. The elderly shambled off for a shivering slow march to death, without benefit of assured help for their final years.”⁹¹ Seeing the import of the book, MacMillan agreed to publish it. The time for Barbara’s vision of social insurance had arrived.

⁸⁸ *Id.*, at 30.

⁸⁹ *Id.*, at 264.

⁹⁰ Traynor, *supra* note 4, at 921.

⁹¹ *Id.*, at 922.

VI. WASHINGTON, D.C.: SUFFERING FOOLS AND BUREAUCRATS

"Most people like Social Security. I don't know any piece of legislation that has gotten more social acceptance."⁹²

⁹² ORAL HISTORY, *supra* note 1, at 114.

Governor Roosevelt first publically embraced the idea of implementing social insurance at the Governors' Conference in Salt Lake City in 1930.⁹³ Implemented in Germany in the late 1800's and in Britain in the early 1900's, Americans initially found the underlying principles of social insurance an affront to the frontier values of independence and self-sufficiency.⁹⁴ Nevertheless, in the postwar 1920's—as the United States became a more advanced industrial nation—it began to consider more seriously the virtues of implementing the safeguards of a comprehensive social insurance program. By the beginning of the 1930's, America was deeply mired in the depression, and Americans were quickly becoming aware of the disastrous consequences of not having social insurance programs.

Immediately following his Inauguration in 1933, Roosevelt encouraged Senator Wagner and Representative Lewis—both of whom had a longstanding interest in unemployment insurance—to go forward with their bill (the Wagner-Lewis bill) to ensure employment insurance.⁹⁵ Divisive differences in opinion soon arose during congressional hearings, and by June of 1934 there was still no committee agreement on the bill.⁹⁶ Although anxious to push the

⁹³ Davis, *supra* note 40, at 437.

⁹⁴ *Id.*

⁹⁵ PERKINS, *supra* note 2, at 278.

⁹⁶ *Id.*, at 279.

Wagner-Lewis bill through Congress, the weather was growing hotter, and Roosevelt understood that more work would need to be done to pass a plan through Congress. He allowed Congress to adjourn for the summer and commissioned a thorough study on the viability of a broad economic security program.⁹⁷

⁹⁷ *Id.*

Roosevelt quickly appointed a cabinet committee, the Committee on Economic Security. Chaired by Frances Perkins, the Secretary of Labor, it also included Wallace, the Secretary of Agriculture, Morgenthau, the Secretary of the Treasury, Attorney General Cummings, and Harry Hopkins of the Works Progress Administration.⁹⁸ The Committee, in turn, appointed a full-time professional staff to conduct the actual research. Of note was that this staff did not include any of the major ideological leaders of America’s social insurance movement.⁹⁹ Instead, economist Edwin Witte—Chief of the Legislative Library in Wisconsin—was named as Executive Director, while Second Assistant Secretary of Labor, A.J. Altmeyer, was to chair the committees Technical Board.¹⁰⁰

Once assembled, the Committee’s staff was large, “too large to be of a single mind on any subject.”¹⁰¹ For more effective management and study, the staff was divided into three major

⁹⁸ *Id.*, at 280.

⁹⁹ Such ideologues are Rubinow, Epstein, and Douglas, who would later work on the old-age committee with Barbara Armstrong. Although Armstrong had recently achieved some acclaim with the publication of her book, she was not—at least publically—considered to be one of the major leaders of the social insurance movement. My own opinion, after reading her work, was that this resulted from the fact that she was a woman, rather than from any defect of her scholarship or her commitment. Indeed, she was truly a leading proponent of social insurance, and no less committed to her views than were her male counterparts.

¹⁰⁰ PERKINS, *supra* note 2, at 449.

¹⁰¹ DAVIS, *supra* note 40, at 450.

sections: unemployment insurance, health insurance, and—the smallest of the three—old-age security.¹⁰² Although initially appointed to consult to both the unemployment and old-age security subcommittees, Armstrong ended up working primarily with the old-age subgroup, working towards the old-age insurance we now know as Social Security.

¹⁰² *Id.*

A. An Unlikely Invitation

In the summer of 1934, Ian, Barbara, and her friend Earnestine Black—a feature writer for Hearst—were at the Little Cabin in Tahoe. When Barbara received the telegram inviting her to come to Washington to consult with the President’s Committee on Economic Security, she assumed it was a joke.¹⁰³ Ernestine—who had “a nose for news as all people connected with the press do,”—caught sight of Barbara throwing out the telegram and asked her what it was.¹⁰⁴ Certain that it was a joke, Barbara replied that,

“[The telegram] doesn’t make any sense at all . . . saying that the President wants me to come to Washington and a lot of nonsense.”
 “You have no more sense than a flea,” Ernestine replied, examining the telegram, “This is the real thing. . . . Now you go down [to Washington] and get interviewed.”¹⁰⁵

¹⁰³ ORAL HISTORY, *supra* note 1, at 32.

¹⁰⁴ *Id.*, at 33.

¹⁰⁵ *Id.*

Armstrong still could not believe Roosevelt had sent for her. As a woman living in the West, she was both geographically and intellectually isolated from the rest of the country, making national recognition unlikely, and selection near impossible, given that there were plenty of people in the East who could have been appointed.¹⁰⁶ Armstrong later hypothesized, however, that Mr. Swope—the Chairman of the GE Corporation and a close friend of President Roosevelt’s—had read her book and, in turn, talked to Roosevelt about her work. “Otherwise,” she later said, “I might just as well have been in the Fiji Islands, because California was the Fiji Islands at that time. It was that far removed from the center of events.”¹⁰⁷

With Dean McMurray’s blessing, Barbara took a leave of absence from her teaching and packed her things to go to Washington.¹⁰⁸ Although excited about the Commission’s missive, she

¹⁰⁶ *Id.*, at 34-35.

¹⁰⁷ *Id.*

¹⁰⁸ Dean McMurray saw the contributions of faculty to national agenda as a vital and integral aspect of teaching. As Dean McMurray noted in 1931, Boalt Hall was confronted with a threefold task: “First, it must train men adequate for the practice of this profession, including careers as judges and officials; second,

did not look forward to the prospect of leaving Ian and Patricia for so long. Nevertheless, Barbara saw Washington as an opportunity to realize her longstanding vision of social insurance, a chance to shape America's first experiment with an insurance safety net, a cause that she had championed for nearly two decades.¹⁰⁹

Barbara's characteristic "sharp tongue and inability to suffer fools and bureaucrats," did not serve her well in Washington. The stories of her brief—and important—time there are illuminating precisely because the period was of such great frustration to her. She understood that the potential magnitude of her contribution was enormous, yet she was confronted with the characteristics she most despised: deceit, political grandstanding, and the weighing of personal opportunism over programmatic integrity. Barbara's responses to these characteristics in others—her alternate outrage, gracefulness, persuasiveness, and ultimate refusal to accept in

it must advance research in the law and its allied cultures; third, it must contribute directly to enterprises making for social betterment, especially in the application of law to economic and social problems." EPSTEIN, *supra* note 8, at 139.

According to Witte, the Committee settled on Barbara Armstrong's appointment, but she was not their first choice. *See*, EDWIN WITTE, DEVELOPMENT OF THE SOCIAL SECURITY ACT 29 (1962).

¹⁰⁹ Interviews with Armstrong's friends and relatives made clear that her interest in going to Washington was not motivated by self-interest or a desire for self-promotion but, rather, by the recognition that she had an opportunity to effect change on issues she cared deeply about. *See, e.g.*, telephone interview with Howard Mel, *supra* note 64.

silence mistreatment or trickery—reflect in miniature all the battles of her lifetime, under the most hostile of conditions, far from home, and when she was utterly alone. Ultimately, they illuminate her life, with all of her deep passions and colorful wars.

B. Rude Awakenings: Results are Wanted from High Places

Armstrong arrived in Washington on July 1,¹¹⁰ finding her office in the Walker-Johnson building to be “a terrible heap.”¹¹¹ There was no privacy, the floor shook whenever someone walked across it, and armies of cockroaches (attracted by food stored elsewhere in the building by the Federal Emergency Relief Organization) came out in droves.¹¹² When she first arrived, Barbara Armstrong found a note on her desk instructing her to pull out her bottom drawer and put her feet in it at five o’clock, before the cockroaches started their march. Humored by this at first, Barbara soon found out that it was good advice.

What no one warned her of—although it quickly became evident—was about how highly ideologically fractured the Commission staff were. As the idea of social insurance had grown increasingly popular, numerous parties had advanced their own plans and had, in turn, become extraordinarily invested in their visions.

¹¹⁰ ORAL HISTORY, *supra* note 1, at 30-31.

¹¹¹ *Id.*, at 48-49.

¹¹² *Id.*, at 50.

Two main approaches to social insurance had been advocated in the 1920's and early 1930's. One vision—implemented partially in Wisconsin and mirrored in the Wagner-Lewis bill—emphasized the creation of a federal-state scheme. The other vision—that of Barbara Armstrong and her colleagues such as Epstein, Rubinow, and Douglas—was of a national system.¹¹³ This difference in structure was at the heart of conflict between the two camps.

The disparities between Witte's vision of the Wisconsin Plan, Perkins' allegiance to the Wagner-Lewis Plan, and Barbara's own ideal of a national system quickly became apparent. Shortly after Barbara arrived, Witte requested that she provide an overview of what she thought ought to be done—broadly speaking—with unemployment and old-age insurance. Since she had already written a book on the subject—a book which presumably led to her appointment as a consultant to the Committee—she knew precisely what she thought should be done.¹¹⁴ Her overview followed exactly what she had said in *Insuring the Essentials*: That the country should have compulsory unemployment and old-age insurance, at a national level, with a federal subsidy; that this program should also include old-age assistance, which could not be eliminated merely through the provision of old-age insurance; and, finally, that these programs could only be effectively implemented on a federal level, as opposed to on a state-by-state basis.

Armstrong assumed that there would be no surprises. “They knew what I thought. That’s what my book was written about. You don’t have to read the first fifteen pages of my book to

¹¹³ DAVIS, *supra* note 40, at 450-51.

¹¹⁴ ORAL HISTORY, *supra* note 1, at 39, 42.

know exactly what I thought and what I was going to get if I could get it.”¹¹⁵ But Witte was surprised, and disapproving. He called her to his office, where she found him staring out the window, at the sidewalk below. “[T]here was an air of utter conspiracy,” Armstrong said, recalling the meeting as follows:

“Mrs. Armstrong,” he said, “from a very high place certain results are wanted.”

“I’m sorry, you’ll have to be clearer than that. I don’t know what you’re talking about.”

He said, “From a very high place certain results are wanted.”

And I said, “How high, Mr. Witte? How high?”

Well, that stuck him for a while, and he said, “A very high place. . . .”

And I said, “You mean somebody doesn’t like what I said in my report, is that what you mean?”

“Well,” he answered, “as I said, from a very high place certain results are wanted. . . . You shouldn’t have put those things in your report.”

¹¹⁵ *Id.*, at 85.

“But,” I said, “they’re what I believe. You asked me to put there what I believe. What was I brought here for?”¹¹⁶

Barbara spent forty-five minutes with him, “dancing around,” trying to get him to speak clearly, to tell her honestly what the problem was and who had been upset. Mr. Witte, however, refused to say anything more. Barbara Armstrong never found out from what “high place” Witte’s missive came, but she was resolute that the only “result” she was going to provide was a clear accounting of what she thought should be done. She took seriously that she was a consultant to the Cabinet Committee, as opposed to Witte himself.¹¹⁷ As such, she did not feel personally accountable to him for her actions, or for her opinions.

Shortly thereafter, Witte called a meeting of the three subcommittees, to present their visions for change to the Altmeyer’s Technical Board. When he presented Armstrong’s report to the group, she quickly realized that he was claiming she had recommended just the opposite of what she had said on “all of the things that mattered:” Whether the plan was to provide insurance or assistance, whether it was to be federal or state-based, and how it was to be subsidized.¹¹⁸

¹¹⁶ *Id.*, at 51-52.

¹¹⁷ *Id.*, at 85 (“I [knew] I was not employed by Witte, or anybody that was responsible for him or I never would have been there.”).

¹¹⁸ *Id.*, at 67.

Armstrong seethed with anger, furious that her report had been changed behind her back, in her name, and without her consultation. “I would like to know,” she interrupted, “who dares to do that and leave my name on it? . . . How dare you ever leave any person’s name on something that you have altered to make it say what that person didn’t say and did not believe?”¹¹⁹ Witte’s actions—and Armstrong’s public response to them—caused quite a stir among the Committee, providing what Armstrong called “the first beginning of a crack of disbelief in what was going on.”¹²⁰ As far as Armstrong was concerned, Witte’s violation of her academic integrity was an egregious sin. “That was the beginning of war. From then on I knew what I had to expect from Mr. Witte and whoever was running him.”¹²¹

Armstrong never found out who—if anyone—was behind Witte’s actions, but she was certain that it was not the President (since he “did not interfere at that level with things”).¹²² After the Technical Board meeting, however, she tried to schedule an appointment to see the Chairman of the Committee, Frances Perkins. When her attempts failed, Armstrong realized that Perkins was purposely avoiding her.¹²³ Although skeptical that Perkins had issued Witte’s missive to change her report, Armstrong was nonetheless upset that Perkins had not called on her directly to

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*, at 68.

¹²² *Id.*, at 53-55. Armstrong did not put it past Roosevelt to put the “opposition” in charge of a project, to disarm them and ensure their buy-in. *Id.*, at 86. In this case, any number of people could have been the opposition, if not to Roosevelt’s overarching vision, then to the specific plan for its implementation.

¹²³ *Id.*, at 70.

discuss—as rational and educated women—their differences.¹²⁴

¹²⁴ “[A]fter all,” Armstrong said, “I was somebody that *represented* the program.” *Id.*, at 183. But she also respected Perkins for being an able-bodied woman, and being “nobody’s slouch.” *Id.* “[I]n many ways, if we had met under pleasanter circumstances, I would have liked her, I’m quite sure.” *Id.*

It soon became clear, however, that the action—or inaction—of Committee members stemmed from deep and tangled political roots, and reflected both ideological differences among Committee members as well as individuals' opportunistic attempts to assert ownership over the program. Armstrong believed that Perkins' bias was personal rather than wholly political in nature. Armstrong believed that Perkins' bias resulted from her loyalty to Tom Eliot—the Committee's General Counsel—who had co-authored the Wagner-Lewis Bill.¹²⁵ Perkins, Armstrong asserted, wanted Eliot “to have the glory of having his Wagner-Lewis Act passed.” Barbara claimed Perkins' adoration of Eliot was a matter of maternal pride.

“[T]here wasn't any doubt in my mind, later on when I saw Miss Perkins with Mr. Eliot, that he was the son she never had. . . . Any relation that she had to Tom Eliot—it was almost a fatuous maternal look of devotion that she would fix upon him . . . [S]he had a daughter but she didn't have a son. And evidently she thought he was just the way a son ought to be, and there was a very strong personal feeling.”¹²⁶

Armstrong was even more suspicious of Witte—whom she called “half-Witte”—whose motives she thought reprehensible and whose results she believed economically unsound.¹²⁷ Armstrong surmised that Witte was upset with her because she stood in the way of implementing a program based on the Wisconsin plan, on which they had worked, and which would bring them public acclaim. This might have been fine with her, had the Wisconsin Plan not undermined her vision. For example, those supporting the Wisconsin plan wanted to implement only old-age

¹²⁵ *Id.*, at 31.

¹²⁶ *Id.*, at 187.

¹²⁷ *Id.*, at 46.

assistance (instead of comprehensive insurance), and limit unemployment compensation to something far short of the national unemployment insurance Armstrong envisioned.¹²⁸ Armstrong was convinced, however, that this plan was both economically unsound and functionally infeasible to implement on a national level.¹²⁹ Moreover, she was disgusted by such political gamesmanship, believing that the three men did not have a substantive conviction about the program among them.¹³⁰ This disgust, in turn, motivated her to resist even more vocally.

After reviewing Armstrong's intentions for the old-age and unemployment programs, Witte clearly wanted Armstrong out of the way—particularly where the unemployment program was concerned. Although Armstrong's contract had specified that she was to consult both with the old-age security and unemployment subcommittees, Witte later tried to move her full time to the old-age security subcommittee. Although she reminded him that she intended to consult on both, she subsequently spent the majority of her time with the old-age security group.¹³¹

Even this did not dissuade Witte from trying to convince Armstrong that she should be more polite and adhere less rigidly to her views. "You could have a very pleasant life," he

¹²⁸ *Id.*, at 45-50.

¹²⁹ *Id.*, at 46.

¹³⁰ *Id.*, at 109-110.

¹³¹ *Id.*, at 130-136.

insisted, “[I]t’s very nice to be persona grata . . . at the White House.”¹³² But for Barbara, it was not about being persona grata; it was about improving people’s lives in the most effective, economically efficient way possible.

¹³² *Id.*, at 111.

As her colleague Sam Kagel later said of her, “Barbara was a great listener, but she was also a great concluder. For her there was no grey area. This was not a bad thing, but she insisted that you get the facts straight and come to some conclusion about things.”¹³³ Once she had concluded—particularly based on statistical facts, like those amassed in *Insuring the Essentials*—pity the fool who tried to dissuade her, particularly if their position was based on personal comfort, not on merit. “They still had an idea that there was some way I could be reached,” she observed. “They didn’t have enough sense to know that academic people are not reachable if they’re halfway decent people. . . . There was no real argument about this thing.”¹³⁴ Firm in her vision, Barbara Armstrong stood her ground.

3. Subcommittee on Old-Age Insurance

Where the larger process was characterized by political contentiousness, the workings of the subcommittee on old-age security was not. First, the group was small, a fact which proved to be “a great boon.”¹³⁵ Chaired by Armstrong, it’s 3 other members were: J. Douglas Brown (Director, Industrial Relations Section of Princeton University), Murray Latimer (the first Chairman of the Railroad Retirement Board), and Otto Richter (of the American Telephone and Telegraph Company).

¹³³ Telephone interview with Sam Kagel, *supra* note 38.

¹³⁴ ORAL HISTORY, *supra* note 1, at 111-12.

¹³⁵ DAVIS, *supra* note 40, at 453.

Second, while each member knew how to wage a good political fight, each was facile at cooperating with like-minded colleagues towards a shared goal. As Armstrong later said, there was “teamwork from one end to the other and there were no differences among us and we thrashed out *everything* absolutely everything, and we had mutual respect and mutual harmony and it was wonderfully good. It was an experience [I] . . . remember with warmth and great gratitude.”¹³⁶

Third, since they were constantly under siege, they quickly developed a strategy for dealing with Witte, and a strong underground network to keep them apprised of the work of the rest of the Committee.¹³⁷ To get things done, the group agreed that “all the animus should be directed at me [Barbara], . . . and we should just do our knitting and do it well and get ready in every possible way.”¹³⁸ If there was a fall to take, Armstrong agreed to take it, a role that she

¹³⁶ ORAL HISTORY, *supra* note 1, at 74.

¹³⁷ This strategy included fighting both under the table, as well as above it. To make sure that they could preempt any attacks by Witte, they had inside informants to keep them apprised of the workings of the rest of the committee. *Id.*, at 169-171 Those who informed, “did something for a good cause and did it for us with the understanding . . . that their part in it would never be revealed.” *Id.* Had they fought above the table, said Armstrong, “we would not have had a program, and the program I think has vindicated itself.” *Id.*, at 172.

¹³⁸ *Id.*, at 112.

credits for part of the group's success. "We wouldn't have done as well as we did and gotten the work done as well if all of us had been boiling around and being furious at [Witte] all the time."¹³⁹

¹³⁹ *Id.*, at 113.

Finally, the group had a strong shared vision. From the start, the group agreed that to be workable, the old-age insurance plan for the United States needed to be compulsory; contributory by both employer and the employee so that benefits could be a legal right of the recipient, and be administered nationally, as opposed to on a state-by-state basis.¹⁴⁰ With this agreement firmly in hand, the group could focus on creating an effective old-age insurance program. Before long, however, new political obstacles stood in their way.

D. Seeing the Possible

When the time came for subcommittees to present their proposals to the larger committee, Armstrong and the group presented as their central proposal the idea of an old-age insurance program operated on a national scale. Tom Eliot quickly objected, asserting that he was the General Counsel, that he knew the law, and that such a program would certainly be found unconstitutional.¹⁴¹ Although she was aware that constitutional problems could arise, Armstrong believed that the group should first come up with a model program, and then decide how to put it into law. Furthermore, she disagreed with Eliot's conclusion that a national program would be unconstitutional, *per se*. "Would you like me to disconnect my law professor's brain and not to question anything anybody says about constitutionality, with which I am quite familiar?" Barbara inquired? Eliot voiced his (erroneous) doubt that Armstrong was a law professor, and then started listing people who believed a national program to be unconstitutional, including Harvard Law School professor Thomas Reed Powell.¹⁴²

¹⁴⁰ DAVIS, *supra* note 40, at 453.

¹⁴¹ ORAL HISTORY, *supra* note 1, at 74-5.

¹⁴² *Id.*, at 75-76.

Unfortunately for Eliot, Armstrong knew Powell, and knew he did not believe a national program would be considered unconstitutional. Although she was “not generally a malicious woman,” Barbara Armstrong decided that she had to declare war.¹⁴³

¹⁴³ *Id.*, at 96.

By “purely fortuitous circumstance,” Armstrong knew Powell and his family, and arranged to spend the weekend with them up in Boston.¹⁴⁴ Recounting the day’s events upon her arrival, she quickly enlisted his help, requesting that he write a letter explaining his position. When she returned to Washington on Monday, to a meeting of the subcommittees, it was with Powell’s letter in her hand.¹⁴⁵ She stopped the meeting, declaring that she had a letter from Powell himself. Elliot paled, but Barbara Armstrong continued,

“[B]efore we go any further . . . this is absolutely essential to our planning. We were more or less left with the impression that we might as well abandon the idea of old-age insurance on a national plan because somebody as liberal and fine and outstanding an authority as Mr. Powell said it couldn’t be done constitutionally . . . Now I wish to read you a letter . . . given to me by Professor Thomas Reed Powell by his hand . . .”¹⁴⁶

Eliot quickly backed down. “We will no longer go on the basis that it’s impossible and we can’t do anything,” Armstrong announced. “We are going to have a program, at least recommended, with its basic part national old-age insurance, and I hope survivor’s insurance as well.”¹⁴⁷

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*, at 97.

¹⁴⁶ *Id.*, at 98.

¹⁴⁷ *Id.*

Above all else, Armstrong perpetually saw the possible before the impossible. Deaf to the annoyance of details, “Barbara Armstrong’s gift was to reassure harumphers that the best of an old world might survive in the new.”¹⁴⁸ She did not pick on Tom merely to be mean or vicious. Rather, she believed her actions “simply cleared the way” for further progress on the issue.¹⁴⁹ It was the last time Eliot would try to cross her. “From then on,” Barbara recalled, “he was ‘Tom.’ I never gave him a ‘mister’ again.”¹⁵⁰

5. The National Meeting: “We Fixed that Little Wagon”

In mid-November of 1934, the Committee held a national conference, which almost marked the end of old-age insurance altogether. Originally conceived as “window dressing,” for the program, the Roosevelt administration invited over 200 social workers, labor leaders, legislators, bureaucrats, and academicians for a luncheon meeting and programmatic briefing.¹⁵¹ Hopkins opened the luncheon meeting, announcing the administration’s resolve to “in one bold strike” create all phases of a comprehensive social security program. Excitement among the conferees was high. But then the President himself addressed the meeting, reigning in Hopkins’ promise of comprehensive coverage. Insisting that unemployment not become the “dole,” Roosevelt expressed serious doubts about the future of old-age security, a revelation that stunned

¹⁴⁸ Traynor, *supra* note 4, at 923.

¹⁴⁹ ORAL HISTORY, *supra* note 1, at 102.

¹⁵⁰ *Id.*, at 97 (punctuation added).

¹⁵¹ DAVIS, *supra* note 40, at 454.

the participants, and, later, the nation. “I do not know if this is the time for any federal legislation on old-age security,” Roosevelt announced.¹⁵² With this proclamation, window dressing quickly turned into the “ceiling caving in.”¹⁵³

¹⁵² *See generally*, DAVIS, *supra* note 40, at 454.

¹⁵³ ORAL HISTORY, *supra* note 1, at 104.

“It’s the kiss of death!” cried Armstrong, who—like other members of the subcommittee—were furious at what they perceived to be Witte’s betrayal.¹⁵⁴ (Witte had been asked to prepare the initial draft of Roosevelt’s speech). Jolted by the realization that the survival of their project depended on their own ingenuity, they quickly mobilized.

Armstrong immediately called on Max Stern, an “ultra-liberal” Scripps-Howard editor and one of Armstrong’s closest friends.¹⁵⁵ Stern, in turn, called on his colleagues at other papers. “We fixed that little wagon,” Barbara would later say.¹⁵⁶ The next morning, papers from coast to coast (including the New York Times) carried editorials sharply critical of Roosevelt’s speech, particularly his position on old-age insurance. Upset by the negative press coverage, Roosevelt promptly called Perkins to complain. Perkins, in turn, called Witte, who immediately went to Armstrong’s office to inquire whether she or her staff knew why the press had reported the speech so negatively.¹⁵⁷ Armstrong and her colleagues feigned ignorance about the press coverage, forcing Witte to return to Perkins without explanation. The whole incident left Witte so nervously unstrung that he ended up checking into a hospital for a few days.¹⁵⁸ Meanwhile, Perkins called a press conference, expressing her displeasure and surprise with the press’ coverage of Roosevelt’s speech. Roosevelt had not abandoned old-age insurance, Perkins insisted publically, and a “broad comprehensive program of economic security” remained the

¹⁵⁴ Davis, *supra* note 40, at 454-55.

¹⁵⁵ ORAL HISTORY, *supra* note 1, at 88, 89, 158.

¹⁵⁶ *Id.*, at 89.

¹⁵⁷ DAVIS, *supra* note 40, at 455.

¹⁵⁸ ORAL HISTORY, *supra* note 1, at 114.

administration's priority.¹⁵⁹

¹⁵⁹ DAVIS, *supra* note 40, at 455.

As these events unfolded, Max Stern insisted that Barbara take further action to ensure favorable press coverage for her piece of the social security program. He urged her to meet all the women in the press in Washington. “Never think that they don’t count,” Max advised. “They’re sharp women,” and keen allies, he maintained. “They’ve got a strong sense of sex solidarity.”¹⁶⁰ Impressed with Barbara’s grace and eloquence, she must have won their favor, since Armstrong believed that the press subsequently provided a “slanted . . . story whenever possible.”¹⁶¹

As it turned out, this was Armstrong’s last direct battle with the Committee. With public support strongly behind them, the old-age insurance group “knew something was going to be done, and we knew that it wasn’t going to be done on an assistance [as opposed to insurance] basis.”¹⁶² Thanks largely to Armstrong’s constant vigilance and tireless advocacy, a path had been cleared to the possible: The subcommittee was free to recommend the program as they had envisioned it from the start. They had not only won the battles; they had won the war as well.

1. Final Report

¹⁶⁰ ORAL HISTORY, *supra* note 1, at 157.

¹⁶¹ *Id.*, at 158.

¹⁶² *Id.*, at 157.

When their proposal was complete—after November’s disastrous national meeting— the old-age subcommittee presented the plan for the approval of the Technical Board, Actuarial Board, and Advisory Council. After that, they reported to Witte, and, finally, to the Cabinet Committee, of which Perkins was the Chair. It was the first—and last—time that Barbara Armstrong would meet Frances Perkins. Since the plan had already been approved by the Technical, Actuarial, and Advisory Boards—representing the approval of some of the most powerful businessmen in the country—Armstrong expected that the Committee would support the old-age subgroup’s work.¹⁶³ Although the Committee expressed continuing skepticism about the feasibility of old-age insurance (they preferred an assistance-only program), Perkins and the Committee were gracious and polite, thanking them for their work.¹⁶⁴ Armstrong felt that the meeting had gone well, and that Perkins “was licked on this fight and she knew it.”¹⁶⁵ Had the Committee meeting gone badly, Armstrong was prepared to try to reach the President himself—to “go and pull on Mr. Roosevelt’s coat at the church where he worshiped on Sunday”—to ensure the safe passage of the subgroup’s recommendations.¹⁶⁶

Armstrong’s last official act as the head of the old-age security subcommittee was to write the final report to be submitted to the Cabinet Committee. To do so, she moved out of the Walker-Johnson building into the Willard Hotel, where she could work without distraction.¹⁶⁷

¹⁶³ *Id.*, at 184.

¹⁶⁴ *Id.*, at 188-195.

¹⁶⁵ *Id.*, at 195.

¹⁶⁶ *Id.*, at 196.

¹⁶⁷ *Id.*, at 200.

She wrote honestly, but with caution. Upon the report's completion she brought a copy to Witte, and tried to send one to Perkins as well. Armstrong had little faith the report would reach Perkins intact, and no assurances of how Perkins would use the report she received.¹⁶⁸

¹⁶⁸ *Id.*, at 201.

Armstrong never knew whether the subcommittee’s report reached the President or, if it did, in what form. After she returned to California, she received a copy of a letter from Perkins to Witte, requesting that he send Armstrong a copy of the old-age subgroup’s report that had been sent to the President. Although curious to see “what he [Witte] had done,” Armstrong never received a copy of the report.¹⁶⁹ Nevertheless, a substantial number of the old-age subgroup’s recommendations were incorporated in the bill that finally went to Congress, which vindicated the tremendous effort Armstrong had invested in the project. Once submitted to Congress, Armstrong had no proprietary interest in the program. More concerned that the program receive attention than that she receive attention for having created it, Armstrong regarded old-age insurance as *finished* business.” “It had been baptized and it was a sturdy enough infant and from then on other people were going to take it on and that was the way it ought to be. I never felt any proprietary interest in it whatsoever — not any, just very great pleasure.”¹⁷⁰

VII. PROFESSOR ARMSTRONG: GIVING THEM TWO FOR EVERY ONE THEY COULD GET IN

¹⁶⁹ *Id.*, at 157-58.

¹⁷⁰ *Id.*, at 206. Armstrong expressed great pleasure at seeing the Social Security program implemented, in fact. *Id.*, at 172. “Right down the line you will find that you are graciously received and you are made to feel not that somebody is handing you out something but that this is an institution that belongs to you and that the people in charge want to do everything to facilitate your rights. It’s really remarkable,” *Id.*, at 172-73.

Once she finished the final report, Armstrong could not wait to leave Washington. “I’d never been away from my family,” she recalled, “[I]t was a long period and a long deprivation for me.”¹⁷¹ When she returned to California, she quickly resumed her place in the Boalt Hall community, teaching labor law and marital property, and starting on her next project: authoring what was to be two volume tome on California family law.¹⁷²

The faculty at Boalt was a small and tightly-knit community who, according to Dean Prosser, liked each other “indecently well.”¹⁷³ Free from personal animosities or rivalries, the faculty were comfortable engaging each other—and students—in contentious and lively debate over heated sociological, political, and legal issues.¹⁷⁴ Armstrong was often a central participant in such debates, her strong voice resounding through the halls as she “argued with students and colleagues alike, giving them two for every one they could get in.”¹⁷⁵

¹⁷¹ *Id.*, at 166-67.

¹⁷² BARBARA ARMSTRONG, CALIFORNIA FAMILY LAW (1954). Barbara Armstrong’s scholarship in family law was visionary. Many of the reforms that she was the first to advocate have since gained wide acceptance. Gehrels, *supra* note 13, at 934.

¹⁷³ EPSTEIN, *supra* note 8, at 287.

¹⁷⁴ *Id.*, at 159.

¹⁷⁵ *Id.*

Armstrong was an extraordinary person and an exceptional educator. Armstrong loved students, and desperately wanted them to learn.¹⁷⁶ With her background in theater, vivacious personality, quick intellect, and silver tongue, she worked the classroom easily, holding students' unbroken attention or inciting them to heated debate. In fact, she often appointed a student sergeant-at-arms to ensure that class discussions "did not exceed appropriate bounds."¹⁷⁷ As Roger Traynor said of Barbara after her death, she was a vibrant part of the Boalt community, contributing "to the humanity of the groves of academe as she bridged generation gaps, dispelled old husbands' tales, and brought solace to students in sloughs of despond over a rough course in future interests or a romance past redeeming."¹⁷⁸

Such was the case when she saved the class of '48 from the notorious Alexander Marston Kidd, whom the class had offended.¹⁷⁹ A founding ACLU member and professor of criminal law, Kidd opened his class one day with the following hypothetical: "A man was walking up Euclid Avenue, wearing a long black overcoat. It was midnight. He had a suitcase. What about it?" "Arrest him for vagrancy," said one student. Kidd grew impatient, and asked the others what they thought. Gripped by a false notion of unity, no student offered a dissenting answer. Offended by the student's answer, and indignant over the classroom's silence, Kidd slammed closed his notebook, announced that "No one from this class will ever graduate from Boalt Hall," and

¹⁷⁶ Traynor, *supra* note 4, at 925; EPSTEIN, *supra* note 8, at 318.

¹⁷⁷ Traynor, *supra* note 4, at 928; EPSTEIN, *supra* note 8, at 319.

¹⁷⁸ Traynor, *supra* note 4, at 921, 930; Telephone interview with Sam Kagel, *supra* note 38.

¹⁷⁹ Kidd and Armstrong shared common beliefs and were close friends. Kidd gained some measure of local fame when he eloped with one of his students, Frances Wilson, the first woman deputy attorney general in Alameda County. EPSTEIN, *supra* note 8, at 308.

stormed out of the room.¹⁸⁰ Although the students returned to class the next day, and the next, the “Captain” did not return, and the students began to panic. When they sought out Barbara Armstrong for her help, she sat them down and lectured them, scolding them for their shortsighted response, pointing out that Kidd was a civil libertarian, and would never have anyone arrested for vagrancy on the facts he had presented. Once finished, however, Armstrong sought out Kidd. By the following week, he had returned to his classroom.¹⁸¹

¹⁸⁰ Telephone Interview with Sam Kagel, *supra* note 38.

¹⁸¹ Sam Kagel, *In Memoriam* Barbara Nachtrieb Armstrong, 65 CAL. L. REV. 929, 930 (1977).

Armstrong was the “house mother” of Boalt Hall. The door to her corner office overlooking the patio was always open, prompting students to drop in for tea—and intellectual debate—at all times of the day and night. Among the faculty it was she who remembered birthdays, and anniversaries, and provided toys at Christmas. Yet her generosity was not without discrimination. While she “gave unstintedly of her time” to those seriously committed to the law, those who were distracted, lazy, or unprepared experienced her full wrath.¹⁸² For example, when Bernard Witken skipped one too many of Armstrong’s classes, she refused to allow him to take the final exam in her course, delaying his degree a full year.¹⁸³

Like Kidd, she had little patience with students who saw the law merely as a path to “lordly fees and a lady or two in waiting.” Committed to the ideals of social equality and the use of law to solve society’s problems, she often taunted students who pursued a legal education only for their own advancement.

How many rum-soaked double chocolate ice cream sundaes do you want to consume daily for the rest of your life around a swimming pool in which you’re too fat to swim? How many wretched fur coats do you want to possess as tokens of your esteem for the poor girls you imagine will bear them? Who’s going to want to bear your fur coats anyway? Nobody but some birdbrain who will age into a wizened corncob encased in stitched soft bellies of

¹⁸² Gehrels, *supra* note 13, at 934.

¹⁸³ Jesse H. Choper, *In Memoriam: William B. Lockhart and Bernard E. Witkin*, 47 HASTINGS L.J. 581 (1996).

appropriate light weight.¹⁸⁴

¹⁸⁴ Traynor, *supra* note 4, at 925 (providing examples of how Armstrong conveyed to the men of all ages around her a “sense of their obsolescence as lords of the manor.”).

Armstrong was similarly discriminating in her support of women, and “women’s causes.” Armstrong valued gender equality yet did not believe in special treatment towards that end.¹⁸⁵ She similarly took a special interest in women law students, but had little patience for those who did not intend to follow a career in the law.¹⁸⁶ For example, Armstrong was dismayed to learn that Ruth Chance, an outstanding student in whom she had taken a special interest, intended to marry a classmate, certain that it would impair Ruth’s career.¹⁸⁷

Where equal rights for women were concerned, Barbara Armstrong was an individualist, not an activist. Reluctant to advocate for her own advancement (for advancement’s sake) she preferred instead to focus on what was immediately before her, and to achieve in that task at the highest level possible. This expectation of excellence—and intolerance of low standards—remain an important part of Barbara Armstrong’s living legacy.¹⁸⁸ As Armstrong prepared to leave Boalt Hall, to retire, she insisted that another woman professor be appointed to take her place. This woman, Dean Herma Hill Kay, was appointed to the law faculty in 1960.¹⁸⁹ Dean Kay currently

¹⁸⁵ Interview with Dean Herma Hill Kay, *supra* note 1.

¹⁸⁶ Traynor, *supra* note 4, at 934.

¹⁸⁷ EPSTEIN, *supra* note 8, at 319.

¹⁸⁸ Interview with Dean Herma Hill Kay, *supra* note 1.

¹⁸⁹ EPSTEIN, *supra* note 8, at 319.

holds the Barbara Nachtrieb Armstrong endowed chair, which Kay herself worked to create.

VIII. AN ENDLESS SUCCESSION OF LIGHT YEARS

Barbara Armstrong continued to participate actively in Boalt Hall even after her retirement from teaching in 1965. Yet intellectual and social life in Berkeley changed dramatically in the 1960's and Barbara, who insisted on living freely and independently, was not spared the effects of this change. Widowed in the early 1960's (and devastated for a time by the loss of Ian),¹⁹⁰ Armstrong lived alone near campus, continuing to grow roses outside the apartment, just as she had at her home. While those around her worried for her safety, she was unconcerned, laughing when a pair of neighborhood "bullies" had stopped by to assure her that in an emergency she should call on them for protection. "I'm on the way to weighing seventy-five pounds," said one, "and I can look *this* fierce."¹⁹¹

Insistent on continuing to live independently, and freely, Barbara "knew no other way."¹⁹² Then, in 1970, when she was 79 years old, she was brutally attacked while walking near her home. Assailed by three young black men who took her wallet, she was knocked to the ground and beaten repeatedly, until they left her for dead. Barbara Armstrong did not freely walk again. She lived for 6 more years, restricted to her wheelchair.¹⁹³ Despite how devastating this must have been to her, Barbara's friends insisted that the event changed her little, and that they rarely heard her speak bitterly of the changing Berkeley landscape. Her friend, Katherine Gehrels, noted

¹⁹⁰ Telephone interview with Howard Mel, *supra* note 64.

¹⁹¹ Traynor, *supra* note 4, at 924-25.

¹⁹² *Id.*, at 936.

¹⁹³ *Id.*

that Barbara “changed less over the years than anyone I have ever known.”¹⁹⁴ While her abilities and projects grew increasingly limited, her warmth, grace, wit, and intelligence remained a constant.

¹⁹⁴ *Id.*

Upon her death, in January of 1976, Roger Traynor could not believe the news. As he later wrote,

I read, and do not believe, the announcement of Barbara Armstrong's death on 18 January 1976. It cannot be; she held life too dear. Perhaps the young ones will come to understand from such lives as hers that freedom with responsibility is a synonym for life.¹⁹⁵ Perhaps then the twenty-first century will make amends for the twentieth. [For Barbara] only the calendar years finally closed. There could no more be an end to Barbara Armstrong's life, to her love of life, than to the stars whose radiance reaches us through an endless succession of light years.¹⁹⁶

¹⁹⁵ *Id.*, at 927.

¹⁹⁶ *Id.*, at 924.

Barbara Nachtrieb Armstrong (1890 - 1976)

First Woman Appointed to Full-Time, Tenure-Track Position

1890	Born August 4, 1890 to Anna and John Jacob Nachtrieb, San Francisco, California. Barbara is third of four children. Siblings: Howard, Florence, and younger brother Harold.	
1900	Barbara grows up in San Francisco, is educated entirely in public schools.	
1913	Receives her B.A. in Economics from the University of California at Berkeley Enters law school at the University of California, School of Jurisprudence (Boalt Hall)	Alpha Phi Sorority Graduated Phi Beta Kappa
1915	Receives J.D. from Boalt Hall School of Law Admitted to the Bar	Order of the Coif Member: <i>California Law Review</i> One of two women in her class Dissertation: <u>Has a Public Utility the Right to Abandon its Service?</u> (1915)
1915-19	Practices on and off with classmate Louise Cleveland. Acts as Executive Secretary of California Social Insurance Commission	<u>Compulsory Health Insurance: A report to the California Social Insurance Commission</u> (1917)
1919	Appointed to joint position as Lecturer in the School of Law and Department of Social Economics	First woman to be appointed to a full-time position in an ABA-approved, AALS member law school. Starts writing dissertation
1920*	Marries first husband, classmate Lymon Grimes	(*date is approximation)
1921	Receives Ph.D. in Economics from University of California at Berkeley	Dissertation, completed in 1921 was based on her 1917 report to the California Social Insurance Commission
1922	Daughter, Patricia Grimes, born	
1923	Promoted to Assistant Professor of Law and Social Economics	
1925*	Divorces first husband, Lymon Grimes	(*approximate date)

1926	Marries Ian Armstrong	
1928	Moves to the law school full time	
1929	Promoted to Associate Professor, specializing in Family Law and Industrial Law	
1932	Publishes <u>Insuring the Essentials</u>	<u>Insuring</u> was a cross-national review of the evolution of social insurance and minimum wage laws.
1934-35	Takes leave of absence from Boalt to serve on President Roosevelt's Commission on Economic Security. Helps draft the old-age insurance provisions of the Social Security Act.	
1935	Promoted to Full Professor, Boalt Hall	
1939	Publishes <i>The Health Doctor: His Role in Great Britain, Denmark, and France.</i>	
1940's	Lobbies the California Legislature to create universal, compulsory health insurance. Loses in 3 consecutive legislative years.	
1940's	Takes leave of absence to become Chief of Rent Enforcement for San Francisco District Office of Price Control, heading one of the few effective rent enforcement operations in the country. Eventually becomes National Hearing Officer.	
1954	Publishes authoritative, two volume work: <u>California Family Law</u>	
1955	Appointed to be the A.F. and May T. Morrisson Professor of Law	
1957	Retires, but continues teaching— <i>Emeritus</i> —until 1965.	
1961	Receives Honorary Doctor of Laws (LLD) from the University of California at Berkeley Acts as resource consultant to the White House Conference on the Aged and Aging	
1965	Stopped teaching.	
1966	Publishes first of several supplements to <u>California Family Law</u>	
1970	Violently attacked in Berkeley. Following this attack, Professor Armstrong must rely on a wheelchair.	
1976	Dies in Oakland home, January 18, at the age of 85.	

Barbara Nachtrieb Armstrong (1890 - 1976)

Future Research Directions

Armstrong's Scholarship.

Although I was able to read a significant amount of Armstrong's work, I was not able to discuss her scholarship as fully as I wanted. An analysis of her work in any of her areas of expertise—social insurance, health insurance, marital property, or family law—would be interesting, particularly given the fact that many of the reforms Armstrong recommended in the 1930's and 40's are still considered innovative and cutting edge.

Armstrong's Efforts to Secure Universal, Compulsory Health Insurance

Armstrong lobbied the California legislature a number of times. Further examination of those efforts would be interesting. It would also be interesting to speculate about whether you think she would succeed in the current political climate.

An More Detailed Analysis of Armstrong's Time in Washington

There are numerous good books, and tall tales, about the development of Social Security under Roosevelt. This could be a book unto itself, particularly given Armstrong's lively participation in all the debates.

An Examination of Armstrong's Mentorship Relationships

Sociable and outgoing, Armstrong was both mentor and mentee in a variety of relationships and settings. A number of people are still living who knew her as a professor and mentor. Examining her meaningful relationships, from both sides of the mentorship relationship, would be a worthwhile effort.

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1915-19	Practices on and off with classmate Louise Cleveland. Acts as Executive Secretary of California Social Insurance Commission	<u>Compulsory Health Insurance: A report to the California Social Insurance Commission</u> (1917)
1919	Appointed to joint position as Lecturer in the School of Law and Department of Social Economics	First woman to be appointed to a full-time position in an ABA-approved, AALS member law school. Starts writing dissertation
1920*	Marries first husband, classmate Lymon Grimes	(*date is approximation)
1921	Receives Ph.D. in Economics from University of California at Berkeley	Dissertation, competed in 1921 was based on her 1917 report to the California Social Insurance Commission
1922	Daughter, Patricia Grimes, born	
1923	Promoted to Assistant Professor of Law and Social Economics	
1925*	Divorces first husband, Lymon Grimes	(*approximate date)

1926	Marries Ian Armstrong	
1928	Moves to the law school full time	
1929	Promoted to Associate Professor, specializing in Family Law and Industrial Law	
1932	Publishes <u>Insuring the Essentials</u>	<u>Insuring</u> was a cross-national review of the evolution of social insurance and minimum wage laws.
1934-35	Takes leave of absence from Boalt to serve on President Roosevelt's Commission on Economic Security. Helps draft the old-age insurance provisions of the Social Security Act.	
1935	Promoted to Full Professor, Boalt Hall	
1939	Publishes <i>The Health Doctor: His Role in Great Britain, Denmark, and France.</i>	
1940's	Lobbies the California Legislature to create universal, compulsory health insurance. Loses in 3 consecutive legislative years.	
1940's	Takes leave of absence to become Chief of Rent Enforcement for San Francisco District Office of Price Control, heading one of the few effective rent enforcement operations in the country. Eventually becomes National Hearing Officer.	
1954	Publishes authoritative, two volume work: <u>California Family Law</u>	
1955	Appointed to be the A.F. and May T. Morrisson Professor of Law	
1957	Retires, but continues teaching— <i>Emeritus</i> —until 1965.	
1961	Receives Honorary Doctor of Laws (LLD) from the University of California at Berkeley Acts as resource consultant to the White House Conference on the Aged and Aging	
1965	Stopped teaching.	
1966	Publishes first of several supplements to <u>California Family Law</u>	
1970	Violently attacked in Berkeley. Following this attack, Professor Armstrong must rely on a wheelchair.	
1976	Dies in Oakland home, January 18, at the age of 85.	