

Insuring *Our* Essentials:
The Work of Barbara Nachtrieb Armstrong

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3 April, 2000

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There already exists, as part of the Stanford Women's Legal History Biography Project, an excellent biography of Barbara Nachtrieb Armstrong's life and work. I have, I hope, supplemented it with my addition. I have focused on the Armstrong's groundbreaking work in the field of social insurance, specifically work Insuring the Essentials. I have been constantly impressed with her foresight, dignity, and sense of social injustice, and like the biographer who began researching Armstrong for the Stanford project, I have been unable to remain objective and mask my awe.

In 1932, Barbara Nachtrieb Armstrong published Insuring the Essentials, a work that would bring her national attention, and would ultimately send her to Washington and into the nerve center of the New Deal. There, she would (both successfully and unsuccessfully) work to implement many of her ideas on social insurance—ideas that were developed, if not born in, her influential work.

I. THE HISTORICAL CONTEXT OF *INSURING THE ESSENTIALS*

Barbara Nachtrieb Armstrong was both a lawyer and an economist, holding a JD and a Ph.D. in economics from the University of California at Berkeley. Her influential book grew from a course she took at Berkeley on the control of poverty, a course that she described as “social economics.”¹ Armstrong recalled taking the class as a student and raising the issue with her professor that “you didn’t control poverty unless you got at the cause of it and stopped it where it started.”² This point is crucial for an understanding of Armstrong’s philosophy; it sheds light on her opposition to relief, something she considered “a public vice.”³ She recalled that, after voicing such a seemingly radical opinion that she “got squelched hard.”⁴ But in her mind there had to be a better, more effective way of fighting poverty than relief.

This belief was the “real reason”⁵ that Armstrong became involved in the Committee for Economic Security. In 1914, the governor of California appointed her to be the executive secretary of a social insurance commission whose goal was to undertake a statewide survey on the causes of poverty. The committee may have been armed with only \$20,000, but Armstrong explained that the group, with which she worked from

¹ COLUMBIA UNIVERSITY ORAL HISTORY COLLECTION, REMINISCENCES OF BARBARA NACHTRIEB ARMSTRONG 2 (1984) [hereinafter ORAL HISTORY]. In 1928, Armstrong went on to teach a course entitled “The Law and Problems of Poverty” at Boalt Hall. Sandra Epstein, who chronicled the history of Boalt Hall, writes: “Whereas law had been regarded as a means of social control and law school courses formulated to convey this purpose to new lawyers, there were now the beginnings of courses designed to show that law could also be the facilitator of social change.” LAW AT BERKELEY: THE HISTORY OF BOALT HALL 167 (1997).

² ORAL HISTORY, *supra* note 1 at 2.

³ Id.

⁴ Id.

⁵ Id. at 1.

1915-1919, consisted of “people who were just out of college who were all interested in trying to do something constructive and having very good luck with the people we got.”⁶

Catherine Felton, the director of the Associated Charities in San Francisco, helped Armstrong get the appointment. The two women met at social welfare conferences in San Francisco. Armstrong described Felton as a “very forward-looking woman”⁷, specifically because Felton also opposed the relief solution to poverty. Felton, like Armstrong, wanted to avoid resorting to relief by preventing the destitution that created the need for it, and convinced the governor to create a commission to research the causes of poverty. The commission began in 1915, and first ended in 1917; the California State legislature continued it for two more years – until 1919.⁸

The Committee for Economic Security surveyed the state’s big cities and concluded that the causes of poverty were related to two things: sub-standard wages and a “lack of protection for the time when you didn’t have a wage.”⁹ Minimum wage and social insurance were to become the two main prongs of the solution Armstrong puts forth in Insuring the Essentials. The two were inexorably strung together, as Armstrong explained: “the only way you could get a living wage would be to have both.”¹⁰ Health care factored into the committee’s findings as well. Foreshadowing her emphasis on health care (an interest which is eventually ignored), Armstrong explained that the greatest single cause of destitution was sickness. Building on existing regulations, the committee ultimately recommended that workmen’s compensation be extended to

⁶ Id. Armstrong said that the group’s actuarial expert, Louis Mueller, was a “near genius” who later went on to found United Airlines.

⁷ Id. at 3.

⁸ Id. at 4.

⁹ Id.

¹⁰ Id.

nonindustrial accidents and general illness.¹¹ These were some of the first mutterings about compulsory health insurance—in the form of protection against accidents at work and nonindustrial accidents and sickness.

For Armstrong, this fight against destitution was more than a job:

I had what most of my friends thought was an obsession on the subject. It wasn't an obsession, but it had been my first job, and I believed in what we found out, and I had always believed it ... and resented that people had to be demeaned ... I felt that it 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 as to be built on.¹²

However, the public was not ready to accept compulsory health care as an integral part of social insurance. Armstrong knew that before solutions (hers or anyone else's) were accepted, causes must be understood. It was from this realization that Insuring the Essentials was born:

I made up my mind right then that I was going to write a book, an American book by somebody that cared, and I took a position with the University which I was offered in two departments (law and economics) and I started to work. On my first semi-sabbatical I went over to France and worked in the Bibliotheque Nationale for a year because I (was) determined to include all the countries of the world that were involved with some kind of social insurance. That was quite a job but I was a very tough person as a young person. Like an ox I was, and I could do a lot of things and I loved to work; I was industrious – that was my German blood. That self-discipline and all the rest of it was a great help in life to me.¹³

Six years later, in 1932, Armstrong completed her work. Yet, her positions were not uniformly embraced. Between 1917, when the committee's proposition on health

¹¹ Id. at 5.

¹² Id. at 16.

care got “soundly trounced”¹⁴, and 1932, when Insuring the Essentials came out, Armstrong faced opposition and disbelief. She recalls that the Dean of Boalt Hall, Orrin K. MacMurray, remarked: “Oh really, Barbara, why are you so foolish? Your grandchildren may be interested in this, but haven’t you enough knowledge of the world now from your experience up in Sacramento and the legislature to know that this is not the time. Working like this is a waste.”¹⁵

But Armstrong wrote her work, in spite of such disbelief. Or at least, she penned it; her husband, Ian Armstrong, typed the whole book for her, as Armstrong had never learned how to type.¹⁶

II. THE WORK: *INSURING THE ESSENTIALS*

“The subject matter in this book needs no apologist.”¹⁷ And so begins Armstrong’s seminal work, the work that would attract the attention of the New Deal administration. Armstrong writes for the student, “to furnish him an accurate comprehensive view of the various elements which comprise the living wage program of present-day society.”¹⁸ She focuses on legislative evolution and draws on contemporary studies of living wages in other countries. The book treats the general problem of security and is divided into two main sections—minimum wage and social insurance. *Insuring the essentials* means “assuring a living wage”¹⁹ which Armstrong defines as “a wage sufficient to obviate the necessity of public charity.”²⁰

¹³ Id. at 2.

¹⁴ Id. at 27.

¹⁵ Id. MacMurray became the dean of Boalt in 1940. See EPSTEIN *supra* note 1, at 242.

¹⁶ Id. at 30.

¹⁷ BARBARA NACHTRIEB ARMSTRONG, *INSURING THE ESSENTIALS* 3 (1932) [hereinafter *ESSENTIALS*].

¹⁸ Id.

¹⁹ Id. at xiii.

²⁰ Id. at xiii.

Acknowledging that other nations were providing remedies to the different ailments of a lack of security—minimum wage, medical care, old age and invalidity insurance—Armstrong proposes a scheme to attack the problem and provide the underpinning remedy: the prevention of economic dependence.²¹ This would, in effect, “remove from the public funds the needless burden of tendering public charity to thousands of people who, with intelligent organization, could be self-sustaining. It would mean the inauguration of a real living wage program.”²² Such a program would have two elements – a minimum wage and social insurance “for when no wage can be earned.”²³ Armstrong suggests fixing an average amount to meet food, clothing, and shelter requirements of a worker’s family, as these are the only fixed and certain elements that can safely be factored into the equation. The two elements would work in conjunction to obviate a substantial part of the destitution with which Armstrong’s America was confronted, and would do so regularly and on a grand scale. This, Armstrong pronounces, would be a far better solution than charities, which, in her opinion, were wasteful, shortsighted and demoralizing.²⁴

Much of her work concentrates on the historical evolution of minimum wage and social insurance. The two may be interdependent, complementary aspects of a living wage system, but they have different histories.

²¹ Id. at xv.

²² Id. at xv.

²³ Id. at xv.

²⁴ Id. at xvii.

A. MINIMUM WAGE

The minimum wage movement grew from the “anti-sweating movement”, the movement against low, subnormal wages. Sweated employees, Armstrong explains, are a result of a surplus of labor that is present in industrial economies.²⁵ They have no access to the labor movement and are completely out of the system. The 1800’s saw legislation in Australia, Great Britain, South Africa, United States, Australia, and New Zealand. Armstrong is immediately, and consistently critical of U.S. attempts at reform. Listing the more comprehensive minimum wage systems in South America, Europe, and the British Commonwealth, Armstrong highlights the inadequacy of the US system with a less than subtle juxtaposition. The American minimum wage boards never “arrived at the intelligent arrangements achieved by some of the British trade boards of ‘pegging the rates’ at a given period by providing for its automatic increase and decrease with variation in the cost-of-living index number.”²⁶ Rather, the U.S. boards preferred gradual changes in the rates.

Armstrong also sharply criticizes the *Adkins* case²⁷, which made minimum wage for women unconstitutional, nullifying a Washington, D.C. minimum wage law by a 5-3 decision. The *Adkins* Court, Armstrong charges, both misconstrued the issue, and never fully comprehended the economics involved.²⁸

Armstrong was often called to defend the constitutionality of minimum wage laws. She attacks the issue head-on in Insuring the Essentials. A state, she argues, can

²⁵ Id. at 4.

²⁶ Id. at 93.

²⁷ *Adkins v. the Children’s Hospital*, 261 U.S. 525 (1923). See id.

exercise its police power and interfere with the liberty and property of its citizens in a way reasonably necessary to the public welfare.²⁹ Although the industrial state and the industrial process have weakened the worker, the *Adkins* Court was not willing to expand police power to social or labor legislation. More specifically, the Court held that while Congress could regulate hours, it could not regulate wages. The Court, Armstrong says, missed the point at issue. The Court falsely reasoned that Congress could regulate one (wages) and not the other (hours), because one would offset the other, as employers would lower wages to compensate for having to reduce hours. Moreover, the Court misconstrued the woman's movement and its relation to the issue, by reasoning that the movement was making its own strides and would take care of the iniquity.³⁰ The Court justified its decision by explaining that, just as sale of commodities could not be regulated, neither could people or labor, and goes as far as to say that the amount paid for labor should be the worth of the labor performed.³¹ The Court thus dismisses the legislation as impractical because it seeks to regulate that worth. Armstrong sharply criticizes this last point as an unnecessary moral judgment.

Armstrong proposes that the only way round the Court's reluctance to allow Congress to enact such social legislation is to amend the Constitution. She also radically proposes changing the rules of the nation's highest court—advocating a procedural change that would guarantee that the Court could not declare such a policy unconstitutional without a voting majority of more than one.³² Armstrong writes that given human emotions, prejudices, and emotions, and the fact that they often control

²⁸ Justice Brandeis recused himself from *Adkins* because he had been an advocate for a minimum wage law in an Oregon minimum wage case.

²⁹ ESSENTIALS, *supra* note 4, at 92.

³⁰ *Id.* at 100.

judgment, “it seems flying in the face of providence to permit, in such a controversial field as the police power, a bare-majority of a judicial body to declare legislation unreasonable and therefore unconstitutional.”³³ Had the justices been “more aware of the economic facts involved” and had a “greater familiarity with the basic principles of modern economic science” they would have decided the case differently.³⁴ If the justices are going to be ruling on such economic issues, they ought to be more familiar with economic theory.

The “present” (1931) status of minimum wage law in the United States, Armstrong writes, “is reminiscent of the nursery rhyme, ‘Ten little Indians all in a line, one fell down, then there were nine’.” She explains that while seventeen states passed minimum wage laws for women, two never enacted the laws, one repealed the law, and the laws of the District of Columbia, Arizona, Arkansas, Wisconsin, and Kansas were all declared unconstitutional by the Supreme Court and various district courts. Puerto Rico accepted the Supreme Court’s decision in *Adkins* as invalidating its law. Of the seven states that remained, Armstrong charges that none had compulsory laws, so none of them had been struck down as unconstitutional. However, their laws were not perfect by any means. Utah, for example, had a fixed rate, and as of 1931 had not been changed since 1913. North and South Dakota were agricultural states whose laws had affected about 14,000 women.³⁵

Armstrong uses the minimum wage issue to address the issue of women and men in the work force. Women, Armstrong states, are underpaid greater numbers than men

³¹ Id. at 101-2.

³² Id. at 101.

³³ Id. at 104.

³⁴ Id.

are; thus, legal minimum wage regulation is “more urgent” for women than for men.³⁶ The acceptance of minimum wage laws for women will “pave the way” for minimum wage laws for men.³⁷

While Armstrong is never short of moral charges and declarations, it is her economic analysis that received the most attention (perhaps because as a woman, many had not expected her reasoning to be so sound).

Armstrong made several key economic points. For example, she argues that minimum wage legislation may lead to speeding up of work—because employers would be able to demand more and because a comfortable worker is a productive worker.³⁸ A minimum wage would force factories to mechanize, using labor saving machinery, something many plants would otherwise postpone doing until absolutely necessary. Armstrong states, “This is a machine age, and the machine sets the pace.”³⁹

The effect of minimum wage on employment would depend largely on increased demand and on whether increasing or decreasing unit cost followed increased production. Home workers would not be able to compete with factory workers, and would thus have to enter the factories themselves. Armstrong explains that “great elasticity of demand, combined with decreasing costs as production is increased might absorb into factories even a greater number of workers than had been employed in the home working era.”⁴⁰

Linking minimum wage to social insurance, Armstrong writes: “With a realization of the importance of safeguarding the independence of workers, minimum wage assumes its proper proportions and the foundation is laid for the discussion of its

³⁵ Id. at 149-151.

³⁶ Id. at 157.

³⁷ Id.

³⁸ Id. at 162.

even more significant complement in insuring the essentials, *social insurance*.”⁴¹ Both will create a living wage—basic payment and insurance when payment could not be earned.

B. SOCIAL INSURANCE

Armstrong begins the issue of social insurance with a discussion of industrial accidents. In the United States in 1929 industrial accidents were the cause of 25,000 deaths, two million temporary disabilities, and 40,000,000 lost weeks of working time.⁴² Armstrong passionately discusses occupational disease referring, almost angrily, to industrial poisons—lead, benzene and its derivatives, methyl alcohol, carbon monoxide, and mercury—many of which were being used in the “efficiency” movement.⁴³ Armstrong argues for the repression of the use of such poisons—where they cannot be avoided completely.⁴⁴

From accidents and disease, Armstrong makes the inevitable move to accident insurance. She summarizes the evolution of accident insurance, as she did minimum wage laws, paying special attention to German legislation. Again, the Americans were latecomers to the game. American law had inherited some liability law from English common law. The 1908 compensation movement broached the issue of social insurance, but did so selectively to avoid the constitutional implications that dogged minimum

³⁹ Id. at 163.

⁴⁰ Id.

⁴¹ Id. at 167.

⁴² Id. at 180-1.

⁴³ Id. at 218.

⁴⁴ Id. at 219.

wage. When social insurance became compulsory in 1917, it did so with the sanction of the Supreme Court as valid expression of police power.⁴⁵

Armstrong advocates including a rehabilitation provision in workmen's compensation. Such compensation would restore individuals to their capacity as workers, and more importantly reinstate "the disabled workers as complete human beings filling a normal place in society."⁴⁶

Armstrong outlines the required provisions of an effective compensation act.

Some requirements include:

1. Social insurance should be compulsory and apply to all injuries—including occupational diseases; and
2. should be completely inclusive.
3. The government ought to require insurance and offer employers either a monopoly or a competitive state insurance carrier to self employed workers.
4. The plan should include minimum compensation to prevent the compensation of a low paid worker from falling below the subsistence level;
5. include a maximum high enough only to scale down the exceptionally paid worker;
6. provide for the survivors of the victim of a fatal accident; and
7. rehabilitate as far as possible.⁴⁷

Again, Armstrong addresses social health insurance:

The interest in this country in completely socialized medicine has been used to foster opposition to health insurance plans. This is . . . based upon a failure to analyze the economic problem of the illness. The most complete state medical and hospital service on the plan of the state

⁴⁵ *New York Central Ry. Co. v. White*, 243 U.S. 188 (1917).

⁴⁶ ESSENTIALS, *supra* note 4, at 274.

⁴⁷ *Id* at 281.

school system would not pay the family's grocery bill nor the rent when the wage earner was ill and away from his work. Socialized medicine would solve only one aspect of the illness problem. It would leave a situation that still called for health insurance as the only rational solution.⁴⁸

As Armstrong explained in an interview, health insurance was a natural follow up to Social Security:

[W]e should have had it right then and there when the federal social security plan was initiated. If we'd had any sense, we should have had it when we had the other social security legislation. The plan was all prepared. The report was all ready, and the AMA got the better of Mr. Roosevelt—that's all. But actually it was my first love, if you wish to put it that way, in social insurance.⁴⁹

The American Medical Association launched an attack on Armstrong, going as far as to accuse her of embezzling government funds.⁵⁰ Armstrong spoke of Peter Ross, a man who came to a committee meeting at which health care was being debated. Armstrong's brother was a marine about to go overseas and he came to the meeting. Her brother was in uniform, as were many of the men there. Ross tactlessly charged: "While the men are giving up their lives and their blood to defend this country overseas, Barbara Armstrong is embezzling the funds of her state and having a high old time." Armstrong later said: "My brother was a big husky, over six foot man and he was going to take that fellow and break him into pieces. I stopped him. That sort of comment is the sort of thing that I had to get hardened to. You had to be willing to take it."⁵¹

Perhaps from her experience and research, Armstrong had a store of negative comments about doctors. Doctors, Armstrong charged, were "terrible vultures" who had

⁴⁸ Id at 374.

⁴⁹ ORAL HISTORY, *supra* note 1, at 2.

⁵⁰ Id. at 23.

⁵¹ Id. at 24.

“become a very affluent people without much reference” to the oath which she called “the oath of hypocrisy.”⁵²

But the AMA was not alone in its opposition to social health insurance. Insurance companies, organized labor (which dealt quite a blow to Armstrong), and Christian Scientists (of which Peter Ross was a member) joined the attack. Armstrong termed her opposition the “royal triumvirate.”⁵³ She suspected that the public opposition stemmed from the post-WW I attitude that identified social insurance with both Bismarck and with Germany. Some of her critics even attacked the former Ms. Nachtrieb for being a socialist or a German traitor.⁵⁴

Armstrong was never dissuaded, despite the personal attacks: “I say a compulsory health insurance proposal in 1917 was before its time. The public was not ready to accept it.”⁵⁵

C. OLD AGE AND INVALIDITY INSURANCE

Armstrong was far more successful in regard to her mission to provide old age and invalidity service—after all, it is for this work that she is best known. While many Americans believed that most employers provided pensions for their deserving employees, the statistics did not conform. The New York Commission on Old Age Security reported that not more than fifteen percent of the employees in New York worked for companies which maintained old age pensions systems; moreover, the labor

⁵² Id. at 270.

⁵³ Id. at 23.

⁵⁴ Id. at 25.

⁵⁵ Id. at 26.

turnover was such that only five to ten percent of workers ever benefited from them.⁵⁶

Many of the schemes in the U.S. were not properly financed and most states at the time made no systematic provisions for old age Americans without income sufficient for their own maintenance. Armstrong decried the status quo: “In no part of the United States does the older person with insufficient personal income enjoy the dignified independence which the security arrangements grant him in more civilized portions of the world.”⁵⁷

The U.S. law “holds the children and other near relatives responsible for his support if he is unable to maintain himself and only when the fact of no possible provision such relatives is added to his own income deficiency does the state even profess to assist.”⁵⁸

This only perpetuated the problem—more Americans becoming destitute supporting their aged family members.

The Supreme Court acted again, this time in the realm of unemployment insurance.⁵⁹ The Court held unconstitutional as “unreasonable interference” legislation to abolish and regulate fees of the commercial employment agencies. The Court, Armstrong argues, “made identically the same kind of blunder that it made in the *Adkins* case when it declared minimum wage unconstitutional.”⁶⁰

⁵⁶ ESSENTIALS, *supra* note 4, at 393.

⁵⁷ *Id.* at 395.

⁵⁸ *Id.*

⁵⁹ Armstrong refers to two “ill-reasoned” decisions by the Supreme Court. *Adams v. Tanner*, 244 U.S. 590 (1917) *Ribnik v. McBride*, 277 U.S. 350 (1928). Adams held the abolition, and *Ribnik* the regulation of fee-charging employment agencies. ITE 546

⁶⁰ ESSENTIALS, *supra* note 4, at 547.

III. THE CRITICS RESPOND

Critics welcomed the work. The field, they argued, had been begging for such a “scholarly and comprehensive treatment”⁶¹ written in a voice that was both “critical” and “sharp.”⁶²

The book’s link to national policy was undeniable. Armstrong had done more than present the history of social reform. Rather, she charged her own government to act as other governments had acted. Her work held “important lessons for the present national administration in the United States. How far may it push the program of relief without turning to the project of remedy?”⁶³ Nobody in the field of social reform could now afford to overlook her voice:

The monumental volume should be put in the hands of every person, lawmaker or not, interested in the problem of economic insecurity. It is of particular importance at a time when, with the failure of private relief agencies adequately to feed and clothe the unemployed, millions of honest and industrious men and women are facing hunger and destitution in an America scored as ‘the laggard of the Western World’ in the field of socio-economic administration.⁶⁴

Critics were also enamored with her ability to tackle the statistics involved. One critic wrote, “She shows much talent in reducing great masses of data to system, and she has a faculty for accurate and convenient summary. The large number of tables and chart, even aside from the text itself, make this work a necessary handbook of the subject

⁶¹ Broadus Mitchell, *Book Reviews*, 22 CAL. L. REV. 124 (1936).

⁶² Harry W. Laidler, *Book Reviews*, 32 COLUM. L. REV. 1467 (1932)

⁶³ Mitchell, *supra* note 61.

⁶⁴ Laidler, *supra* note 62.

of social legislation.”⁶⁵ Another echoed, “The treatment is clear, comprehensive and accurate, and is supplemented by extensive charts summarizing the status of social insurance ... and an excellent bibliography.”⁶⁶ One cannot help but wonder whether or not the same critics would have heaped such praise on a male author who had tackled the same numbers.

However, one critic suggested that Armstrong may have erred on the side of description, rather than prescribing a more detailed remedy:

It is to be regretted that the author, with her wide knowledge of the workings of various systems of social insurance abroad, did not make more specific recommendations for systems of insurance impracticable in this country. On that question we need much light ... It is to be hoped that Professor Armstrong will, in a later volume, apply the same fine scholarship and sympathetic understanding to the working out of detailed laws at home as she has applied to other phases of this admirable study. The preparation of such a volume as *Insuring the Essentials* by a professor of law of one of our leading universities, with its vigorous insistence on the need for legal change, side by side with social change, is indeed a good omen for the future.⁶⁷

⁶⁵ Mitchell, *supra* note 61.

⁶⁶ Laidler, *supra* note 62, at 1468

⁶⁷ Id.

IV. ARMSTRONG'S INFLUENCES

At the heart of Armstrong's reasoning and analysis, beneath the charts and graphs, were strong beliefs, beliefs that initially brought her to the field of poverty relief:

It is difficult to work up effective indignation against long standing evils. Familiarity breeds not only contempt but indifference as well and the erroneous conviction that workers always have been sweated almost absolves the present economic structure from blame for the sweating of workers to-day.⁶⁸

Roger Traynor, Armstrong's student and colleague recalls that she had once remarked that "A government can be aptly judged . . . by the humanity with which it affords insurance against catastrophe."⁶⁹ Armstrong, Traynor writes, fought against social demons, and against the notions such as "long unemployment developed character . . . the elderly were expendable . . . the vision of legal services solely in terms of net profit."⁷⁰

Armstrong was clearly influenced by the importance of social adequacy. She, and her fellow committee members in Washington, wanted to ensure benefits that would be socially adequate, and would keep people out of the dependant class. They thus envisioned a contributory based system—based on the concept of earning more benefits the longer one worked. Such as system would also discourage early retirement.⁷¹

But from where did her ideas emerge? Armstrong fought against notions that made up the conventional wisdom of her time, thus she must she must have looked

⁶⁸ ESSENTIALS, *supra* note 4, at 17.

⁶⁹ Roger Traynor, *Barbara Nachtrieb Armstrong In Memorium*, 65 CAL L REV 920 (1977).

⁷⁰ *Id.*

⁷¹ ORAL HISTORY, *supra* note 1, at 125.

elsewhere for influences and guidance. Like many social reformers of her time, especially those who spearheaded the New Deal, Armstrong looked East, to Europe.

Europe

Americans, Armstrong argued, are hesitant to look East for guidance—especially guidance on social issues.⁷² Something in the America’s makeup has its citizens looking West and forging ahead independently. However, she argues, “There is no question that the biggest hindrance to achievement in this country lies in the persistent refusal of a large part of the public to admit that our economic conditions present like problems to those of our European neighbors.”⁷³ This persistence ran counter to another “American” tendency—the desire for newness. The American obsession with being “up to the minute” technologically was coupled with a crippling “sentimental devotion to the relief methods which were developed so many generations ago.”⁷⁴ The look Eastwards also ran counter to isolationism and xenophobia, long favorites of U.S. administrations. It also challenged the Hooverian idea that Europe’s war was precisely that, and the Depression was a uniquely American event.

Armstrong was not the first New Dealer to look East. FDR cited Lloyd George as an influence for the New Deal, and Frances Perkins’ 1933 proposals for minimum wage “were a close adaptation of the British Trade Board Acts of 1909.”⁷⁵ The New Deal was, in some ways, a response to unbridled, aggressive market capitalism and the ensuing demands of workers. As the Industrial Revolution began in Europe, America’s industrial change required the unavoidable look East. The making of New Deal social politics

⁷² ESSENTIALS, *supra* note 4, at 560.

⁷³ *Id.* at 561.

⁷⁴ *Id.*

⁷⁵ DANIEL T. RODGERS, *A TLANTIC CROSSINGS: SOCIAL POLITICS IN A PROGRESSIVE AGE*, 423-25 (1998).

“required . . . an intellectual shift, a sense of complicity with historical forces large than the United States: a suspension of confidence in the particular dispensation of the United States from the fate of other nations.”⁷⁶

This line of thought, this Eastward glance, had to do serious battle with the America-centric ideology that had been so prevalent in the U.S. and had only been strengthened by WWII. In addition to social insurance, Americans looked to Europe for guidance in subsidized worker’s housing, city planning and rural reconstruction.⁷⁷ Not all of the Europe’s laws were successfully transplanted: “Some made the crossing to the United States with relatively little difficulty. Others sank in mid passage. Still more were transformed, their Americanization leaving a precise and revealing trace of the forces and circumstances they had come up against.”⁷⁸

While some Americans may have decried the trend, Europe welcomed these changes in American policy. European nations saw the New Deal as “an unexpected Beacon in the decade’s darkness.”⁷⁹ Keynes called the New Deal the “middle way” for which American progressives had often looked to Europe. The New Deal was a “halfway house” between Marxism and laissez-faire.”⁸⁰ Lloyd George called it the most important social experiment upon whose success the whole world depended.⁸¹

American progressives had almost been lying in wait, watching Europe for cues – and moved into action with the New Deal, armed with “pamphlets on German social

⁷⁶ Id. at 4.

⁷⁷ See id. at 5.

⁷⁸ Id. at 5.

⁷⁹ Id. at 411.

⁸⁰ Id.

⁸¹ See Id. at 411. Still, Daniel Rodgers writes that despite the enthusiasm and approval with which European progressives received the New Deal, “Not all of the New Deal’s foreign observers like what they saw. Appalled by the massive Blue Eagle parades staged to whip up enthusiasm for the National Recovery

insurance, London housing, Danish farm revitalization, Australian labor courts, English garden cities, and unemployment measures from around the world.”⁸² With the shift of power from Republicans to Democrats, they went into action.

This was especially true in the realm of social insurance: “As the Depression reopened the idea of insurance against the risks of unemployment, a phalanx of American investigators descended on Britain once more to mine its experience for data and arguments.”⁸³ Of all of the New Deal measures, “the one that most clearly illustrates the politics of the Atlantic progressive connection in its culminating crisis moment was Social Security.”⁸⁴ This may be because of all the New Deal measures, social insurance has most strongly endured.

In Insuring the Essentials, Armstrong cites Scandinavia as an example of successful policy; however, she was not the only American progressive interested in the region. American progressives flocked to Sweden and Denmark during this period.

Armstrong recounts a story told to her by Chief Justice Warren. The Chief Justice was on holiday with his wife in Sweden. His wife became ill and they went to see a doctor in a small town. The doctor ran some tests and suggested flying in a specialist. When the Chief Justice tried to settle the bill, the doctor told him that there wasn’t one. Even as a tourist, the doctor explained, Mrs. Warren was treated as a Swede as far as Swedish health care was concerned. The Chief Justice offered to endow a hospital, as a token of his appreciation, only to learn that all hospitals were public. In marked contrast

Administration in 1934, the British Independent Labor Party’s Fenner Brockway felt he might have been in Nazi Germany.” at 410.

⁸² Id. at 416.

⁸³ Id. at 420.

⁸⁴ Id. at 429.

to their American counterparts, Swedish doctors, according to Armstrong, were “real professional men and they take great pleasure in doing their work well.”⁸⁵

When asked if she relied on European experience in the area of social insurance, Armstrong replied:

It made sense to me, and the influence of it made sense to me – that people ought to pay when they were well and at work for the time when they weren’t well and couldn’t work or couldn’t find employment. It just made sense. And instead of 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; otherwise it would be like schooling in the pre-compulsory education days only a few children get educated. You couldn’t get universality or protection for people any other way.⁸⁶

Armstrong used Europe not only as an example of what to do, but also as an example of what not to do. She did far more than make a copy of the European blueprint for reform and mimic it indiscriminately; rather, she learned from the European experience. She spoke of an experience she had while researching the book in England. While talking to the Secretary of Labour, she told him that she thought the weekly unemployment benefits paid out by the British government were paltry and “absurd.” To this he replied, “Madam, another twopence and the wife would put poison in the husband’s tea because she’d be better off with him dead.” Armstrong was horrified, and the secretary explained that the answer lay in fixing wage standards: “We can’t make it so much better to be out of work or dead than it is to be living and trying to get back on your feet.” From this, Armstrong realized that minimum wage was a crucial component of social security.⁸⁷

⁸⁵ ORAL HISTORY, *supra* note 1, at 272.

⁸⁶ *Id.* at 20.

⁸⁷ *Id.* at 265.

In an article Armstrong wrote in 1936, she approached the issue of old age security as a comparativist. American reform provided for the aged only when their families could not, therefore ensuring the problem will spread to others, involve others, and perpetuate itself. Other countries precluded this cycle. She explains:

It should be remarked in making passing reference to the old-age assistance plan adopted in the United States during the late twenties, that these state laws differ in a vital respect from the gratuitous pension provisions of other countries. They are without exception, granted assistance to the needy old person only when he did not have a spouse or children (or, as in many cases, other listed relatives such as sisters and brothers) who were able to support him. The foreign measures, in contrast, judge the applicant on the basis of his own financial situation without forcing his dependence on his children.⁸⁸

The American old age security measures, Armstrong charged, were a mere variety of poor relief and did not deserve the term “pensions” which certain of the states had applied to them. She writes:

Their chief contribution was that they marked a definite step away from the neglect of the aged which characterized the shameful almshouse The efforts made to secure the usage of these measures, moreover, educated the citizenry both to the existence of serious old-age dependency problem and to the need of systematic provision of old age security other than enforced institutional care.⁸⁹

In the article Armstrong discussed two possible approaches: contributory annuities and gratuitous pensions. Armstrong preferred the former. The latter, in many countries, involved a determination of the “worthy poor” and often resulted in more relief than assistance. Armstrong decried linking insurance to moral judgements, and always

⁸⁸ Barbara Nachtrieb Armstrong, *Old Age Security Abroad: The Background of Titles II and VIII of the Social Security Act*. 3 LAW AND CONTEMP PROBS 177, 185 (1936).

⁸⁹ *Id.*

chose reform to relief. Contributory annuities made assistance “business-like” and thus removed pensions “from the undesirable sphere of poor relief.”⁹⁰

Armstrong looked at the Danish, English and German systems as a fair sample of the three best contributory plans, and used them to determine who would be covered under her proposal. The Germans and the English made distinctions based on what type of worker one was; the Danish included everyone in the same plan.⁹¹

Armstrong, and her fellow committee members in Washington decided to begin with a conservative coverage (keeping an eye on economic stability) and build on it. Like the German and English plans, they took into account the nature of the worker’s work. They initially did not include domestic and farm laborers because they were difficult to reach and difficult to serve, and the committee had decided to operate through employers.⁹²

⁹⁰ Id.

⁹¹ ORAL HISTORY, *supra* note 1, at 128.

⁹² Id. at 129. Armstrong does say that to Frances Perkins’ credit (she is hesitant to complement the Secretary), Perkins argued for, and won the inclusion of farm workers.

V. **PROFESSOR ARMSTRONG GOES TO WASHINGTON: WHERE *INSURING THE ESSENTIALS* TOOK HER**

The book took Armstrong six years to write, but provided her with a lifetime of opportunity and experience. Essentials got “into the hands” of Gerard Swope⁹³, the head of General Electric, and a friend of FDR. Swope wrote a letter complementing Essentials, which Armstrong says pleased her husband because Swopes, like her husband, was a businessmen. Swope read the book and as a result, discussed social insurance with FDR. She joked that Swope saved her from obscurity: “Otherwise I might have 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.”⁹⁴

Armstrong then received an offer to go to Washington. She was, according to her contract, to be a consultant to the president’s committee on both unemployment and old age insurance.⁹⁵

Armstrong was surprised that she got the post. Again, she explains that to many Americans, California might as well have been Fiji. She was also surprised: “Because I was a woman, to begin with, and I was in the West and there were plenty of people in the East who could have been employed.”⁹⁶

Armstrong did not initially know that Swope had recommended her. She assumed her appointment was the work of Frances Perkins. Armstrong assumed that Perkins wanted another woman both on the committee and in the inner circle. Armstrong

⁹³Swope was also sent by FDR to Sweden to study insurance reform. Armstrong never really knew Swope, and only met FDR several times – in conference. ORAL HISTORY, *supra* note 1, at 20.

⁹⁴ *Id.* at 30.

⁹⁵ *Id.*

later discovered otherwise. Perkins, she claimed, refused to see her. Armstrong said, “Time and again I tried to see her.”⁹⁷ Armstrong believed that Perkins snubbed her because “she was fighting our program.”⁹⁸ Perkins “was not helping it and she did not want it, and her reason had to do with Mr. (Thomas) Elliot.”⁹⁹ Thomas Eliot and Paul Raushenbush had authored the Wagner-Lewis Act on unemployment insurance. Eliot was also the general counsel for the committee, and “Miss Perkins wanted him to have the glory of having his Wagner-Lewis Act passed.”¹⁰⁰ Eliot favored old age assistance, something Armstrong opposed vehemently, and the two clashed often. As for Perkins’ desire to have another women in the inner circle, Armstrong learned that not only did Perkins not want her in the circle, “I don’t think she was inclined to share the limelight with anyone, male or female, from what I could see.”¹⁰¹

About Perkins, Armstrong said: “I’m not one that harbors grudges even if I did break the panes in my won bedroom door when I read Miss Perkins' autobiography. It wasn’t so much what she didn’t do for the achievement of Social Security, as the way she took credit for what she had tried utmost to prevent.”¹⁰²

Armstrong made it clear to the other committee members that insurance was needed on both a compulsory and a national scale.¹⁰³ Many states already had assistance

⁹⁶ Id. at 34.

⁹⁷ Id. at 31.

⁹⁸ Id.

⁹⁹ Id.

¹⁰⁰ Id. Interestingly enough, Paul Raushenbush was Justice Brandeis's son-in-law—he married his daughter Elizabeth. Paul and Elizabeth also drafted a plan for Wisconsin along lines suggested by the justice himself. See Daniel R. Ernst, *Engaging Willard Hurst: A Symposium Willard Hurst and the Administrative State: From Williams to Wisconsin*, 18 *Law & Hist. Rev.* 1 (Spring, 2000).

¹⁰¹ Id. at 35.

¹⁰² Id. at 13.

¹⁰³ Id. at 41.

programs in place and dismantling all these programs was unreasonable. Armstrong thus advocated a “straight national system.”¹⁰⁴

Armstrong’s insistence on a national system was a result of the research she had done for the class she taught at Berkeley. She explained that “There’s no better way to become familiar with these things than to teach them. I was teaching a course in social legislation that involved workmen’s compensation and all the way stations.”¹⁰⁵ By “way stations”, Armstrong was referring to unemployment insurance, old age, invalidity survivor’s insurance, health insurance and minimum wage. All her research pointed in clear favor of a national, uniform system, but she met with serious opposition when she suggested a national plan.

Armstrong wrote a report to the committee. Ed Witte, another member of the committee, a social reformer from Wisconsin (who advocated state by state reform), came back to her reporting that “from a very high place results are wanted.”¹⁰⁶ Witte never said how high, he only told Armstrong that she should not have called for a national system in her report.¹⁰⁷ Armstrong claimed that she was never told that FDR wanted a state plan. She never thought he actually ever wanted one. Rather, it was Perkins who wanted a state plan. Armstrong assumed that Perkins was the “very high place” of which Witte had spoken.

At a subsequent meeting, Witte presented Armstrong’s report. He had edited out old age insurance and left only compulsory assistance.¹⁰⁸ Witte had also discarded the national plan, and instead advocated the Wagner-Lewis plan, modeled on the Wisconsin

¹⁰⁴ Id. at 42.

¹⁰⁵ Id.

¹⁰⁶ Id. at 51.

¹⁰⁷ Id. at 52.

plan. At the meeting, Armstrong said, “[S]omething is very wrong. I see my name on this report. This is not my report. This is just the opposite of everything that I recommended and said. And I would like to know who dares to do that and leave my name on it?”¹⁰⁹ This was, she said, “the first beginning of a crack of disbelief in what was going on. I know that. I was furious. All an academic person has is his integrity and his thoughts...”¹¹⁰

Armstrong envisioned a national plan comprised of economic regions—such regions would not be possible if it was a state-federal system.¹¹¹ Armstrong couldn’t understand why, if the committee had been so opposed to a national plan and compulsory insurance, they had appointed her in the first place. She said, “They knew what I thought. That’s what my book was written about. You don’t have to read the first fifteen pages . . . to know exactly what I thought and what I was going to get if I could get it.”¹¹²

Armstrong’s dissatisfaction was obvious. Thomas Elliot, in his book, described her using words like “vehement”, and called her “the acerbic Barbara Armstrong of Berkeley”.¹¹³ Armstrong was a “fierce advocate of national action on all fronts.”¹¹⁴

Once Armstrong submitted her final report, it was sent to Congress. However, when she asked Witte for a copy of the final report she never received one.¹¹⁵ Thus, once she submitted the final report, she regarded it as “finished business.”¹¹⁶ Her work “had been baptized and it was a sturdy enough infant and from then on, other people were

¹⁰⁸ See *Id.* at 68.

¹⁰⁹ *Id.* at 96.

¹¹⁰ *Id.* at 67.

¹¹¹ *Id.* at 211.

¹¹² *Id.* at 85.

¹¹³ THOMAS H. ELLIOT, *RECOLLECTIONS OF THE NEW DEAL: WHEN PEOPLE MATTERED*, 99 (1992).

¹¹⁴ *Id.*

¹¹⁵ ORAL HISTORY, *supra* note 1, at 206.

¹¹⁶ *Id.*

going to take it on and that was the way it ought to be. And I have never felt any proprietary interest in it whatsoever—not any. Just very great pleasure.”¹¹⁷

Armstrong didn’t think that FDR ever read the report; rather, he took it on Perkins’ advice: “I think he knew that he was now sponsoring as a major administration measure, the establishment of old age insurance. And I’m sure he was delighted because that’s what he’d wanted as governor of the state of New York.”¹¹⁸

J. Douglas Brown, in his book on social security, wrote that “Armstrong brought as leader of the group a brilliant legal mind, and extensive knowledge of social insurance systems abroad, and an extensive concern for human welfare.”¹¹⁹ He cites Essentials as a monumental work (and he echoes Armstrong’s comment that Ed Witte was quite useless).¹²⁰

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ J. DOUGLAS BROWN, AN AMERICAN PHILOSOPHY OF SOCIAL SECURITY, 8 (1972).

¹²⁰ Id. at 9. Armstrong was even harsher when talking about Arthur Altmeyer, whom she called a “quarter-wit”. ORAL HISTORY, *supra* note 1, at 48. Altmeyer was the chair of the Social Security Board. See ARTHUR J. ALTMAYER, THE FORMATIVE YEARS OF SOCIAL SECURITY 33 (1966).

VI. CONCLUSION

I can best conclude by allowing Professor Armstrong to do so in her own words. When asked whether she had read a book by Ed Witte, she replied: “You know, I’ve never looked at his book... You just don’t realize. I’ve another incarnation. I was a full-time law professor, and I had a whole big field of marital property to handle. In addition I was teaching labor law; and I did this enormous tome (Family Law in California), and I had a family. I just did that a human being could do...”¹²¹

¹²¹ ORAL HISTORY, *supra* note 1, at 11.

VII. FUTURE RESEARCH

I hope I have provided more detail into Armstrong's work, theories, and political experience. There is, however, much to be done. Unfortunately most of Armstrong's own papers were destroyed. Still, many have written about her and make reference to her life and work in their own histories. An extensive oral history is also on file.

There is, in my opinion, still more to be written about Armstrong's legacy at Berkeley. Many of her students and colleagues are willing to talk about her life at, and impact on, Boalt Hall. She had a long and impressive reign there, and many of her colleagues have documented it in some of their own works.

Armstrong also did extensive and influential work in the area of family law. This area is especially ripe for more research.

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