

WOMAN LAWYER:

The Trials of Clara Foltz

BARBARA BABCOCK

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REVIEW ESSAY BY MARY JANE MOSSMAN*

In trying to sort out the reasons for professional women's successes or failures, it is far too facile to say that there were prejudices against women that they had to overcome. The ways in which the prejudice manifested itself were extremely complex and insidious. . . . As determined, aspiring professionals, women were not easily deterred. They found a variety of ways to respond to the discrimination they faced. . . .¹

Although their study of late nineteenth and early twentieth century women professionals in the United States did not include a review of

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¹ Penina Migdal Glazer and Miriam Slater, *UNEQUAL COLLEAGUES: THE ENTRANCE OF WOMEN INTO THE PROFESSIONS, 1890–1940* (New Brunswick and London: Rutgers University Press, 1987) at 12.

the first women who gained admission to the legal profession, Glazer and Slater's assessment of the experiences of women professionals (above) is equally appropriate to understanding the lives of "first" women lawyers, such as Clara Shortridge Foltz (1849–1934). Certainly, prejudices about Foltz were manifested in a variety of different ways. But, like other women who chose to become lawyers in the late nineteenth century, Foltz was not easily deterred — indeed, she was both astute and creative in finding ways to respond, and often to overcome, the discrimination she faced.

As Barbara Babcock's new biography reveals, Foltz had great ambitions: to be "an inspiring movement leader, a successful lawyer and legal reformer, a glamorous and socially prominent woman, an influential public thinker, and a good mother"; perhaps not surprisingly in this context, she suffered not a few setbacks in a life that was often "frantic and scattered."² Yet, as Babcock's careful scholarship demonstrates, the story of Foltz's life and contributions as one of America's first women lawyers offers important insights about the history of gender and professionalism in law. Moreover, Babcock's biography is particularly important for two reasons. First, it provides both a detailed "story" about Foltz and a sustained assessment of her accomplishments, rounding out many aspects of Babcock's earlier writing about Foltz.³ Perhaps more significantly, the biography is also augmented by an online supplement with essays and bibliographic notes that extends the documentation in the printed book — part of Babcock's unique Women's Legal History Web site at Stanford Law School, which has become a primary source for scholars interested in the history of women in law, particularly in the United States.⁴ This review focuses on the published biography, an authoritative and sensitive biographical interpretation of Foltz's life. Indeed, in answer to Babcock's

² Barbara Babcock, *WOMAN LAWYER: THE TRIALS OF CLARA FOLTZ* (Stanford: Stanford University Press, 2011) at x [hereinafter *WOMAN LAWYER*].

³ Barbara Babcock, *Reconstructing the Person: The Case of Clara Shortridge Foltz* (1989) *BIOGRAPHY* 5; reproduced in Susan Groag Bell and Marilyn Yalom, eds., *REVEALING LIVES: AUTOBIOGRAPHY, BIOGRAPHY AND GENDER* (Albany: State University of New York Press, 1990) 131; and Babcock, *Clara Shortridge Foltz: Constitution-Maker* (1991) 66 *INDIANA LAW JOURNAL* 849.

⁴ See www.law.stanford.edu/library/womenslegalhistory.

professed goal for her biography, it seems clear that Foltz would enthusiastically “approve” this fine effort.⁵

The biography includes four chapters that offer a chronological story of Foltz’s life and then three chapters that focus in more detail on significant aspects of her contributions: her role as a “public thinker,” her activities in support of political equality, and her “invention” of the idea of a state-funded public defender. Each chapter is carefully written, with supporting references to a wide range of legal and contextual materials, including references to Foltz’s own writings and speeches, many of which were vibrant and humorous — and sometimes outrageous, probably intentionally.⁶ The book also includes a number of excellent photos of Foltz, especially the portrait that now appears at the entrance to the Clara Shortridge Foltz Criminal Justice Center, the central criminal courts building in Los Angeles.⁷

The four chapters describing Foltz’s life have been organized to tell her story chronologically up to 1911,⁸ including her early life and elopement at age 15, followed by farm life and motherhood. As Babcock notes, by 1869, when Arabella Mansfield became the first American woman to

⁵ WOMAN LAWYER at xi.

⁶ Like many biographers of women lawyers, Babcock lamented the absence of a significant number of personal papers, although she had access to Foltz’s personal Scrapbook and published essays, etc. Babcock also acknowledged assistance from Jill Norgren, the biographer of Belva Lockwood: see Norgren, *BELVA LOCKWOOD: THE WOMAN WHO WOULD BE PRESIDENT* (New York and London: New York University Press, 2007) and a review by Mossman in (2007) 22:1 *CANADIAN JOURNAL OF LAW AND SOCIETY* 164. Babcock also acknowledged an early assessment of Foltz, published almost one hundred years after Foltz and Laura Gordon had sued Hastings College of the Law for refusing to admit women: see Mortimer D. Schwartz, Susan L. Brandt and Patience Milrod, *Clara Shortridge Foltz: Pioneer in the Law* (1976) 27 *HASTINGS LAW JOURNAL* 545.

⁷ Installation photo by Susan Schwartzenberg, 2008; and portrait of Foltz at the courthouse entrance, with map detail of Los Angeles where Foltz served as deputy district attorney and witnessed the enactment of the Foltz Defender Bill. Both illustrations precede the Introduction.

⁸ The chronological chapters focus on Foltz’s efforts to become a lawyer (1878–1880); her initial efforts to make a living (1880–1890); her expanding horizons, including participation in the Chicago World’s Fair (1890–1895); and her geographical moves to New York, Denver, San Francisco and Los Angeles (1895–1911).

gain admission to the bar in Iowa,⁹ Foltz was living in the same state as a farm wife and mother of (eventually) five children. In addition to describing her move west with her extended family, there are details about efforts by Foltz and her supporters (including Laura Gordon) to enact a Women Lawyers' Bill, and Foltz's subsequent admission to the bar of California on September 5, 1878, the first woman lawyer in the West. The stories of the suffrage movement in California, her lawsuit to open Hastings College of the Law to women, and her support for Gordon's work at the constitutional convention that prohibited sex discrimination all reveal an auspicious beginning for Foltz's career.¹⁰

Yet, although gaining admission to the legal profession represented a significant accomplishment for Foltz, it seems that (as for other early women lawyers), there was another and greater challenge: earning a living in the practice of law.¹¹ Babcock's description of Foltz's energetic efforts as a political orator, public lecturer, legislative counsel, and newspaper publisher, as well as a practicing lawyer and criminal prosecutor, suggest Foltz's enduring creativity in seeking opportunities to make a living. The detailed descriptions of her legal cases, her involvement with women lawyers elsewhere (including her support for Belva Lockwood's

⁹ WOMAN LAWYER at 5-6. For Mansfield, see THE FIRST WOMEN LAWYERS at 26-27 and 63-64; T. Federer, *Belle A. Mansfield: Opening the Way for Others*, STANFORD WOMEN'S LEGAL HISTORY online; and L.A. Haselmayer, *Belle A. Mansfield* (1969) 55 WOMEN LAWYERS JOURNAL 46.

¹⁰ In 1872, Nellie Tator, a suffragist from Santa Cruz, had passed the bar but was refused admission; although she drafted a Woman Lawyer's Bill, it was never passed and Tator did not appeal her rejection. In the process of lobbying for a new bill, Foltz met Laura Gordon, an early suffragist in California, and the two joined forces to promote the Women Lawyers' Bill. When it passed and was signed by the governor to become law, both Foltz and Gordon claimed credit — with somewhat different stories. Foltz, who had studied law in her father's law office, then passed the oral bar exam and was admitted to the bar. Meanwhile, Gordon put aside law studies to engage in extensive lobbying at the Constitutional Convention in the fall of 1878, where her efforts were substantially rewarded. Foltz was also joined by Gordon in the suit against Hastings College of the Law: see WOMAN LAWYER at 24 ff.

¹¹ Although some nineteenth-century women lawyers, particularly in the United States, managed to make a living in the practice of law, many of them struggled to do so and none was as "successful" as male counterparts in the United States at the time: see THE FIRST WOMEN LAWYERS at 37-40 and 54-65.

candidacy for the U.S. presidency in the 1880s),¹² her ongoing suffrage activities, and her significant lobbying efforts (to establish a parole system, and to permit women to become estate executors and to hold marital property) reveal a woman who was energetic, persevering and ambitious. Nonetheless, as Babcock notes, by 1890, Foltz was “largely disappointed by her inability to convert her growing fame into a secure financial situation.”¹³ As a result, she often engaged in speaking tours, and in the context of the depression of the 1890s, moved often: to New York City and Denver and then back to California. (In addition, her flair for publicity was much enhanced when she survived a shipwreck on a voyage to Europe.)¹⁴ On her return to California, Foltz settled in Los Angeles, where she became the first woman appointed to the State Board of Charities and Corrections in 1910, and shortly after, the first woman deputy district attorney.¹⁵

In the remaining three chapters of the biography, Babcock provides a more detailed assessment of three aspects of Foltz’s accomplishments. Chapter Five, on Foltz as “Public Thinker,” details her contribution to the Queen Isabella Society lectures at the time of the Chicago World’s Fair in 1893 (an address about the evolution of law and the need for systematic review of legislation and law reform);¹⁶ in addition, Foltz was one of only four women lawyers invited to present a speech to the Congress of Jurisprudence and Law Reform,¹⁷ and it was here that Foltz described her public defender proposal. Both of these presentations were published in the *Albany Law Journal*.¹⁸ In addition, the chapter reviews some highly-debated cases about women murderers, in which Foltz asserted (contrary to others in the suffrage movement) that women and men convicted of murder should both be executed, an early example of

¹² WOMAN LAWYER at 91 ff. See also Norgren, *supra* note 6.

¹³ WOMAN LAWYER at 131; and see Chapter Two at 64 ff.

¹⁴ WOMAN LAWYER at 174 ff.

¹⁵ WOMAN LAWYER at 215 ff.

¹⁶ WOMAN LAWYER at 221 ff.

¹⁷ WOMAN LAWYER at 305 ff. See also THE FIRST WOMEN LAWYERS at 63-65; and *Reflections*.

¹⁸ See Foltz, *Evolution of Law* (1893) 48 ALBANY LAW JOURNAL 345; and Foltz, *The Rights of Persons Accused* (1893) 48 ALBANY LAW JOURNAL 248.

the “equal treatment” stance among feminists. There is also an extensive chapter on Foltz and the suffrage movement, including a detailed overview of the shifting alliances within it, and Foltz’s part in achieving this major objective in California in 1911. As Babcock suggests, Foltz’s goals were intricately connected to the aims of the women’s movement, “so that the history of each illuminates the other.”¹⁹

Finally, Babcock turns to Foltz’s great “legacy,” her invention of the public defender. As Babcock notes, Foltz was a woman with a “reformist attitude to life,”²⁰ as well as having considerable experience in defending indigent accused in the criminal courts; in addition, Foltz had sometimes witnessed unfairness on the part of prosecutors. Thus, not only did she present a detailed proposal for a public defender during the Chicago World’s Fair, but she also later drafted a model statute and presented it to the New York legislature; and she published articles promoting the idea in the late 1890s. Eventually, a public defender system was established in Los Angeles in 1913 (although not exactly the same as that proposed by Foltz).²¹ And, according to Babcock, Foltz’s proposal was also a forerunner of the Supreme Court’s landmark constitutional decision in *Gideon v. Wainwright* in 1963, establishing a requirement for defense lawyers in criminal cases, with state funding provided if necessary.²²

Babcock’s biography of Foltz represents an outstanding accomplishment. With its fine detail and attention to all the disparate aspects of Foltz’s life, the biography achieves Babcock’s goal of recognizing Foltz’s courage and charisma, while also confronting her flaws and mistakes

¹⁹ WOMAN LAWYER at 246; and see Chapter Six.

²⁰ WOMAN LAWYER at 293.

²¹ WOMAN LAWYER at 288-290 and 309-319. Foltz first presented her public defender proposal to the Women’s National Liberal Union (a suffrage organization) in 1890; and then at the Chicago World’s Fair in 1893. In 1897, she drafted a model statute that was introduced in several states, and Foltz herself presented it to the New York legislature. Although the proposed statute was not enacted anywhere at the time, the progressive movement in the early twentieth century resulted in Foltz’s renewing her public defender campaign in California in 1910, and the statute was enacted two years after woman suffrage in California in 1913.

²² WOMAN LAWYER at 318. See *Gideon v. Wainwright* 372 US 335 (1963), and for an earlier case about public defenders, decided two years before Foltz’s death, see *Powell v. Alabama*, 287 US 45 at 71 (1932).

in judgment: “the hag with the hagiography.”²³ Although there is some modest repetition, the separation of the chronological life story from the more detailed assessment of Foltz’s three most important contributions also generally works well. Poignantly, the biography often reveals Foltz’s isolation as an early women lawyer in the West, even though Laura Gordon, the second woman lawyer in California, shared in a number of Foltz’s legal and suffrage activities, and Foltz supported Mary Leonard in Oregon and may have met Lelia Robinson in Washington.²⁴ At the same time, although there is no documented explanation for Foltz’s selection as one of only two women lawyers in the United States to take part in the 1893 Congress on Jurisprudence and Law Reform,²⁵ her status as the first woman lawyer in the West may have worked in her favor on this occasion. In any event, for Foltz and for other women lawyers, the meetings of the Queen Isabella Society during the Chicago World’s Fair in 1893 must have been a highlight, as they came together from their isolated legal practices in different parts of the country, not only to engage in presentations about legal developments but also to share their stories as the first women in law.

And, indeed, many of the stories of these early women lawyers reveal how, like Foltz, they often had to respond to “complex and insidious” prejudices. At the same time, their stories confirm similarities in their experiences of support and encouragement: middle class parents who

²³ *WOMAN LAWYER* at x.

²⁴ *WOMAN LAWYER* at 24 ff. (Laura Gordon); at 100-101 (Mary Leonard); and at 103-104 (Lelia Robinson).

²⁵ The two American women lawyers were Clara Foltz, who was then practicing law in New York, and Mary Greene, a woman admitted to the bar in Massachusetts. There were also two invited women lawyers from outside the U.S., who sent papers to be read by others: one was Eliza Orme, a woman who had been engaged in conveying, patents and estates work in London’s Chancery Lane since the early 1870s but without formal admission as a barrister or solicitor; the other was Cornelia Sorabji, the first woman to sit for the BCL exams at Oxford in 1892, who had returned home to India and the beginning of her long struggle to engage in legal work there. Mary Greene’s description of the Queen Isabella Society meetings and the Congress on Jurisprudence and Law Reform is located in the *PAPIERS FRANK* in the Bibliothèque Royale, Brussels; for details about the archival records and about Orme and Sorabji, see *THE FIRST WOMEN LAWYERS*.

encouraged education for their daughters, widespread assistance from the women's movement in the late nineteenth and early twentieth centuries, and timely interventions on the part of a number of prominent men who shared their ideas about equality for women. Yet, unlike most of these early women lawyers, Foltz married, although she later became a single mother, and then (like Belva Lockwood), accepted primary responsibility for supporting her family. Although Babcock's biography does not try to make connections between Foltz's life and the experiences of modern women lawyers today, Foltz's story shows both how much and how little may have changed: as Carol Sanger suggested, "modern women lawyers know that the biographies of women who chose to locate their professional lives in the law are likely to be stories of *piecemeal progress and circumscribed success*."²⁶

In this context, Babcock's biography clearly shows how Foltz succeeded in achieving the "limits of the possible."²⁷ Although she faced private disappointments, she consistently presented steadfast optimism and purposefulness in public. In this context, it seems fitting to give Clara Foltz the last word. In responding to a request for a letter in support of the claim of Jeanne Chauvin for admission to the bar in Paris in 1896,²⁸

²⁶ Carol Sanger, *Curriculum Vitae (Feminae): Biography and Early American Women Lawyers* (1994) 46 *STANFORD LAW REVIEW* 1245, at 1257 (emphasis added). Sanger's comments occurred in the context of her review of the biography of Myra Bradwell: see Jane M. Friedman, *AMERICA'S FIRST WOMAN LAWYER: THE BIOGRAPHY OF MYRA BRADWELL* (Buffalo: Prometheus Books, 1993). For one assessment of connections in the experiences of early women lawyers and their modern counterparts, see Fiona Kay, *The Social Significance of the World's First Women Lawyers* (2007) 45:2 *OSGOODE HALL LAW JOURNAL* 397.

²⁷ Glazer and Slater, *supra* note 1, at 14. The authors identified four basic strategies for the first women professionals: superperformance, subordination, innovation and separatism; for many women lawyers, the strategy of "innovation" may be most in evidence, as they *created* their opportunities for legal work, evading or overcoming the barriers of formal rules and professional legal cultures: see *THE FIRST WOMEN LAWYERS* at 282-284.

²⁸ Jeanne Chauvin's claim was denied by the courts, but she then successfully lobbied for the enactment of legislation in France, permitting women to become *avocat(e)s* there in 1900. See *THE FIRST WOMEN LAWYERS*; and Anne Boigeol, *French Women Lawyers (Avocates) and the 'Women's Cause' in the First Half of the Twentieth Century* (2003) 10:2 *INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION* 193.

Foltz enthusiastically confirmed that there were already a dozen women lawyers in California by then, and confidently asserted the absence of any prejudice against them (or at least that it could be overcome!). Carefully ignoring so many of the challenges she continued to face in the 1890s (clearly documented in Babcock's biography), Foltz described her experiences as a woman lawyer in language that demonstrates a formidable talent for public advocacy:

I cannot speak for others as [to] the relation between them and their clients, bar and court; for those facts are not much known, but have no hesitancy in speaking as to my own case. I was the first woman admitted to practice in the state of California, and sixth admitted in the United States. I have had a regular court practice ever since. I do not doubt but I have had a longer, broader, and more active experience than any other woman at the bar, for I have had a large clientage and a busy and continuous practice for eighteen years. I was admitted in 1878, and began practice at once. I went into all the courts from the lowest to the highest and tried all manner of causes. With very few exceptions my relations with my clients have been most cordial and satisfactory. I have sometimes lost cases I thought I would win, but so have my opponents, and I have certainly won my share. Losing clients are not always amiable, but their wrath has never been directed toward me, and I think I never lost a client I wanted to retain.

Between myself and the members of the bar the most friendly relations have always been maintained. Sometimes one of the riraf [sic] of the profession made himself obnoxious, but the cases were few and I feel assured that I have received quite as much of a welcome at the bar and been shown quite as much courtesy by its members, as any other member of the profession. Of course there were prejudices, but I feel sure they have been largely dissolved by personal contact. Many indeed have been more than courteous. They have been helpful, rendering voluntarily assistance in tangled cases, and supplying valuable hints as to practice. The Judges have always accorded me a patient hearing, and I have as little fault to find with their decisions as have

other members of the bar. Among Judges I am persuaded there is little prejudice against women as practitioners at the bar in the west [and in New York City].²⁹

Notwithstanding Foltz's advocacy, Babcock's biography clearly shows that Foltz faced prejudices that were "extremely complex and insidious"; at the same time, it seems clear that Foltz, like other women described by Glazer and Slater, was among the "determined, aspiring professionals, not easily deterred [who] found a variety of ways to respond to the discrimination [she] faced."³⁰ In telling the story of California's first woman lawyer, Babcock has provided a fitting and comprehensive assessment of her life and her "trials." ★

²⁹ Foltz to Louis Frank, September 23, 1896, in PAPIERS FRANK #6031 (file #2), Section des Manuscrits de la Bibliothèque Royale, Brussels; Frank corresponded with a number of women lawyers around the world in preparing his book in support of the application for admission to the bar presented by Chauvin: see Frank, *LA FEMME-AVOCAT: EXPOSÉ HISTORIQUE ET CRITIQUE DE LA QUESTION* (Paris: V. Giard et E. Brière, 1898). Interestingly, Foltz's letter to Frank differs significantly from her assertion in an interview a few years later in 1898, in which she (uncharacteristically) blamed the "ill-concealed, often rude opposition of the legal fraternity [at the New York bar] . . . who regard [women lawyers] as freaks rather than mental equals": see *WOMAN LAWYER* at 203. Significantly perhaps, Foltz's 1898 comment was made to an interviewer in Idaho, to whom she was explaining her intentions to abandon New York and return West.

³⁰ Glazer and Slater, *supra* note 1.