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“The New American Woman”: The Legal and Political Career of Clara Shortridge Foltz

Abstract

This article analyzes the life and career of Clara Shortridge Foltz, a California attorney and suffragist of the latter decades of the 19th Century and the early 20th Century who was an early developer of the concept of the public defender, leaving an important legacy in the advancement of women's rights.

Swope: "The New American Woman"

"The New American Woman"

The Legal and Political Career of Clara Shortridge Foltz

Marissa Swope

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Dr. Smith

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Clara Shortridge Foltz was a woman of firsts. In “Reconstructing the Person: The Case of Clara Shortridge Foltz,” Foltz’s biographer Barbara Babcock effectually encapsulates a portion of her accomplishments: “For many years, her name was familiar to Californians as the state’s ‘first woman’ – first woman lawyer; first woman to attend law school; first woman notary public; first woman counsel to a legislative committee; first woman deputy district attorney.”¹ In addition to these firsts, Foltz pioneered the concept of the public defender. She was an early feminist, a suffragist, and a champion of women’s rights. She was a lecturer, a public speaker, a teacher, and an author. She was a mother of five, a divorcee, and – perhaps, the most dangerous thing of all – a woman.

While Foltz achieved monumental success throughout her lifetime, her rejections also merit attention, as they molded her determination to enter the legal profession and to become the first female lawyer on the Pacific Coast. Early rejection also motivated one of Foltz’s most notable works, the “Woman Lawyer’s Bill,” which advanced women’s suffrage and promoted equal opportunities within the legal field. Whether in the courtroom or on a stage, Foltz excelled oratorically; and, she employed her skillful rhetoric to further women’s suffrage campaigns and to advocate for the defenseless. After recognizing the lack of proper and professional representation for the accused, Foltz crafted the concept of the public defender. In order to accomplish this task, Foltz remained active in drafting bills and lobbying for her legislation. Later in life, Foltz recorded portions of her experiences within “Struggles and Triumphs of a Woman Lawyer,” a column in her publication *The New American Woman*. Foltz’s legal journey and her subsequent political career heralded new opportunities for women and ushered in a new era of equality.

¹ Barbara Allen Babcock, “Reconstructing the Person: The Case of Clara Shortridge Foltz,” *Biography* 12, no. 1 (1989): 5.

Clara Shortridge Foltz was born on July 16, 1849, in Lafayette, Indiana. Foltz was the middle child, bordered by two older and two younger brothers. As a child, Foltz demonstrated that she was adept at problem solving and critical thinking; in response, her father lamented "It is too bad, daughter...that you are a girl, for if you were a boy I would educate you for the law—you would make a great lawyer."² Foltz reports her mother's response: "Elias, you should not tell that girl that she could become a great lawyer, for some of these days she will take it into her head to study law, and if she does, nobody on earth can stop her."³ Foltz later termed her mother's words as a "prophecy," specifically during her application to Hastings College of Law.⁴ With support from her mother, Foltz gained "confidence in her abilities and belief in her destiny...she was a true western character: larger than life and prodigious in her enjoyment of the moment and in her ambitions for the future."⁵ Elias Shortridge would grow to become one of his daughter's greatest supporters.

At the age of fifteen, Clara Shortridge eloped with Jeremiah Foltz against her parent's wishes. From that union, Foltz gained five children and followed her husband to San Jose California around 1877. In "Reconstructing the Person: The Case of Clara Shortridge Foltz," Babcock describes Jeremiah as an "unsuccessful provider" and an "unfaithful husband."⁶ While her marriage was deteriorating, Foltz managed to maintain her household and to further her own personal career; Foltz drafted and lobbied for the Woman Lawyer's Bill during this period. Babcock keenly analyzes that "there is a causal connection between the collapse of her marriage

² Clara Foltz, "Struggles and Triumphs of a Woman Lawyer," *The New American Woman* 1, no. 3 (April 1916): 10.

³ *Ibid.*, 10-11.

⁴ *Ibid.*, 11.

⁵ Barbara Allen Babcock, *Woman Lawyer: The Trials of Clara Foltz* (Stanford, CA: Stanford University Press, 2011), x.

⁶ Babcock, "Reconstructing the Person," 8.

and her choice of a career—that Clara Foltz's story is not simply the old tale of desertion and infidelity.”⁷ Foltz’s writings within her column affirm Babcock’s speculations as she states that “it was the desire that women should be as they ought to be...to enable them in some degree to protect themselves and their children when the shadow of death had fallen upon the head of the household that formed the nucleus of my determination to open the way for women in the profession of law in California.”⁸ Foltz divorced her husband in 1879; her failed marriage left Foltz not only with the responsibility of providing for her five children, but also with the burden of providing a path for other women to earn an honest living for their family in a noble profession. Foltz pursued a career in law “not from ambition and defiance of the norms of womanly conduct, but out of desperation, she decided to become a lawyer.”⁹ Economic need to provide for her family undoubtedly influenced Foltz’s legal pursuits and cemented her drive to achieve equality.

In an effort to earn an income, Foltz first pursued a career as a public lecturer, focusing on the subject of women’s suffrage. Her keynote address titled “Impartial Suffrage” reflected her own personal experiences and the goals imbedded in the Seneca Falls Declaration. Utilizing sources such as Blackstone’s *Commentaries on the Laws of England* as well as its American counterpart, James Kent’s *Commentaries on American Law*, Foltz wove her legal knowledge throughout her speeches.¹⁰ Foltz excelled in public speaking; a biographical sketch of her from 1893 reveals her dynamic oratory abilities: “Her sunny temper, genial disposition, broad views, liberal sentiments, never failing charity and ready repartee make her a brilliant

⁷ Ibid., 12.

⁸ Clara Foltz, “Struggles and Triumphs of a Woman Lawyer,” *The New American Woman* 1, no. 7 (August 1916): 11.

⁹ Babcock, *Woman Lawyer*, 8.

¹⁰ Barbara Allen Babcock, “Clara Shortridge Foltz: First Woman,” *Valparaiso University Law Review* 28, no. 4 (June 22, 1994): 1245.

conversationalist."¹¹ Foltz quickly amassed both local and regional notoriety and greatly furthered the women's suffrage even at the onset of her professional career.

Foltz's childhood dreams of oration were rekindled. Following her success at lecturing, Foltz desired to advance into the legal realm and quickly applied for an apprenticeship with a prestigious lawyer, Francis Spencer. Her application letter read as follows: "My dear sir:—Being a young woman desiring to read law, with the hope of admission to the bar. I am writing to ask permission to enter your law offices as a student."¹² Her first endeavor toward her law career resulted in rejection. Recalling her rejection, Foltz printed the written response in "Struggles and Triumphs of a Woman Lawyer":

My dear young Friend:—

Excuse my delay in answering your letter asking permission to enter my law office as a student. My high regard for your parents, and for you, who seem to have no right understanding of what you say you want to undertake, forbid encouraging you in a so foolish a pursuit.—wherein you would invite nothing but ridicule if not contempt.

A woman's place is at home, unless it is as a teacher. If you would like a position in our public schools. I will be glad to recommend you, for I think you are well qualified.

Very Respectfully.
Francis Spencer.¹³

Recalling her disappointment, Foltz asserts that "[a]ll my preconceived notions of the liberality and nobility of mind of our distinguished townsman paled and in proportion all men sank in my estimation."¹⁴ Despite a minor setback, this rejection further cemented Foltz's determination to pursue a legal career.

¹¹ Mary A. Livermore and Frances E. Willard., ed., *A Woman of the Century: Fourteen Hundred-Seventy Biographical Sketches Accompanied by Portraits of Leading American Women in all Walks of Life* (Buffalo, C. W. Moulton, 1893): 293-294.

¹² Clara Foltz, "Struggles and Triumphs of a Woman Lawyer," *The New American Woman* 1, no. 5 (June 1916): 5.

¹³ *Ibid.*

¹⁴ *Ibid.*

Instead, Foltz settled for an apprenticeship with her father's firm in the offices of Stephens and Shortridge. As an extracurricular during her studies, Clara Foltz and her father applied for membership into a moot court at a San Jose legal club, which immediately ignited conflict over the admittance of a woman. During the first meeting, Foltz recalled that a male advocate for women's rights, E. F. Cothran, nominated her to be the first Judge of the moot court of the San Jose Law Student's Club; however, Foltz did not receive a second nomination. Later, she reflected: "I sat away back in the corner of the chamber, thinking, thinking how all the world was open to men, how every opportunity for service to the State, for personal achievement, was theirs; while women were disqualified to act... upon any important public matter."¹⁵ Discouraged, Foltz resigned to "never again invade the presence of the Moot court... or any court."¹⁶ However, after confiding her dispirit to her father, he launched into an eloquent speech which cemented Foltz's "resolution to struggle on and help to change the old and crude system which still oppressed the women of our day."¹⁷ The San Jose law club later disbanded as a result of contention surrounding the admission of a woman.¹⁸

With every rejection, Foltz's resolve grew; however, one final obstacle stood between Foltz and a legal career – section 275 of California's Code of Civil Procedure. This statute contained a male specification for bar admittance.¹⁹ Anticipating this statute as a potential point of contention, Foltz drafted the "Woman Lawyer's Bill" in response, which amended the existing

¹⁵ Clara Foltz, "Struggles and Triumphs of a Woman Lawyer," *The New American Woman* 1, no. 11 (December 1916): 8.

¹⁶ Clara Foltz, "Struggles and Triumphs of a Woman Lawyer," *The New American Woman* 1, no. 12 (January 1917): 26.

¹⁷ *Ibid.*

¹⁸ Barbara Allen Babcock, *Woman Lawyer: The Trials of Clara Foltz* (Stanford, CA: Stanford University Press, 2011), 21.

¹⁹ 1851 Cal. Stat., ch. 1, § 275, at 64 in Newmark's Code of Civil Procedure, 1880.

specification of "male" to include "any citizen or person resident of this state."²⁰ Foltz's "Woman Lawyer's Bill" reads as follows: "Any citizen or person resident of this state who has bona fide declared his or her intention to become a citizen in the manner required by law, of the age of twenty-one years, of good moral character, and who possesses the necessary qualifications of learning and ability, is entitled to admission as attorney and counselor in all the Courts of this state."²¹ In 1878, Barney Murphy, former mayor of San Jose and current senator, proposed the Woman Layer's Bill to the upper house.²² As Foltz reports, "the bill met with a storm of opposition such as had never been witnessed upon the floor of a California Senate."²³

Despite brutal opposition, Foltz and others like Laura De Force Gordon relentlessly lobbied for votes toward their bill. Addressing the progress of the bill's approval, Foltz elicits the following response:

I coaxed, I entreated, I would have reasoned had they been reasonable men; I almost went down on my knees before them, asking for the pitiful privilege of an equal chance with men to earn an honest living in a noble profession! Think of it! They made laws against vagrancy, they urged laws against tramps, they complained loudly of prevalent idleness—and yet, I had to beg—not for a living, but to be allowed to earn a living—had to beg it as a privilege—and the bill passed by one majority in a full Senate.²⁴

The Woman Lawyer's Bill passed the California Senate in January 1878. Following a hard-won victory, Foltz reported "the law amended, the legislature having adjourned, I returned at once to San Jose and began to prepare for a career in the law."²⁵ However, her struggles to enter the legal profession were only beginning.

²⁰ Ibid.

²¹ 1878 Cal. Stat., ch. 600, §§ 1–3, at 99.

²² Clara Foltz, "Struggles and Triumphs of a Woman Lawyer," *The New American Woman* 1, no. 7 (August 1916): 11.

²³ Ibid.

²⁴ Ibid.

²⁵ Clara Foltz, "Struggles and Triumphs of a Woman Lawyer," *The New American Woman* 1, no. 9 (October 1916): 11.

Once back in San Jose, Foltz diligently prepared for her bar examination by studying the hallmark works of Blackstone and Kent.²⁶ After a rigorous course of study, Foltz applied for admission to the bar at the court's first sitting in September. Her test would entail a three-hour oral examination before a committee of three lawyers; three hours was twice the customary amount. Foltz's mentor C. C. Stephens would sit on the board of examiners; as well as two others D. W. Herrington, a prominent San Jose attorney, and Francis Spencer, the man who refused to accept Foltz into an apprenticeship at his law firm.²⁷ Clara Foltz passed the lengthy exam unanimously. *San Jose Weekly Mercury* reported that "The Committee...subjected her to a thorough test of her legal knowledge...and unanimously certified to her entire fitness for advancement."²⁸ On September 5, 1878, Clara Foltz took the oath and became California's first woman lawyer – the "Portia of the Pacific."

On January 9, 1879, Foltz registered for Hastings College of the Law in San Francisco; she paid the \$10 registration fee and attended the term's opening lectures.²⁹ Recalling her first day of classes, Foltz reflects the following: "The first day I had a bad cold and was forced to cough. To my astonishment every young man in the class was seized with a violent fit of coughing. You would have thought the whooping cough was a raging epidemic among the little fellows."³⁰ The next day, Foltz was barred from entering the law school by the janitor, who simply stated, "This is a law school. I'm ordered not to let you come in here."³¹ As Foltz pressed

²⁶ Babcock, *Woman Lawyer*, 30.

²⁷ Babcock, "Clara Shortridge Foltz: First Woman," 1261.

²⁸ *San Jose Weekly Mercury*, Sept. 12, 1878, at 3. In *Ibid.*

²⁹ Babcock, "Clara Shortridge Foltz: First Woman," 1264.

³⁰ Clara Foltz, "Struggles and Triumphs of a Woman Lawyer," *The New American Woman* 1, no. 1 (November 1915); in Babcock, "Clara Shortridge Foltz: First Woman," 1265.

³¹ Clara Foltz, "Struggles and Triumphs of a Woman Lawyer," *The New American Woman* 2, no. 6 (July 1917): 18.

for further explanation, the janitor replied "Because you are a woman—and them's my orders."³² Undeterred, Foltz resolved to enter Hastings School of Law "peaceably if I could, but forcibly if I must."³³ Foltz appealed to Judge Serranus Hastings, the school's founder and first dean, and found him nearby in his law office. After pleading a compelling case, Judge Hastings provided Foltz with a note, guaranteeing her entry until the Board of Directors decided what to do.³⁴ During their encounter, Judge Hastings also warned that her admission was only permitted with the provision that if she proved distracting to the male students, provisions would have to be made to keep her out of sight.³⁵

Despite her paper of permission, Foltz received another letter at the close of her third day at law school signed by the Registrar. The letter revealed that the Board of Directors at Hastings had decided "women should not be admitted to Hastings Law School."³⁶ Babcock theorized that "the founders and students of Hastings resented a woman's intrusion on their enterprise, feeling that her very presence made it less impressive...others feared the competition, and some perhaps guessed correctly that women would draw all the public attention."³⁷ Foltz, accompanied by Laura De Force Gordon, proceeded to challenge Hastings for entrance into their law school throughout February of 1879; Foltz applied to the 4th District Court in San Francisco through a writ of mandamus.³⁸ Within her written appeal, Foltz claimed that she was "wrongfully excluded from Hastings College of the Law, since she met all University of California requirements for

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Babcock, *Woman Lawyer*, 43.

³⁸ Clara Foltz, "Struggles and Triumphs of a Woman Lawyer," *The New American Woman* 2, no. 6 (July 1917): 19.

admission.”³⁹ Both students continued to audit their lectures, until physically barred from attending.⁴⁰

On February 24, 1879, Clara Foltz received her day in court. During *Foltz vs. the Trustees of the Hastings Law School*, Hastings was represented by four prestigious leaders of the San Francisco bar; Foltz represented herself.⁴¹ As petitioner, Foltz argued first, defending herself for “the crime of being a woman.”⁴² She contended that Hastings was a branch of the University of California, which by law was open to all female students. Citing the recent adoption of the Woman Lawyer’s Bill, Foltz continued to state that admission decisions could not violate public policy and further asserted that discrimination against women would violate this statute. Laura De Force Gordan also presented her argument at Holtz’s hearing; however, her writ of mandamus was rejected. Opposing counsel presented the following argument: “She is a WOMAN...she cannot be expected to reason: God Almighty decreed her limitations, but you can reason, and you must use your reasoning faculties against this young woman who will lead you by her sympathetic presentation of this case reeking with the vilest guilt, to violate your oaths and let a guilty man go free.”⁴³ In response to these assertions, Foltz calmly retorted her opponent with both intellect and sarcasm: “Counsel tells you that I am a woman. I wonder that the planets did not stand still in their courses and rivers cease to run to the sea at the announcement of this startling discovery. I am amazed that his Honor did not faint upon the bench and that you gentlemen of the jury have survived this awful shock to your nervous

³⁹ Susan L. Brandt, Patience Milrod, and Mortimer D. Schwartz, “The Battles of Clara Shortridge Foltz” *California Defender* 1, no. 1 (Spring 1985): 4.

⁴⁰ Babcock, *Woman Lawyer*, 44.

⁴¹ Clara Foltz, “Struggles and Triumphs of a Woman Lawyer,” *The New American Woman* 2, no. 7 (August 1917): 22.

⁴² Clara Foltz, “Struggles and Triumphs of a Woman Lawyer,” *The New American Woman* 2, no. 12 (January 1918): 10.

⁴³ *Ibid.*

systems."⁴⁴ After pleading guilty to her "crime," Foltz defends her position as both a woman and a lawyer.⁴⁵ Ten days after the oral arguments, Judge Morrison of the California Supreme Court delivered his opinion. Citing the recent Woman Lawyer's Act, the judge sided with the women and ordered their immediate admission. Foltz had won.⁴⁶

"My name was on every tongue," Foltz recalled, "the daily papers and the monthly magazines were filled with flattering mention of my exploits."⁴⁷ Indeed, her victory had won Foltz great renown. Foltz reminisced: "They called me the 'lady lawyer,' a pretty soubriquet which did much for me, for of course to be worthy of so dainty a title I was bound to maintain a dainty manner as I browbeat my way through the marshes of ignorance and prejudice which beset me on every hand."⁴⁸ Foltz achieved great success with this endeavor; her actions paved the way for other female lawyers to pursue careers in the legal realm.

In addition to her advances for social equality, Clara Shortridge Foltz pioneered the concept of the public defender. Foltz initially voiced her theories regarding the concept of the public defender during a suffrage convention for the Women's National Liberal Union in 1890. As the lead speaker of the meeting, Foltz affirmed her advocacy for public defenders asserting that law should function as both "a shield as well as a sword."⁴⁹ In defense of her stated position, Foltz addressed several wrongdoings committed by Public Prosecutors in the name of justice; she states the following: "...when I remember that in the face of the fact that the men who are

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Babcock, *Woman Lawyer*, 49-54.

⁴⁷ Clara Foltz, "Struggles and Triumphs of a Woman Lawyer," *The New American Woman* 1, no. 3 (April 1916): 11.

⁴⁸ Clara Foltz, "Struggles and Triumphs of a Woman Lawyer," *The New American Woman* 1, no. 9 (October 1916): 11.

⁴⁹ Clara Foltz, "Public Defenders – Rights of Persons Accused of Crime – Abuses Now Existing," *Albany Law Journal* 48, no. 13 (23 September 1893): 250.

prosecuted are often men without means charged with crimes of which oftentimes they are innocent, I cannot but think it is most important that some defence [sic] for them should be given by the State.”⁵⁰ During that meeting, Foltz fielded questions regarding California’s representation laws and received opposition in response to the proposed position of public defender, predominantly from males.⁵¹ These criticisms also challenged Foltz’s “sympathy for criminals.”⁵² Despite these critiques, *The Washington Post* reported that Foltz “gained the sympathy of the audience, and her strong words frequently called out bursts of applause.”⁵³ From its conception, the concept of public defender received both voracious support and evident criticism.

On October 15, 1892, the *San Francisco Chronicle* reported the following: “In 1892, Foltz lost a hard-fought case in which the charge was embezzlement.”⁵⁴ The case referenced, *People v. Wells* only cemented Foltz’s resolve for the necessity of a government-funded public defender by affirming her picture of a failed prosecutor. Despite an exceptional oratory performance in trial, complete with an intuitive cross-examination and a compelling summation, Foltz lost the case due to the prosecutor’s misconduct.⁵⁵ With her recent defeat of *People v. Wells* in mind, Foltz composed the “Duties of District Attorneys in Prosecutions,” a passionate,

⁵⁰ Woman's National Liberal Union, Clara Foltz in “Excerpt from Woman's National Liberal Union, Report of the Convention for Organization, Feb. 24-25, 1890, Willard Hall, Washington, D.C.,” (Syracuse, N.Y.: Masters and Stone, 1890): 76.

⁵¹ *Ibid.*, 77.

⁵² *Ibid.*

⁵³ “A ‘Liberal’ Platform,” *Washington Post*, 26. February 1890, 6.

⁵⁴ “Wells Convicted,” *San Francisco Chronicle*, October 15, 1892, 7.

⁵⁵ Foltz won her appeal for the *Wells* case. Forty years after winning her appeal, the U.S. Supreme Court *People v. Wells* became first major case reversing for prosecutorial misconduct. Barbara Allen Babcock, *Woman Lawyer: The Trials of Clara Foltz* (Stanford, CA: Stanford University Press, 2011), 302-305.

yet professional outline detailing the proper ethics, behavior, and duty of prosecutors.⁵⁶ Foltz outlines the duty of the prosecution as follows:

Counsel for the prosecution are not, or at least ought not to be, advocates for the party on the record, struggling for a verdict, but they are, and ought to be, ministers of public justice, aiding the court in a solemn investigation of crime. Their highest duty is laying bare the truth, whatever it may be. 1. There is no obligation to convict. It is as much their duty to protect the innocent as to punish the guilty. The state is as much interested in saving the innocent as in convicting the guilty. 2. District attorneys representing the state ought to be equally so... The spirit of justice ought to govern their conduct rather than the pride of contest and the lust for gold; and courts ought to so have the confidence.⁵⁷

Foltz advances in her analysis to highlight the abuses of various prosecutors, citing over two-hundred cases of trial misconduct. Her research into these cases of misconduct, combined with her first-hand observation of the injustice affirmed her resolution to advocate for the public defender.

In 1893, Clara Foltz attended the Chicago World's Fair, where she was elected to speak in the Congress of Jurisprudence and Law Reform. Her subject was the public defender and her speech was titled "Public Defenders – Rights of Persons Accused of Crime – Abuses Now Existing." During this speech, Foltz boldly asserted that "the remedy for many of the evils of the present criminal court practice lies in the election or appointment of a public defender."⁵⁸ Foltz continued to argue that "[f]or every public prosecutor there should be a public defender chosen in the same way and paid out of the same fund."⁵⁹ Employing a constitutionally-based argument, Foltz emphasized that defense of the innocent includes the accused: "The innocent are, and of right ought to be, the special care of the law, and let it be remembered that in the eyes of the law

⁵⁶ Clara Foltz, "Duties of District Attorneys in Prosecutions," *Criminal Law Magazine and Reporter* 18, no. 4 (July 1896): 415-26.

⁵⁷ *Ibid.*, 415.

⁵⁸ Clara Foltz, "Public Defenders – Rights of Persons Accused of Crime – Abuses Now Existing," *Albany Law Journal* 48, no. 13 (23 September 1893): 249.

⁵⁹ *Ibid.*

every man is innocent until proven guilty, and the presumption of innocence goes with him and follows him through every step of the trial till the verdict is rendered.”⁶⁰ Barbara Babcock summarizes the romantic appeal behind the public defender proposal with an idyllic portrayal of “the innocent man walking free into the sunset.” Ultimately, Foltz contended that the defendant’s right to counsel was constitutionally protected and that the defense lawyer, as an extension of the state, was bound by the same standards as the state.⁶¹

Pleading the audience to rally in support of public defense, Foltz sought to utilize her platform to amass public support and media publicity for the public defender movement. Barbara Babcock notes in “Women’s Rights, Public Defense, and the Chicago World’s Fair” that Foltz “sought to arouse and inform these influential men about conditions in the baseline criminal courts...using a precious opportunity for personal advancement, on the best platform of her life.”⁶² However, her debut of the public defender was overshadowed by Professor James Bradley Thayer, who “urged restraint in constitutional review of legislative decisions.”⁶³ While obscured, Foltz submitted her argument for publication with the *Albany Law Journal*; her work was published in their September edition in 1893. Foltz continued her public defender efforts with the publication of two law review articles: “Duties of District Attorneys in Prosecutions” in *The Criminal Law Magazine* in 1896 and “Public Defenders” in the *American Law Review*. Both publications launched her statutory campaign in 1897.⁶⁴

⁶⁰ Ibid., 248.

⁶¹ Barbara Allen Babcock, *Woman Lawyer: The Trials of Clara Foltz* (Stanford, CA: Stanford University Press, 2011), 310.

⁶² Babcock, Barbara. “Women’s Rights, Public Defense, and the Chicago World’s Fair.” *Chicago-Kent Law Review* 87, no. 2 (March 22, 2012): 497.

⁶³ Barbara Allen Babcock, *Woman Lawyer: The Trials of Clara Foltz* (Stanford, CA: Stanford University Press, 2011), 308.

⁶⁴ Addressing *The Criminal Law Magazine*, “Foltz was the first woman lawyer to publish in its pages.” In Babcock *Woman Lawyer*, 313.

Following the publication of "Duties of District Attorneys in Prosecutions," Foltz composed a draft of a bill establishing the office of public defender – the Foltz Defender Bill. In an effort to advance the notoriety of her platform quickly, Foltz endeavored to present and defend her bill in the New York capital. Babcock notes how Foltz relied on her previous lobbying experience in order to obtain the legislative attention; her steps to success include the following: "present a well-drafted bill, write up the supporting arguments, distribute press packets in advance, milk the publicity by taking the bill personally in hand, lobby individuals, and seek a public hearing."⁶⁵ While effectively navigating the complex world of New York policies, Foltz entered Albany unaccustomed to the extremes of New York politics and unconnected to the major political characters that dominated the lobbying landscape.⁶⁶ Recognizing the futility of lobbying in Albany, Foltz returned to writing and composed "Public Defenders." The opening lines of this article reported that "[l]ast winter there were introduced in the legislatures of more than a dozen States of the Union, bills to provide for a public defender whose duty it should be to advise and defend those accused of crime, and to represent those charged with being lunatic or insane."⁶⁷ These bills were reportedly well-received and well-published.⁶⁸ Foltz concluded her statutory campaign in New York following the publication of her second article.

While Foltz asserted that half of the papers which assessed the Foltz Defender Bill were positive, many newspapers also negatively reported on the concept of the public defender.⁶⁹ For

⁶⁵ Barbara Allen Babcock, *Woman Lawyer: The Trials of Clara Foltz* (Stanford, CA: Stanford University Press, 2011), 313.

⁶⁶ *Ibid.*, 315, 317.

⁶⁷ Clara Foltz, "Public Defenders," *American Law Review* 31 (May-June 1897): 393.

⁶⁸ *Ibid.*

⁶⁹ "Some 200 papers, so far as the writer knows, mentioned and explained the measure. Of those making editorial comment, just one-half were favorable to it; forty per cent were opposed, and about ten per cent thought some less expensive remedy might be devised." *Ibid.*

example, the *New York Daily Tribune* rationalized that “it would be a ridiculous thing for the State to prosecute with one hand and defend with the other the violation of its own statutes.”⁷⁰ Despite sometimes harsh criticisms, Foltz continued to advance the public defender nationally after returning to San Francisco. In “‘Sister of Men’ has Fought Battles of Women – Now Running for Judge,” *The Tacoma Times* boasted that Foltz introduced the bill for Public Defenders in sixteen states.⁷¹ Jennie Van Allen reported in “The Fight for a Public Defender: A Sketch of Clara Shortridge Foltz” that Foltz personally introduced the Foltz Defender Bill in thirty-two states by 1912.⁷² Foltz continued to advance the defender bill and her efforts would prove successful by 1913.

Foltz’s appointment to the Los Angeles District Attorney’s Office in 1910 provided another platform for her to voice her public defender rhetoric. In 1913, the first public defender office was established in Los Angeles, as “an outgrowth of the Progressive movement which had found root in early California.”⁷³ In 1919, Reginald Herber Smith published the first history of the public defender movement. In *Justice and the Poor*, Smith reports that since 1914 “floods of articles in both legal and popular magazines” addressing the public defender have been published.⁷⁴ However, as Babcock notes in “Inventing the Public Defender,” Smith’s portrayal of the public defender within the progressive movement differs slightly from the Foltzian public

⁷⁰ “Public Defenders.” *New York Daily Tribune*. January 25, 1897, 6.

⁷¹ “‘Sister of Men’ has Fought Battles of Women – Now Running for Judge,” *The Tacoma Times*. July 12, 1913, 8.

⁷² Jennie Van Allen, “The Fight for a Public Defender: A Sketch of Clara Shortridge Foltz,” *West Coast Magazine* 13 (October 1912): 44.

⁷³ Barbara Allen Babcock, “Inventing the Public Defender,” *American Criminal Law Review* 43, no. 4 (Fall 2006): 1274.

⁷⁴ Reginald Heber Smith, *Justice and the Poor: A Study of the Present Denial of Justice to the Poor and to the Agencies Making More Equal their Position before the Law: With Particular Reference to Legal Aid Work in the United States* (New York: Carnegie Foundation for the Advancement of Teaching, 1924), 116.

defender model.⁷⁵ While Foltz emphasized the need for a strong, reliable defense counsel, Smith revealed that the progressive model advocated for a complete reform to the criminal justice system: "An examination of this literature reveals the fact that the defender idea, in last analysis, is nothing more revolutionary than a plea for the extension of what is best in the assignment system and for reorganization along modern lines of efficiency."⁷⁶ Babcock defines these differences as "competing visions – individual advocate versus Progressive public servant."⁷⁷ In support of Foltz's concept of the public defender, the voluntary defenders established a system of "private lawyers who donated their services for adversarial individual representation."⁷⁸ Foltz never commented on the progressive model of the public defender; or, if she did, that information was discarded upon her death.⁷⁹ Babcock speculates that perhaps Foltz agreed with this shift, but emphasizes that the longtime advocate for public defenders undoubtedly rejoiced for the establishment of the public defender as a working institution.⁸⁰

Foltz's interests in feminist activities, social reform, and the public defender system often overlapped.⁸¹ Reporting in 1917, Foltz states that "I was bent on correcting things generally wherein women were concerned (and where please are they justified in being unconcerned) and incidentally I had quite a few reforms up my sleeve so to speak which were aimed directly for the general welfare of men."⁸² Within the 1890s, Foltz worked closely with the Women's

⁷⁵ Babcock, "Inventing the Public Defender," 1274.

⁷⁶ Smith, *Justice and the Poor*, 116.

⁷⁷ Babcock, "Inventing the Public Defender," 1277.

⁷⁸ *Ibid.*, 1278. The Voluntary Defenders later became known as the Legal Aid Society. Louis Fabricant, "Voluntary Defenders in Criminal Cases," *The Annals of the American Academy of Political and Social Science* 205 (1939): 24-29.

⁷⁹ Susan L. Brandt, Patience Milrod, and Mortimer D. Schwartz, "Clara Shortridge Foltz: Pioneer in the Law," *Hastings Law Journal* 27, no. 3 (January 1976): 564.

⁸⁰ Babcock, "Inventing the Public Defender," 1279.

⁸¹ Brandt, Milrod, and Schwartz, "Clara Shortridge Foltz: Pioneer in the Law," 558.

⁸² Clara Foltz, "Struggles and Triumphs of a Woman Lawyer," *The New American Woman* 1, no. 12 (January 1917): 26.

Christian Temperance Union through lobbying and publishing words advocating women's suffrage. As previously emphasized, Foltz's lobbying efforts dramatically enhanced her oratorical ability, which would prove beneficial during her participation in her second panel at the 1893 World's Fair – the World's Congress of Representative Women. Foltz's panel, also titled "The Woman of the Century," addressed a variety of subjects: "One day she was speaking spontaneously at a temperance meeting, and the next she was describing the poor living conditions of Italian immigrants in San Francisco."⁸³ The discussion and debate which occurred within the Chicago World Fair prompted subsequent suffrage reforms in the following years and sparked an increase in support for the women's rights movement.

In addition to her writings on the public defender, Foltz engaged with a myriad of publications involving women's equality. In one of her earliest submissions for the *Albany Law Journal*, Foltz addressed the subject of women and the death penalty by responding to the question "Should Women be Executed?" In answer to this question, Foltz responds with a resounding affirmative; Foltz argued the following: "Crime has no sex. It seizes, controls and impels men and women alike. If a man needs killing for it, so does a woman. If crime is a disease, it still attacks both sexes in the same way. If we must kill the man to cure the disease, the woman's death is equally necessary."⁸⁴ Acknowledging that some suffragists have contended that women are not amenable to laws they did not create, Foltz reports that that "position is utterly defenceless [sic] and vicious."⁸⁵ Within this article, Foltz establishes a precedent for equivocal

⁸³ Babcock, *Woman Lawyer*, 262.

⁸⁴ Clara Foltz, "Should Women be Executed?" *Albany Law Journal* 54, no. 20 (November 14, 1896): 310.

⁸⁵ *Ibid.*

equality between men and women, and affirms that "equality before the law is the spirit of our Constitution."⁸⁶

While justly admitting that women should suffer the same punishment as men for the same crime, Foltz also expressed an optimistic and prophetic outlook on the future of women's rights. Reflecting on her struggle to enter the law profession, Foltz declares the following: "I want to see women grow broader and nobler in thought, word and deed, and to the end that she may, I would open every avenue from the rocking of the cradle and singing lullabys [sic] to the highest place in science, literature or government."⁸⁷ Foltz began this crusade in 1880 when she ardently lobbied for a bill that would enable women to vote in state school elections. While the bill failed, Foltz's outspoken efforts established in the public and earned her the election as president of the California Women Suffrage Association. Foltz's advocacy cast her as a target for popular press; the San Francisco Saturday magazine, *Wasp* published a report on a Suffrage Association meeting in 1881 entitled "The Sexless Impracticables." The article remarked that Foltz presided over the meeting like a little man: "She has a fin baritone voice and a pleasant pug nose, and wore a single red rose in the hip pocket of her trousers."⁸⁸ Foltz's work within the suffrage movement continued throughout her lifetime; and, in 1910, she assumed the position of president of the Los Angeles Votes for Women Club.⁸⁹ In 1911, Foltz drafted a suffrage amendment which read as follows: "Women citizens of this state who comply with election laws and are twenty-one years old shall be entitled to vote at all elections."⁹⁰ In November of that

⁸⁶ Ibid.

⁸⁷ Clara Foltz, "Struggles and Triumphs of a Woman Lawyer," *The New American Woman* 1, no. 10 (November 1916): 12.

⁸⁸ *7 San Francisco Wasp*, September 16, 188, at 183, in Brandt, Milrod, and Schwartz, "Clara Shortridge Foltz: Pioneer in the Law," 559.

⁸⁹ Brandt, Milrod, and Schwartz, "Clara Shortridge Foltz: Pioneer in the Law," 560.

⁹⁰ S.F. Call, January 3, 1911, at 2, col. 2 in Brandt, Milrod, and Schwartz, "Clara Shortridge Foltz: Pioneer in the Law," 560.

same year, California adopted a similar amendment, guaranteeing women's suffrage within California.

Foltz championed women's suffrage and encouraged others to join the cause within her publication *The New American Woman*, a monthly magazine which she edited and published between 1916 and 1918. Reporting on the development of this publication, *Los Angeles Times* remarked that Foltz's work reveals "a refreshing statement of policy that it 'will not be after the manner of ordinary women's tiresome publication, but a reliable review, a brief abstract of our day and time – an invigorating stimulant for the gone-to-seed.'"⁹¹ In the magazine's opening issue, Foltz formulated a statement of purpose, detailing "What We Stand For"; in this column, Foltz urged that "women must have a voice in the nation's affairs; they must acknowledge no political of other limitations; they must prepare to think intelligently upon great matters of state, and cease to regard themselves as a second-rate power..."⁹² Foltz demonstrated her commitment to political engagement in 1930 when she ran for governor of California. While Foltz was defeated in this endeavor, many newspapers covered her candidacy, such as the *New York Times* which reported "Enters California Race: Clara Shortridge Foltz Seeks Republican Gubernatorial Nomination."⁹³

Within *The New American Woman*, Foltz maintained a column entitled "The Struggles and Triumphs of the Woman Lawyer" in which she recorded her major life achievements in the legal realm and for women's rights. In addition to the autobiographical nature of this editorial, Foltz employed this platform as a tool to encourage other women to advance in the legal

⁹¹ "New Magazine for Women's Cause: Los Angeles Publication with National Spirit," *The Los Angeles Times*, (February 4, 2916), 1.

⁹² Clara Foltz, "What We Stand For," *The New American Woman*, February 1916, at 3.

⁹³ "ENTERS CALIFORNIA RACE: Clara Shortridge Foltz Seeks Republican Gubernatorial Nomination," *New York Times*, New York (May 30, 1930): 35.

profession and continue the fight for equality. Foltz implored: "And if any of my young lady friends want to study law and some anti tells you nobody will marry you if you do, don't you believe it. It isn't so. You will be all the better for knowing something of the law, and infinitely more in demand by any young man worth having."⁹⁴ By advocating for women to enter the legal profession, Foltz continued to pave the path for female lawyers, even after she first achieved victory for herself against Hastings.

While Foltz does successfully record portions of her life experiences in her publication the *New American Woman*, her column alone does not adequately portray both the accomplishments and personal perspectives of Foltz. Additionally, there are many gaps in scholarship addressing the life of Foltz. Following Foltz's death, Virginia Foltz Gatron, the only surviving child, sold all of her mother's furniture and destroyed her personal papers.⁹⁵ Furthermore, secondary scholarship addressing the life and legacy of Foltz is minimal, limited mainly to encyclopedia entries or short, bibliographic essays. Modern scholarship is also restricted largely to the research and writings of Barbara Babcock. While Babcock has devoted much painstaking research into exploring the work and influence of Foltz, she remains one of the only historians to answer Foltz's hope for a biographer to compile her life into a book:

It is to be regretted that neither time nor opportunity for writing are available, wherein to develop and intensify the facts, since the impression has gone forth that these pages constitute the advance sheets of an autobiography soon to appear in book form. Such was not the purpose, nor should it be; for as I regard it, biography should not only relate truthfully the leading events of the life of the individual, but it should be written with care as to arrangement and with graceful if not elaborate allusion to contemporaries, whose intellectual grandure [sic] illuminates the world about us...⁹⁶

⁹⁴ Clara Foltz, "Struggles and Triumphs of a Woman Lawyer," *The New American Woman* 1, no. 6 (July 1916): 14.

⁹⁵ Brandt, Milrod, and Schwartz, "Clara Shortridge Foltz: Pioneer in the Law," 564.

⁹⁶ Clara Foltz, "Struggles and Triumphs of a Woman Lawyer," *The New American Woman* 2, no. 2 (March 1917): 23.

While Barbara's numerous articles and books on Foltz effectually encapsulate her political career and social advancements, additional scholarship is merited due to the remarkable accomplishments of Foltz.

At the conclusion of her life, Foltz lamented over missed opportunities with her children: "The feeling that possesses me as I write is that of having lost more for myself than I have gained for all women...I say truly, that all the pleasure of my young motherhood I sacrificed for woman's cause."⁹⁷ Foltz indeed sacrificed much in her pursuit of equality and advocacy for women's rights. Reflecting on her life and legacy, Foltz recalls the following: "Everything in retrospect seems weird, phantasmal, and unreal. I peer back across the misty years into that era of prejudice and limitation, when a woman lawyer was a joke, an executrix or administratrix a sort of *lusus naturae* [sic]; but the story of my triumphs will eventually disclose that though the battle has been long and hard-fought it was worth while."⁹⁸ Clara Shortridge Foltz led an extraordinary life, matched only by her unparalleled legacy to women's advancement.

⁹⁷ Clara Foltz, "Straggles and Triumphs of a Woman Lawyer," *The New American Woman* 3, no. 2 (March 1918): 9.

⁹⁸ *Ibid.*

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