

BARBARA ANN ATWOOD: A TRIBUTE

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On the occasion of Justice Harry Blackmun's retirement, Justice Souter made the following remark: "I dissent!"

On the occasion of Mary Anne Richey Professor Barbara Ann Atwood's retirement, I likewise dissent.

Here's why:

It matters much to the University of Arizona James E. Rogers College of Law that her cranberry-colored car is parked (slightly askew) in the parking lot. That her office light is on. That her office door is open.

That, after five years on the faculty at the University of Houston Law Center, she came back home in 1986 and has been a big part of our Arizona Law "DNA" ever since.

Since her return, the College of Law has rightly bestowed on Professor Atwood nearly every honor it confers for outstanding contributions to students, to faculty, and to the profession. She is widely recognized as a brilliant, ethical, and creative professor who has devoted enormous time and energy to improvement of our laws and legal system. She is respected by her academic peers and by practitioners for her sound judgment and her mastery of a wide range of legal subjects. (Indeed, she is a superb candidate for a federal or state court judgeship, where she would apply her combination of broad gauged expertise, wisdom, analytical rigor, and fairness to our most urgent legal disputes.) She also is a senior colleague to whom junior colleagues in particular go for sound advice and personal support, and on whom our students rely for both. One of her young faculty mentees, Professor David Marcus, has described her as a "fairy tale mentor." Students describe her in similar, magical terms.

In this Tribute, I will elaborate briefly on the many ways in which Professor Atwood has made the College of Law better in every respect.

First, Professor Atwood's work as a scholar has mattered to the College of Law.

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Professor Atwood is wicked smart. (Former Dean Charles E. Ares recently described her as one of the smartest students he ever taught in his 50 years of teaching, at several schools.) She is a prolific author, having penned two important books—*A Courtroom of Her Own: The Life and Work of Judge Mary Anne Richey*,¹ a biography about the first female federal district court judge in Arizona, and *Children, Tribes and States: Adoption and Custody Conflicts Over American Indian Children*.² Her work on Judge Richey is an important contribution to American judicial history, as well as a sensitive rendering of the life of a complex and path-breaking jurist. Professor Atwood is one of the late Judge Richey’s former law clerks (1976–1978), and offers a nuanced narrative of Richey’s upbringing, legal training, professional life, and personal life that displays Atwood’s deep knowledge of Arizona and of the multiple ways in which “first women” in law, and in other fields, confront sometimes unreasonable, and often conflicting, expectations. It also brings to bear the normative and empirical issues raised in feminist scholarship that speculate on whether there is, in fact, a “woman’s voice” in judging.

Her book on children, tribes, and states draws upon Atwood’s decades of nationally influential work illuminating and interpreting the ornate web of procedural, family law, and indigenous peoples law and policy that arises when tribal laws and customs interact with state and federal laws. Few legal scholars in any substantive area appreciate the significance of tribal sovereignty as an aspect of the mosaic of governments within the United States. Professor Atwood not only sees this significance; she skillfully analyzes its implications across several bodies of law in ways that demonstrate remarkable wisdom and depth. Moreover, she drew in this book on her hands-on lawyering experience representing Carol Redcherries, a Northern Cheyenne woman and former tribal judge who sought to enforce a decree of the Northern Cheyenne tribal court that had awarded her custody of her granddaughter. Professor Atwood was successful in her representation of Redcherries, but later reflected on the ways in which the victory depended on making arguments about the similarities between the tribal code and state court principles. In *Children, Tribes and States*, she worries that when sameness is respected in these proceedings rather than cultural differences, this choice risks the loss of “unique concepts of native law”³ and can ultimately efface the culture itself. Yet—in true Atwood fashion—she also acknowledges the competing concerns of state court judges⁴ who argue, in good faith, that the best interests of the child must remain important elements of a decision whether to deny transfer of a matter involving the Indian Child Welfare Act of 1978.⁵

It is with both sets of concerns in mind that she examines the jurisdictional and substantive disagreements between tribal courts and state courts

1. BARBARA ANN ATWOOD, *A COURTROOM OF HER OWN: THE LIFE AND WORK OF JUDGE MARY ANNE RICHEY* (1998).

2. BARBARA ANN ATWOOD, *CHILDREN, TRIBES, AND STATES* (2010).

3. *Id.* at 6 (quoting Christine Zuni, *Strengthening What Remains*, 7 KAN. J.L. & PUB. POL’Y 17, 24 (1997)).

4. *Id.* at 7–8.

5. Indian Child Welfare Act of 1978, Pub. L. No. 95-608, 92 Stat. 3609 (codified as amended in scattered sections of 25 and 43 U.S.C.).

in litigation over the placement of American Indian children. Because she considers all of these perspectives, the book offers an especially rich and compelling account of the relevant legal and cultural concerns at stake in these disputes.

In addition to her books, Professor Atwood has written over 30 law review articles, and delivered countless academic, professional, and community addresses. Her intellectual contributions also now include consistently insightful commentary in the modern e-salon known as “list serves.”

What shines in all of this writing and speaking—and in all else she does—is how four, pillar values inform her thinking and actions:

1. Intellectual integrity. Her conclusions go where the evidence leads; they do not drive the evidence. Where compelling arguments against her conclusions exist, Professor Atwood sets them out fairly, even as she defends her own outcomes vigorously.
2. Empathy. The impressive range of subject matter she commands, and the many cultural inflections relevant to the issues she addresses, reflect Atwood’s stunning capacity to grasp and express multiple viewpoints fully and imaginatively. She sees injustice in circumstances and in worlds far beyond her own, and she brings it up to the light with head, heart, and voice engaged.
3. Precision. Professor Atwood’s scholarship demonstrates her strict lawyerly and scholarly discipline. The work attends to the most granular procedural and substantive details, as well as to the larger themes of justice. In particular, she elaborates on the critical importance of procedural regularity, especially for those whose voices will otherwise go unexpressed and unheard.
4. Civility. The work is consistently respectful of others’ viewpoints, even viewpoints that the work emphatically rejects.

In short, she sets the intellectual and the scholarly ethics bars high, has mastered the intricacies of law and policy that cross complex legal and cultural boundaries, and addresses issues that really matter—perhaps especially to regions like ours in which tribal governments are such important actors in the mosaic of sovereigns that govern here. The College of Law is justly proud of its international and national leadership role in the arena of indigenous peoples law and policy, and Professor Atwood has long been an important part of the team of scholars here who have established the University of Arizona’s reputation as a global leader in this field.

Second, Professor Atwood’s work as a teacher and mentor has mattered to the College of Law.

The College of Law has long placed tremendous emphasis on excellence in teaching and mentoring, and we have a national reputation for genuine collaboration with our students. Long before other schools began to claim a “small section experience,” the College of Law paired first-year professors with students in classes of only 25, and has kept the overall class size small (150 per class) to

assure a tightly knit professional community. We also sponsor multiple programs that unite professors and students on significant research, outreach, legal representation, and other projects; we co-author work with them; and in multiple ways, we strive to offer a genuine graduate school experience that assists students in the transition to full professional autonomy.

This student-centered culture did not occur by accident or default; it was consciously created and developed, over many years, by faculty leadership. Key colleagues modeled the combination of professorial talent and ethics that put student development at the fore, and insisted on College of Law policies and practices that honored and elevated student intellectual participation. Professor Atwood has been, in this defining aspect of the College of Law, a leader *par excellence*.

She was a devoted small section teacher for decades, where she spent endless hours advising students, reading and critiquing student writing, and otherwise patiently and skillfully initiating the “Atwood Section” students into the foreign world of law. She not only taught her students; she helped to transform them.

In 2004, she received the Distinguished Graduate Teacher/Mentor Award, a University-wide honor. Included in the nomination packet were comments from her student-teacher evaluations (which are done anonymously), as well as heartfelt letters from alumni on her behalf. Typical comments were as follows:

- “Simply a wonderful instructor. She is warm, personable, brilliant, and . . . allows [students] to learn without feeling intimidated. First-year students who are not assigned to her are really missing out.”
- “My favorite class.”
- “Gentle and compassionate teaching style.”
- “One of the best professors at this law school.”
- “She has this magical ability to point promising but unpolished minds toward new and wonderful places. She is amazing.”
- “Her intellectual clarity is free of glaring harshness and her constant encouragement—even as I repeatedly stumble-bumbled—lacked even the slightest whiff of ‘*or else*.’”
- “Barbara Atwood transcends the role of teacher to being an *educator*, and has won my perennial respect—not just as a lawyer but as a human being.”
- “Barbara Atwood has changed my life.”
- “*She is part of what’s best about this law school.*”

In 2011, she (again) was given the College of Law’s John Strong Teacher of the Year Award. When the Student Bar President announced the award, the President put the case simply and eloquently: “We *love* her.” Professor Atwood’s reply was characteristically modest: “It is just a privilege to teach you.”

Our students know that Professor Atwood regards teaching them as a privilege. They feel heard by her. Seen by her. Respected by her. Challenged by her. Reassured by her. As an Arizona Law graduate herself (Class of 1976), she feels a kinship with our students, and they see in her a colleague, not just a professor—one whose example pulls them upward.

When the College of Law raised money for a scholarship in her name to honor her career, one alumnus after another said to us: “Professor Atwood *humanized* law school for me.” In short, generations of students have loved her. It is an impressive gift she has bestowed on them, over time, and they recognize it.

So do we.

Third, Professor Atwood’s work as a faculty leader has mattered to the College of Law.

From 1988–1991, Professor Atwood was Associate Dean, and she has been chair of the College of Law’s most important committees nearly every year of her career. She models fidelity to all things “faculty governance,” and takes seriously the responsibility that comes with the right of participation—as any fine proceduralist would. And for these contributions, she received the Leslie F. and Patricia Bell Faculty Service Award multiple times.

Remarkably, she also enjoys this part of the work. When she advised Dean Lawrence Ponoroff that she would be retiring in 2011, she asked, in a hopeful voice, “Will I still have a vote in faculty meetings?” When he said “no,” she was genuinely disappointed. In fact, she reported to us (wistfully) that she later had a dream in which she still had a vote. Yet even without a vote, and even as a now part-time professor, she continues to attend and participate in our faculty meeting deliberations.

She also fosters faculty community in ways that make this a better place to spend one’s professional career. A small faculty like ours is, in some ways, like the U.S. Supreme Court.

Like the Court, our faculty is composed of professionals who must make a tapestry from very disparate and formidable intellectual and philosophical threads. Like the Court, the faculty is a new body with each arrival and each departure. Like the Court, the faculty often engages in robust debates, and must determine the proper balance between fidelity to traditional principles and attention to the imperatives of emerging legal and social practices, of new intellectual developments, of evolving notions of who we are and what we do, and of other forces that demand that we heed the call for new thinking. All of this, of course, can produce anxiety. Anxiety, in turn, can produce friction. Yet like the Court, it is crucial that we rise above the fissures and retain a sense of the whole, of the thing greater than our disparate individual interests. This requires colleagues who will nourish a capacious and inclusionary definition of our mission, who pursue their own work in ways that elevate and enlighten the rest of us, and who also display a sincere interest in others’ work and progress—across subject matter, ideology, and other divides.

These scholars “look up” from their own concerns. My colleague Professor Ted Schneyer once (rightly) admonished me for tunneling through the faculty floor hallway—looking neither right nor left. He said, in measured tone, “Toni, it is considered polite to ask about others’ well-being, to see how others are faring.”

Ted was—as usual—correct. It matters to the whole whether we see *each other*, just as it matters whether we see our students. If anything, it matters more now, than in years past. As times have changed, the occasions for “looking up”—from our computers, our smartphones, our iPads, our intellectual silos—have become less frequent in ways that can be enervating, given the abiding need for human connection and the manifold ways in which we still are best when we meet face to face, and not just in pithy e-mail, or (heaven forbid), tweet-length interactions.

When we “look up” and engage in longer conversations than e-mail allows, and that go beyond immediate school matters, we humanize the professional setting, expand our intellectual and personal horizons, and fortify intangible bonds that connect us as a faculty—even when we disagree.

Professor Atwood *always* looks up.

From the day she arrived to the present moment, she has respected and nurtured these community bonds. No new colleague, no faculty visitor, no colleague leaving for new endeavors, has failed to sense her interest or concern for their well-being. She consistently gives her time to make this a great place to *live*, not just to work. Moreover, she has done this no matter what publication deadline or other professional pressure she was facing. No matter what home crises were looming. No matter how many other board meetings she had that week, or classes to teach, or other commitments.

Even more remarkable is that she not only looks up—she leans in and listens. Professor Atwood sits with others when they have experienced great losses, visits them in the hospital, and is fully present in these moments when it is easier for many of us to avoid human connection. She does not blink or walk away from suffering or angst. Rather, she extends the empathy that shines through her scholarship, and that informs her teaching and mentoring to her colleagues.

Finally, she exults with colleagues when they experience professional joys and achievements. She realizes that “love is not a pie”—i.e., that a slice of praise delivered to one need not mean the loss of a piece for another. She typically is the first to congratulate others, as well as to counsel and console them. She brings the College of Law community together by permitting all to shine, and enjoys—often organizes—celebrations of others.

Justice David Souter once commented that his predecessor, Justice William Brennan, “made us members of a huge family by adoption . . . I always felt great when I’d been with Bill.”⁶

6. CLARE CUSHMAN, COURTWATCHERS: EYEWITNESS ACCOUNTS IN SUPREME COURT HISTORY 159 (2011).

Barbara Atwood, in this respect, is the Bill Brennan of the College of Law. She makes us all feel like family by adoption, and better about our contributions because of her consistently generous reflections.

She also tells us the truth. More than once over the years, and more importantly, while I was dean, she has admonished me: “Toni, do *not* do that” Or, gently, “Toni, have you thought about this?”—where “this” meant something I obviously had not thought about, and *should* have thought about. Or, more directly, “Toni, you argued this at the faculty meeting, but that is simply wrong because” When reading our manuscripts, debating our ideas at meetings, or interacting with us in other venues and on other matters, her integrity requires her to speak truthfully and directly. Her courage enables her to do this no matter what the consequences. And her decency guides her to do this thoughtfully and fairly. (In fact, if you do not want to hear the truth, do not ask Professor Atwood what she thinks; and if you ignore what she says, you almost certainly will regret it.)

Last, but not least, is that Professor Atwood is extremely funny. Her humor is bone dry, clever, and usually aimed at her own (imaginary) foibles, never at others’ weaknesses. Laughing with others, at oneself, has a way of making space for human vulnerabilities, of relaxing interpersonal defenses, and of enabling more honest and warm relations.

Consequently, the faculty community that Professor Atwood has helped to constitute here is not about being “nice”—though she definitely is nice, and the place is too. Nor is it about avoiding difficult conversations. The community she helps to forge is *decent*, and decent in a particular way. One that expects much of its members, and that assumes they can and will meet these higher demands. Such communities are not created by aspirational statements or faculty retreats, but by daily gestures of colleagues who make it their daily practice.

Professor Atwood is one of the very best of these colleagues, and our community is a much better place because of her and will continue to be because of her legacy.

Fourth, Professor Atwood’s work beyond the College of Law matters.

Professor Atwood is a fellow with the American Bar Foundation, is a Commissioner with the National Conference of Commissioners on Uniform State Laws, and has been active on a wide range of professional boards, including Chair of the Arizona Supreme Court Disciplinary Commission. She does pro bono work and has worked tirelessly throughout her career on American Indian issues, children’s issues, and civil rights issues. Here at the University of Arizona, we now have, at long last, healthcare insurance for same-sex partners. Professor Atwood pushed this issue for *years*. She showed up at all of the committee and public meetings; she lifted her voice, for *others*.

Here in Tucson, she is one of the co-founders of our local women’s bookstore—Antigone. She helped to establish the first rape crisis center here, and was a co-founder of the original Tucson Women’s Center. She has been honored on campus in the Women’s Plaza of Honor for outstanding contributions on behalf of women and children, and to the community more generally. She has long been active in matters that involve civil rights across a wide spectrum, and has spoken,

written, marched, donated, and raised funds for many of these causes. In fact, her community activism extends all the way back to her youth, as a Peace Corps VISTA volunteer. And while in graduate school, she taught English as a second language to adult immigrants for Tucson's Model Cities Program.

It is little wonder that Professor Atwood understands her role as a lawyer as about fostering positive social change. Little wonder that she has led the faculty in its evolution to a more diverse and pluralistic group of scholars. Little wonder that she has long been at the forefront of faculty initiatives to expand our public interest and community service work and outreach. Little wonder that she has been active in so many endeavors that address professional ethics. Little wonder that she is active in political movements relevant to expanding social and legal justice for all.

Some years ago, the College of Law interviewed her for a "Lives in the Law" series about lawyers and their motivations and commitments. In her segment, Professor Atwood fixes her steely gaze on the camera and explains that she went to law school because of "the corruption of Watergate." She rails at injustice; she stands up to corruption; and she despises mendacity. She is battering-ram fierce when confronting adversaries who are unfair or simply unkind. You want this lawyer on *your* side in a fight.

Finally, Professor Atwood has multiple, personal reservoirs that lie beyond the law, beyond the College of Law, beyond her many community and public ties, from which the remarkable spirit and strengths that animate her public life and work surely spring.

Professor Atwood has a deep appreciation of the beauty of nature, of the elevation and consolation that may be found in art and music, and of the expressive power of literature and poetry. She is herself a talented, published poet.

She is the loving mother of three sons—Aaron, Jacob, and Charles—and loving spouse and friend of her husband, Peter Eisner, whom she describes as "a true partner in all that I do," and as possessing "rock-solid strength, energy, and creative vision."⁷ Family matters much to Professor Atwood, and she has devoted herself to making hers a strong and close one.

Her family bonds, too, have helped define what it means to be part of the Arizona Law community, because she has shared her family with us. Professor Atwood and her husband have opened their beautiful, distinctively Tucson home to students and colleagues and the wider community over and over and over again. They provide good food, good company, good conversation, good times, and the Atwood–Eisner warm embrace. *All* are welcome in their home, and the sense of being part of an Arizona family is reinforced there.

The strength and generosity of this family are all the more remarkable in light of how both have been sorely tested. In 1996, Professor Atwood and her husband lost their son, Jacob Eisner, when he was only ten years old. The death of a child under any circumstances is a numbingly and uniquely devastating loss—

7. ATWOOD, *supra* note 2, at xii.

one from which few families recover. Although their colleagues, friends, and family members were there (in throngs) to mourn with them, all understood that bereavement is “a cruel country.”⁸ One must travel through it alone.

Yet she did return from this cruel and solitary country. She resumed her superb scholarship, her caring and award winning teaching and mentoring, her close collaboration with colleagues, and her many public service duties. The Atwood–Eisner home remained open to the community, and new colleagues were wrapped in their family embrace, just as others before them had been.

Nothing likely says more about Professor Atwood’s formidable inner strength and character than this return to life and work, in all of its public dimensions. It makes all of her amazing contributions to the College of Law, but especially those of the last 16 years, even more stunning, inspiring, and above all, humbling.

For all of these reasons, the College of Law is profoundly grateful to Professor Atwood and honored that she is part of the Arizona Law community. Correction: we are profoundly grateful that she has *created* and *remains essential to* the Arizona Law community.

I therefore do not—most definitely, do not—accept her decision to “retire.”

Rather, and respectfully: I dissent.

8. Roland Barthes, *A Cruel Country*, NEW YORKER, Sept. 13, 2010, at 26.