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Scholarship requires critical examination of the intersection of gender with one or more other axes of subordination

JUSTICE BERKELEY JOURNAL OF GENDER, LAW & JUSTICE B

2009 volume 24:2 a continuation of Berkeley Women's Law Journal

BERKELEY JOURNAL OF GENDER, LAW & JUSTICE

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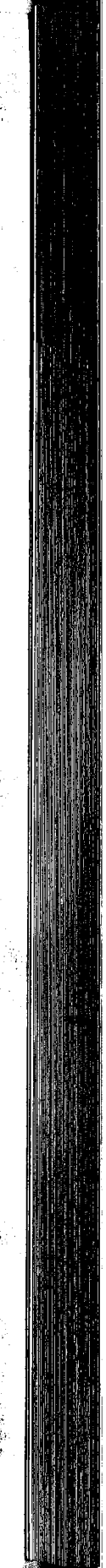
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From the Membership

The *Berkeley Journal of Gender, Law & Justice* is guided by an editorial policy that distinguishes us from other law reviews and feminist journals. Our mandate is to publish research, analysis, narrative, theory, and commentary that address the lives and struggles of underrepresented women. We believe that excellence in feminist legal scholarship requires critical examination of the intersection of gender with one or more axes of subordination including, but not limited to, race, class, sexual orientation, and disability. Therefore, discussions of "women's issues" that treat women as a monolithic group do not fall within our mandate. Because conditions of inequality are continually changing, our mandate also is continually evolving. Articles may come within the mandate because of their subject matter or because of their analytical attention to differences in social location among women. The broad scope of this mandate, and the diversity of scholarship it supports, is reflected in this volume of the *Berkeley Journal of Gender, Law & Justice*.

The majority of pieces submitted to this journal, however, do not fall within the mandate. There are far too few of us in legal education and practice committed to advocating for women, let alone focusing on those women least served by the legal system. Rather than abandon or modify our mandate in response to the limited pool of available scholarship, we hope to cultivate and support such scholarship by recommitting ourselves to the vision our mandate reflects. We need your help. This forum can only exist with the vigorous participation of thinkers and writers nationwide who share our vision and our commitment. We urge you, our readers and friends, to consider the issues raised in the *Berkeley Journal of Gender, Law & Justice* as you pursue your own work. Share your work-in-progress with us. Publish with us. Tell your colleagues, students, and teachers about us. If you read an unpublished paper or hear a speech at a conference that addresses the mandate of the *Berkeley Journal of Gender, Law & Justice*, refer it to us. Join us in nurturing and critically engaging the legal research, theories, and strategies required to serve the interests of underrepresented women, and thus serve the interest we share in social justice.

From the Editors

On behalf of the membership, we are very pleased to present Volume 24, Issue 2 of the *Berkeley Journal of Gender, Law & Justice*, a continuation of the *Berkeley Women's Law Journal*. This issue includes two articles chosen by the membership in accordance with our collective selection process and a commentary piece, all of which reflect an excellence in feminist legal scholarship.

Volume 24 continues with *Cultural Culprits* by Michelle A. McKinley, which examines the how questions of agency, victimization, and cultural essentialism are framed and acted upon in U.S. asylum adjudication and cultural defense cases specifically, and in international human rights law more broadly. The examination of "culture as culprit" is informed by larger concerns of institutionalizing feminist social activism in international modes of governance raised recently by feminist scholars with specific regard to asylum law and jurisprudence. The article argues that cultural and gendered essentialisms have become entrenched components of asylum law and advocacy, even as feminist activists claim victories in gender-based asylum cases. Asylum law and advocacy is structurally dependent on victimhood and rescue, and essentialism is key to the construction of "victims-saviors-and-savages."

The second article, *Sexual Orientation, Gender Non Conformity, and Trait Based Discrimination* by Angela Clements, looks at the Employment Non Discrimination Act (ENDA). The article argues that gender identity protection is essential to prohibit discrimination against gay and lesbian people, not just transgender people. The article uses the history of anti-discrimination jurisprudence to predict courts' reactions to ENDA without gender identity protection, which is the version that passed the House.

This issue also includes a commentary titled *A Transformative Process: Working as a Domestic Violence Expert Witness* written by Nancy K. D. Lemon. The piece is about being an expert witness in domestic violence cases and is grounded in Lemon's expansive experience testifying, researching, advocating, and teaching in the area of domestic violence. Lemon includes the statutory basis for expert testimony and explores California case law that has addressed the subject. Lemon also observes how expert testimony is used differently by the prosecution and defense cases and how such testimony relates to the jury, the survivor, and the perpetrator. Ultimately what Lemon offers is a highly personal and insightful discussion of how the process of interviewing survivors in conjunction with testifying as an expert is a transformative process.

Working on this issue has been particularly exciting because of member enthusiasm. Many new people joined the journal who were enthralled at the prospect of bluebooking, editing, and getting the journal ready for publication. The returning members have continued to help cultivate the journal as close community at the law school. As always, thank you to all of our readers and supporters; we would not be here without you. We look forward to presenting another collection of outstanding feminist scholarship in Volume 25:1, and if you are in the Bay Area we hope to see you at our spring symposium on policing sex work on April 5, 2010.

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It is the policy of the *Berkeley Journal of Gender, Law & Justice* not to draw a distinction between student pieces and the work of scholars, practitioners, and community workers.

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Berkeley Journal of Gender, Law & Justice

2009 Barbara Nachtrieb Armstrong Award for Outstanding Advocacy on Behalf of Social Justice for Women

The *Journal* created the Barbara Nachtrieb Armstrong Award for Outstanding Advocacy on Behalf of Social Justice for Women in 1985 when the *Journal* was founded. Barbara Nachtrieb Armstrong was the only woman in the Boalt Hall Class of 1915. She became the Morrison Professor of Municipal Law, Emeritus, and was the first tenured woman law professor in the United States. She was instrumental in drafting state and federal social security acts and also published a monumental text on family law and community property. The Armstrong Award is a national award open to all people—including scholars, community workers, legal practitioners, and activists—who demonstrate outstanding advocacy on behalf of social justice for women and underrepresented genders. The recipient is chosen by the membership of the *Journal*.

The recipients of this year's Armstrong Award are Kate Kendell and Shannon Minter. Kate Kendell is the executive director of the National Center for Lesbian Rights (NCLR), a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. Shannon Minter serves as NCLR's legal director. Together at NCLR, Kendell and Minter have fought tirelessly on behalf of the LGBT community through direct litigation and advocacy, securing many trailblazing legal victories. Under Kendell's leadership, NCLR's programs and impact have grown considerably, and the issues facing the LGBT community—from homophobia in sports to immigration policy—have taken center stage in our nation's discussion of civil rights and justice. Among his many other accomplishments, Minter was lead counsel for same-sex couples in the marriage case in which the California Supreme Court found that the exclusion of same-sex couples from marriage in California violated the state constitution.

The *Journal* is honored to present Ms. Kendell and Mr. Minter with the Barbara Nachtrieb Armstrong Award for their passionate commitment to sex equality and justice for all LGBT persons.