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JUSTICE BERKELEY JOURNAL OF GENDER, LAW & JUSTICE

2006 volume 21 a continuation of Berkeley Women's Law Journal

# BERKELEY JOURNAL OF GENDER, LAW & JUSTICE

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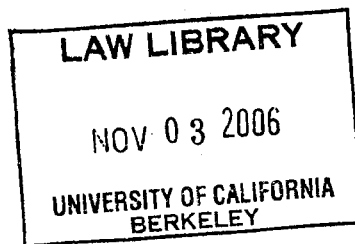
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## From the Membership

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 If you read an unpublished paper or hear a speech at a conference that addresses the mandate of the *Berkeley Journal of Gender, Law & Justice*, refer it to us.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 Editor

This year has been an exciting and interesting one for the *Berkeley Journal of Gender, Law & Justice*. We have spent this year in two worlds: On one hand, this year has been one of birth, as we close our first year under our new name. On the other hand, this has been a time of maturity as the Journal has come of age, having just completed its twenty-first year in existence. We have spent this year growing into what we will become and reflecting upon what we have accomplished. We have been simultaneously nascent and well established and have benefited from each of these positions. This year we have been able to explore what our name change means for our membership, our mandate, and the pieces that we publish. We have been energized and revitalized as an organization, while at the same time being ensconced in institutional memory and a sense of pride in our history as a journal. We spent this year creating new networks and coalitions with other student groups, recruiting more members, and focusing on our past and our future as a legal publication and a progressive organization.

This Volume is unique because the pieces we have chosen to publish this year have all coincidentally been written by authors from within the Boalt community. This was not intentional, and in fact, was not even noticed until it came time for production. It is a true testament to the authors we feature in this Volume that they are made up of our faculty, membership, and alumni and the pieces they submitted were selected wholly independent of that fact. It is surely to their credit that a collection of scholarship can be drawn from one academic community and not suffer at all with respect to diversity of topics, ideas, or quality of scholarship. We are extremely proud to be showcasing such cutting-edge scholarship in Volume 21.

We are publishing two articles this year. The first is on the need of domestic violence courts to become more accessible to non-English speaking survivors of domestic violence. Our second article focuses on intersex infants and advocates a change in the law to address the needs and rights of intersex children without relying on surgery. This article had such an impact on our membership, we chose to dedicate this Volume to the members of the intersex community who are taking up this arduous fight to end gender-normalizing surgeries on children. We were also fortunate to have several recent developments that deal with a myriad of issues including same-sex marriage and equal protection, gender bias in asylum law, religion within the LGBT community in Alabama, the effects of the U.S. anti-prostitution pledge on sex trafficking and the HIV/AIDS epidemic, and healthcare coverage for women of color in the workforce. Our Commentary section is a tribute to the two symposia that the Journal was involved with producing this year: The Gender and Migration symposium, which we hosted and the Overturning Proposition 209 symposium that we helped to or-

ganize with a coalition of other progressive journals and student groups at Boalt. Both events were hugely successful, and we will publish transcripts from both of them next year. This year, our Commentary section features essays and graphics that reflect the themes of each of these symposia. Our Books Received focus on books addressing the relationship between the human rights movement and gender violence, the feminist movement in Singapore, and a collection of essays by scholars discussing what *Roe v. Wade* should have said.

# BERKELEY JOURNAL OF GENDER, LAW & JUSTICE

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The Berkeley Journal of Gender, Law & Justice would like to thank the following law firms who sponsored our 2005 symposium on Gender & Migration. This event would not have been possible without their generous contributions.

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## Dedication

We, the members of the *Berkeley Journal of Gender, Law, & Justice* are honored to dedicate Volume 21 of our journal to the brave members of the intersex community who have come forward to share their stories and advocate for a change in the way the medical community addresses the unique needs of intersex people. Here, we honor those who are rarely honored for their courage in the face of shame, secrecy and unwanted medical intrusion simply because they are born with anatomy which is arbitrarily deemed to be non-standard.

Our name change, from the Berkeley Women's Law Journal to the *Berkeley Journal of Gender, Law, & Justice* in 2005, represented something different to each person in our membership. One universal, however, seemed to be that we could not continue to promote a name which conceptualized a binary-gender system when we ourselves were printing groundbreaking works teaching the falsity of this supposition.

The numerous works we have published informing our readership of the plight of alternatively gendered people around the world, sparked in us a feeling of affiliation with those to whom this volume is dedicated and an eagerness to stand by them in their ongoing struggle against naïve societal standards. This recognition is long over due and that is why it is our hope that, in making this dedication in conjunction with our commitment to printing scholarly, informative works exploring the struggles of those facing gender difference head on, we, the membership of the *Berkeley Journal of Gender, Law & Justice* can assist in the enduring work of pioneers fighting to teach a binary world about the reality of multiplicity. We hereby dedicate this volume to the intersex community and the authors, doctors, medical staff, lawyers, parents, and other allies who labor seeking change.

# *Berkeley Journal of Gender, Law & Justice*

## **2005 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 it 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 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 – scholars, community workers, legal practitioners, activists, etc. – who demonstrate outstanding advocacy on behalf of social justice for women and underrepresented genders. The recipient is chosen by the membership of the *Berkeley Journal of Gender, Law & Justice*, and is presented with the award in an annual reception.

This year's recipient is Alex Lee of the Transgender, Gender Variant, and Intersex Justice Project. Mr. Lee graduated from Boalt Hall School of Law in 2004. He is an attorney and the founder and director of the TGI Justice Project. The TGI Justice Project was created to address human rights abuses against transgender, gender variant, and intersex prisoners incarcerated in California prisons and jails. The TGI Justice Project combines community organizing and activism with direct services legal work to serve as a strong mechanism of support and tool for change within the TGI community. For more information about this organization and how to join the fight, please visit [www.tgijp.org](http://www.tgijp.org). We are proud to honor Alex Lee for the work he has done and continues to do by fighting for justice on behalf of this underrepresented community.

## ***Berkeley Journal of Gender, Law & Justice* 2005 Writing Award**

The *Berkeley Journal of Gender, Law & Justice* created the Writing Award in the fall of 1999 in an effort to advance scholarship on underrepresented women and increase the number of submissions falling within our mandate. Students and public interest practitioners of all disciplines are invited and encouraged to submit pieces for consideration. The deadline for submissions is generally the beginning of November.

The Writing Award recipient receives a cash prize, and the article is published in the spring. The 2006 Writing Award winner, Anne Tamar-Mattis, is the author of "Curing the Law's Failure." This article critically examines the scholarship concerning intersex people and so-called gender-normalizing surgery. Ms. Tamar-Mattis presents a policy analysis that challenges lawmakers to confront the shocking inability of the law to protect fundamental rights of the intersex community. The article was met with huge enthusiasm among the membership and inspired this year's Journal dedication.

Before coming to law school, Ms. Tamar-Mattis spent six years directing the LYRIC Youth Talkline, a national peer-support line for LGBTQ youth. She was also the founding Program Director at San Francisco's LGBT Community Center. She entered the legal profession out of a desire to further this work. As a long-time ally of the intersex community, Ms. Tamar-Mattis was soon drawn to research the legality of non-consensual genital surgeries on intersex infants. Her project has continued to grow, and this fall she will be starting the Institute for Intersex Children and the Law with a fellowship from Equal Justice Works. Ms. Tamar-Mattis lives in Northern California with her two children and her partner, who is an intersex activist and medical doctor.

The *Berkeley Journal of Gender, Law & Justice* is pleased with the caliber of submissions that we received this year, and we hope that the Writing Award will continue to foster and promote scholarship devoted to underrepresented women and genders. Please consider submitting your original, unpublished work to us. Together we can give a voice to those too often silenced.



## Commentary

The following pieces explore the social context of rights—from the deserts of Sudan, to the immigrant enclaves of the United States, and into the classrooms of our schools and universities. Reflecting the Berkeley Journal of Gender, Law and Justice’s engagement in two symposia, *Gender & Migration*, and *Overturning 209: A Joint Symposium and Movement*, these reports from the field suggest that, despite its many failings, the promise of law can provide the strength to carry on despite abuse, injustice, and exclusion.

The first piece, Mark Massoud’s “Rights in a Failed State: Internally Displaced Women in Sudan and Their Lawyers,” illustrates both the salience and the strategic power of invoking human rights for women and children displaced by the ongoing violence in Darfur.

Next, Lauri Owen’s work, “Forced Through the Cracks” provides an activist’s analysis of the Violence Against Women Act and the lag of legal reform to address the needs and concerns of abused immigrant women. The gap between VAWA’s legal guarantees and its practical implementation exemplifies the abyss between the rhetoric and reality of rights—particularly for abused immigrant women.

The following pieces and illustrations reflect the complexity and contextual nature of rights—how they can operate to empower or exclude, vilify or vindicate, and expose injustice or conceal it.