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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 BE

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2005 volume 20 a continuation of Berkeley Women's Law Journal

BERKELEY JOURNAL OF GENDER, LAW & JUSTICE

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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 If you read an unpublished paper or hear a speech at a conference that addresses the mandate of the *Berkeley Journal of Gender, Law & Justice*, refer it to us.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 is a landmark year for our *Journal*. After publishing for twenty years as the *Berkeley Women's Law Journal*, we have now become the *Berkeley Journal of Gender, Law & Justice*. Rather than signaling a change in direction, our new name reflects our long-standing commitment to our mandate to publish pieces that critically examine "the intersection of gender with one or more axes of subordination" thereby giving voice to "the lives and struggles of underrepresented women."

The occasion of our 20th Anniversary presented us with a unique and critical opportunity to engage in self-assessment, self-critique, and self-reflection. Our decision to become the *Berkeley Journal of Gender, Law & Justice* is a direct result of this undertaking. In addition, we are proud to debut our new cover design – one which graphically symbolizes our commitment to intersectional scholarship.

We are honored to be publishing the high-quality cutting-edge scholarship represented in this 20th Anniversary Volume, including articles about the effects of globalization and international trade on African women's human rights, the dehumanizing ways in which transgender persons must configure their identities in order to become recognized legal subjects, and a narrative description of women's encounters with the "law" in adversarial courtroom proceedings. Our members have made crucial contributions with their Recent Developments about the cultural barriers and philosophical tensions faced by Latina women when accessing welfare services, the impact of pharmacist refusal clauses on poor and rural women's access to contraception, the conflict between choice and autonomy in the arena of abortion rights, and a critique of the treatment of female wards by the California Youth Authority. This year's Book Review analyzes a groundbreaking work by Professor Laura Beth Nielsen which studies street harassment and offensive race and/or sex-based public speech. Books Received focuses on new legal readers on abortion, sexual harassment and violence against women, as well as a compelling narrative about the activism of sex workers and other marginalized women living with HIV/AIDs. The Commentary section of this Volume is a celebration of the *Journal* with reflections from a number of former editors who continue to work on issues of critical concern to underrepresented women.

We are also thrilled to be publishing the transcripts from our third independent symposium, "Women and War: A Critical Discourse," which was held on March 12, 2004. Professor Ann Scales has adapted her keynote address into a rich article discussing America's failure to confront the various permeations of militarism in our society. As the conflict in Iraq and the "war on terror" continue, the publication of these transcripts reminds us of how relevant discussions on women's disparate roles in violent conflict continue to be. Planning has already begun for our fourth symposium, scheduled to occur during the next academic year. As the development of this critical symposium on Women and Mi-

gration continues, our website (<http://www.boalt.org/bwlj>) will contain further information regarding the date and content.

On April 7th we gathered together with *Journal* alumni, friends, faculty and current members to celebrate our 20th Anniversary. Remarks by founding Editor-in-Chief, Karen Schryver, and *Journal* advisor Professor Herma Hill Kay were inspirational. We were also honored by the presence and moved by the words of Olivia Wang, an activist working with incarcerated survivors of domestic violence and the 2005 recipient of the Barbara Nachtrieb Armstrong Award for Outstanding Advocacy on Behalf of Social Justice for Women.

This has been a year of reflection, celebration, change, and continuity at the *Journal*. Volume 20 represents a year of hard work and courageous discussion. The scholarship contained within these pages symbolizes the dedication of the hundreds of members who have worked on the *Journal* over the past two decades. We hope you will enjoy reading this volume and join us in celebrating the past twenty years of giving voice to underrepresented women.

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Dedication

The *Berkeley Journal of Gender, Law & Justice* proudly dedicates this 20th Anniversary Volume to the founding members of the *Journal* and to our long-time supporter and advocate, Professor Herma Hill Kay. Without your vision, courage and strength in carving out a space at Boalt to give voice to underrepresented women, we would not be publishing this Volume.

We continue to seek out and publish scholarship that critically examines the intersection of gender with one or more axes of subordination, furthering the critical mission you had the foresight to create twenty years ago. We thank you and commend you for your courage and conviction.

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. 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. The inaugural recipient of the Armstrong Award was Professor Herma Hill Kay, the *Journal's* faculty advisor and the second tenured woman law professor at Boalt Hall. Sadly, the Award was not given out in the years that followed. Today, we are pleased to renew our commitment to honoring those working on behalf of social justice for women on the occasion of the *Journal's* 20th Anniversary.

The 2005 Award recipient, Olivia Wang, is an amazing and dedicated advocate for incarcerated survivors of domestic violence whose career exemplifies our mandate: she works to empower marginalized women who have been silenced for too long. On January 1, 2002 California law PC 1473.5 went into effect, allowing incarcerated survivors to petition for habeas relief if they had been convicted of murdering their batterer prior to 1992 and had not had expert testimony on domestic violence at their trial. Olivia, a new attorney working with Legal Services for Prisoners with Children and the advocacy group Free Battered Women, realized the law's potential and founded the Habeas Project which identifies eligible survivors and recruits and trains pro bono legal teams to assist these women in filing their petitions. To date, over forty women have been represented by the Project's teams, and many have been released. We honor Olivia for her vision and her dedication to giving voice to underrepresented women, aiding them in their struggle for justice.

***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 2005 Writing Award winner, *Defining the Human: Are Transgender People Strangers to the Law?*, critically analyzes the dehumanizing rhetoric of legal discourse as it pertains to transgender people who are forced to configure their identities in narrow and painful ways in order to become recognized legal subjects. Abby Lloyd places the voice and story of Josh, a white, female-to-male (FTM) transgender man at the center of her analysis in order to force the theory and the case law to recognize his humanity and the implications each potential legal strategy has for Josh and other persecuted transgender persons. She argues for a more informed climate in legal scholarship in order to bring an end to this dehumanization and achieve justice for transgender people.

Ms. Lloyd graduated Phi Beta Kappa from the University of Chicago in 2001 with a degree in English Language and Literature. In Chicago, she was active in the HIV/AIDS community, in particular assisting a "mom's support group" and serving as director of a summer camp for children infected or affected by HIV/AIDS. Ms. Lloyd dedicated her time to local queer activism and helped start Trans/Action, a group focused on transgender activism and education in coalition with a focus on racial and economic justice. One of the reasons she came to law school was in reaction to the discrimination her transgender partner at the time experienced. This discrimination inspired her to write the article published in this issue.

During law school at Boalt Hall, Ms. Lloyd worked at East Bay Community Law Center, HIV/AIDS Unit, focusing on *AIDS Lanka*, a project to bring HIV/AIDS medications to Sri Lanka and in Boalt's International Human Rights Law Clinic, researching a report on forced labor in the United States. After two years at Boalt she spent the 2003-04 academic year studying Spanish and volunteering in Honduras and Guatemala. Ms. Lloyd, a member of the Boalt Hall class of 2005, will be clerking for a federal magistrate judge following graduation and then hopes to find a job as a public defender or in other public interest work.

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. Please consider submitting your original, unpublished work to us. Together we can give a voice to those too often silenced.