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2010 volume 25:1 a continuation of Berkeley Women's Law Journal

BERKELEY JOURNAL OF GENDER, LAW & JUSTICE

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Dedication

Volume 25 of the *Berkeley Journal of Gender, Law & Justice* is dedicated to the Women of Color Collective (WOCC) at Berkeley Law. WOCC, a supportive space for African American, Asian American, Latina, Native American, and other women and trans people of color at Berkeley Law, has changed the face and future of Boalt Hall and the legal profession. Since its founding in Spring 2008, WOCC has grown to include over 150 members, and in its first month it recruited the largest class of women of color admits to the J.D. program. This year WOCC launched a tremendous campaign highlighting the lack of diversity in the legal academy and among the faculty at Berkeley Law. In addition to raising awareness regarding the persistent barriers and challenges to ensuring diversity among the student body and faculty, WOCC fostered an open and vibrant conversation that emphasized that excellence demands diversity. WOCC galvanized students and student organizations to advocate for diversity in faculty hiring and played an integral role in this year's hiring and recruitment process. As a result of these efforts, and in collaboration with Berkeley Law faculty, staff, and administrators, Boalt Hall will welcome the most diverse class of faculty appointments in Berkeley Law history this fall.

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

Herein lies the twenty-fifth volume of the *Berkeley Journal of Gender, Law and Justice*, which is one of many accomplishments by the *Journal* and its devoted members this year.

As usual, we have been quite busy with many tasks besides the production of this volume. For instance, we are still basking in the afterglow of our April 2010 symposium, "Uncovered: The Policing of Sex Work." A diverse array of panelists which included academics, activists, sex workers, attorneys, and nonprofit executive staff discussed the differential policing of sex work based on race and class, as well as the complicated issue of sex trafficking and its conflation with sex work. The *Journal* also expanded our fundraising efforts, supplementing our usual income with proceeds from drag king and burlesque show fundraisers, and from selling briefs—the sort you wear, not write—emblazoned with the sassy words "Place of Public Accommodation." (Berkeley Law alumni may recognize this phrase as a well-worn brief topic in our Written & Oral Advocacy program.)

On a more serious note, the *Journal* is preparing to publish journal content online via our own website, so we can reach readers who lack access to expensive and sometimes unwieldy article databases. We have also decided to take a more active role in identifying potential journal content by creating a Solicitations Editor position, so that we better can seek out articles and other writings from persons engaged in cutting-edge feminist and queer scholarship. Hence not only has it been another great year on the *Journal*, but we are also assembling the financial and administrative building blocks for even better years to come.

All the while, we have put together another fine volume of exciting work on gender and the law. True to our interest in diverse scholarship, the two main articles in this volume engage two very different modes of analysis—the application of tort theory to family law, and the examination of the legal profession based on the lived experiences of women practitioners with disabilities.

In our first article, *The New Boys: Women with Disabilities and the Legal Profession*, Carrie Griffin Basas, a research fellow, practitioner, and woman with disabilities, presents and analyzes her own study of women attorneys with disabilities in the United States. Despite their legal background, Basas finds disabled women attorneys do not exercise the rights due to them under the American Disabilities Act by demanding workplace accommodations, but instead "self-accommodate" or find ways to adapt to their workplace rather than vice versa. Basas concludes her examination of ableism (and sexism) in the legal profession by recommending litigation as well as social measures such as mentoring, networking, and coalition-building to remedy the problems experienced by women attorneys with disabilities.

Our second article is inspired by a well-known Harvard Law Review article, in which Guido Calabresi and A. Douglas Melamed posited that tort law supplements property law by providing alternative forms of legal protection. In his article *What have Calabresi & Melamed got to do with Family Affairs?: Women Using Tort Law in Order to Defeat Jewish and Shari'a Law*, Professor Benjamin Shmueli uses Calabresi and Melamed's theory as a starting point for examining how intrafamilial tort law in Israel is evolving to fill in the gaps where family law has no remedy. In doing so, Professor Shmueli argues that when, for instance, a family court upholds the civil actions of a woman whose husbands refuses to grant a *get* (permission to divorce under Jewish law), the court is not necessarily acting out of feminist or anti-religious motivations, but instead merely acknowledging tort law's role in providing a secondary remedy unavailable under family law.

This volume also includes a review by Professor Angela P. Harris of Sunny Schwartz's *Dreams from the Monster Factory: A Tale of Prison, Redemption, and One Woman's Fight to Restore Justice to All*. Schwartz asserts that the American prison is a "monster factory"; criminals tend to come from violent backgrounds—violence originating from their families, relationships, and broken social institutions—and that the prison experience itself perpetuates and exacerbates violence. In her book, Schwartz describes how her personal background informed her views of violence and rehabilitation, as well as her efforts to transform a San Francisco jail from a "monster factory" into a place of what Professor Harris calls "transformative justice." Transformative justice, as defined by Professor Harris, seeks to not only "make right" the wrongs of the individual offender, but also the social mores and institutions acting upon the offender, including cultural acceptance of violence as a facet of masculinity and a criminal justice system that disproportionately visits actual, social, and psychic violence on the socioeconomically disfranchised.

The Journal is also proud to present work by two Berkeley Law students. In the Commentary that begins this volume, student and Journal Submissions Editor Laurel Anderson discusses the urgent need for reform in the treatment of transgender immigration detainees, who are often classified according to their biological sex rather than gender identity. Transgender detainees are therefore often housed in men's facilities where they suffer extreme abuse, or segregated where they are particularly susceptible to abuse by guards. In *Punishing the Innocent: How the Classification of Male to Female Transgender Individuals in Immigration Detention Constitutes Illegal Punishment Under the Fifth Amendment*, Anderson argues that Immigration and Customs Enforcement (ICE) detention policies violate due process, and recommends policy change and litigation strategies to protect transgender detainees. Also, student and researcher for the Berkeley Center on Health, Economic, and Family Security (CHEFS) Zoe Savitsky contributed this volume's Recent Development. Savitsky's *Inertia and Change: Findings of The Shriver Report and Next Steps* examines the findings presented in *The Shriver Report: A Woman's Nation*

Changes Everything, an analysis of the current state of American women and their issues in a broad spectrum of areas, including health, education, business, and religion. She concludes by asserting that the advancement of women in our society should no longer be hindered by the ghettoization of issues arising from gender and family dynamics as women's issues, but recognized for what they are—people's issues.

On behalf of the Journal's membership, we would like to thank our readers for your continued support. We hope that you will find this volume as intellectually stimulating and satisfying as those past, and that you will continue to look to us as a reliable source of exciting gender scholarship.

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Berkeley Journal of Gender, Law & Justice

2010 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 recipient of this year's Armstrong Award is Dr. Ann Lucas, a former member of the *Berkeley Women's Law Journal*. Dr. Lucas was a member of BWLJ from 1988-91, serving as an Article Editor from 1989-90 and as Editor-in-Chief (EIC) from 1990-91. While EIC, Dr. Lucas and BWLJ held a symposium titled "Black Women Law Professors: Building a Community at the Intersection of Race and Gender." After graduating with both a J.D. and a Ph.D. from Berkeley, Dr. Lucas continued to support the work of BWLJ by making frequent financial contributions to the journal.

Dr. Lucas was also a faculty member of the San Jose State University Justice Studies Department for nine years and also served as the Department Chair. Dr. Lucas was dedicated to her students and colleagues, serving as a mentor and role model.

The *Journal* is honored to present Dr. Lucas with the Barbara Nachtrieb Armstrong Award for her contributions to the *Berkeley Women's Law Journal*. Our work throughout the years would not have been possible without the time, dedication and effort of Dr. Lucas. Her impact on feminist legal theory and the Berkeley community reflects a commitment to social justice. Our journal would not be the same without her contributions.