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JUSTICE BERKELEY JOURNAL OF GENDER, LAW & JUSTICE B

2009 volume 24:1 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 If you read an unpublished paper or hear a speech at a conference that addresses the mandate of the *Berkeley Journal of Gender, Law & Justice*, refer it to us.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 Editors

On behalf of the membership, we are very pleased to present Volume 24, Issue 1 of the *Berkeley Journal of Gender, Law & Justice*, a continuation of the *Berkeley Women's Law Journal*. Our spring issue contains a fantastic collection of scholarship by practitioners, activists, and students and was carefully selected by the membership of *BGLJ*.

The first issue of Volume 24 begins with Melanie Conroy's article, *Real Bias: How REAL ID's Credibility and Corroboration Requirements Impair Sexual Minority Asylum Applicants*, which explores the detrimental impact that the REAL ID Act has on sexual minorities' asylum claims. Conroy argues that the codification of immigration adjudicators' evidentiary standards in the REAL ID Act poses particular difficulties for sexual minorities, who have always faced structural obstacles to successful claims. The Act exacerbates these problems and creates further impediments by inviting improper references, illogical valuations of evidence, and unrealistic expectations for corroboration. Conroy explores these issues and more in her cutting-edge analysis of REAL ID.

Our second article, *Gay-Straight Alliances and Free Speech: Are Parental Consent Laws Constitutional?*, by Keola R. Whittaker, applies First Amendment concepts of free association and compelled disclosure to argue that the enactment of parental consent requirements for gay-straight alliances (GSAs) is unconstitutional. As several states have adopted these provisions and other schools consider ways to discourage the formation of GSAs, Whittaker's piece is especially timely. The important role that GSAs play in combating anti-gay harassment of LGBT youth makes this issue all the more pressing. Whittaker's article convincingly demonstrates that statutes requiring parental consent for GSAs, the intent and effect of which is to eliminate GSAs, are viewpoint-based restrictions and are thus constitutionally suspect.

Instead of a conventional book review, this issue includes a review of *XXY*, an Argentinean film by Lucía Puenzo that offers a fictional account of the coming-of-age of an intersex adolescent living in a remote coastal village in Uruguay. Anne Tamar-Mattis uses the knowledge and expertise gained as Executive Director of Advocates for Informed Choice to assess *XXY*, ultimately concluding that in spite of a few flaws, the film's realism, a quality rarely seen in fictionalized accounts of intersex experiences, makes it a compelling success.

Finally, in books received, two recent publications in the area of violence against women, Michael P. Johnson's *A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance, and Situational Couple Violence* and Hillary Potter's *Battle Cries: Black Women and Intimate Partner Violence* are reviewed and put into dialogue by student-author Laura Beckerman.

The *Journal* has settled into its new office among Boalt's other student journals in the newly renovated West Wing of Boalt Hall, and is busy slating exciting pieces for upcoming issues. As always, thank you to all of our readers and supporters. We look forward to presenting another collection of outstanding feminist scholarship in Volume 24:2, to be published fall 2009.

NOTICE OF ERRATA

Due to a formatting error in our last publication (23 BERKELEY J. GENDER L. & JUST. __ (2008)), several of the footnotes in Susan Frelich Appleton's article *Toward a "Culturally Cliterate" Family Law?* incorrectly cited the page numbers for the preceding article and companion piece, Susan Ekberg Stiritz' *Cultural Cliteracy: Exposing the Contents of Women's Not Coming*. The correct citations and footnotes are as follows:

FN 3: Susan E. Stiritz, *Cultural Cliteracy: Exposing the Contexts of Women's Not Coming*, 23 BERKELEY J. GENDER, L. & JUST. 243 (2008).

FN 4: *Id.* at 244.

FN 6: Stiritz, *supra* note 3, at 266.

FN 14: Stiritz, *supra* note 3, at 254. "Western clitoridectomy" uses as its underlying reference the practice of female genital mutilation (FGM), a violent rite in some non-Western cultures in which elders excise a young woman's clitoris and labia to control her sexuality. *See generally* Isabel Coello, *Female Genital Mutilation: Marked by Tradition*, 7 CARDOZO J. INT'L & COMP. L. 213 (1999) (examining the role of tradition in female genital mutilation); Jennifer J. Rasmussen, Note, *Innocence Lost: The Evolution of a Successful Anti-Female Genital Mutilation Program*, 41 VAL. U. L. REV. 919 (2006) (analyzing programs that seek to end female genital mutilation). Federal law prohibits the practice in the United States, 18 U.S.C. §116 (2006), and a recurring issue in immigration law concerns whether the practice of FGM elsewhere justifies a grant of asylum in this country. *See, e.g.*, Agbor v. Gonzales, 487 F.3d 499 (7th Cir. 2007); Mohammed v. Gonzales, 400 F.3d 785 (9th Cir. 2005). Stiritz shows that the emotional and psychological harm from the excision of women's sexuality has a place on the same continuum that includes the physical violence of ritual clitoridectomy. Stiritz, *supra* note 3, at 250 n.38; *see also* Robin West, *Sex, Law and Consent*, in THE ETHICS OF CONSENT: THEORY AND PRACTICE (Alan Westheimer & William Miller eds., forthcoming 2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1172162, at 26-27 (examining possible psychic harms of unwanted but consensual sex).

FN 275: *See* Stiritz, *supra* note 3, at 264.

FN 327: *Id.* at 265-66 (footnotes omitted).

FN 408: Stiritz, *supra* note 3, at 249-50; *see supra* note 14 and accompanying text.

FN 491: Stiritz, *supra* note 3, at 244.

Page 270: "Western clitoridectomy—both discursive and actual" and exposing it "as part of *systematic* suppression of female sexuality." This correction substitutes the word "*systemic*" for "*systematic*."

Any remaining grammatical or formatting errors that may be found in this article are the sole responsibility of the *Berkeley Journal of Gender, Law & Justice*. The *Berkeley Journal of Gender, Law & Justice* apologizes to the authors and to our readers for these unfortunate errors and any inconvenience or confusion they may have caused.

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Spring 2009

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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.