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From the Membership

The Berkeley Journal of Gender, Law & Justice is guided by an editorial policy that distinguishes the Journal from other law reviews and feminist publications. Our mandate is to publish feminist legal scholarship that critically examines the intersection of gender with one or more other 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 If you read an unpublished paper or hear a speech at conference that addresses the mandate of the Journal, refer it to us. Join us in nurturing and critically engaging the legal research, theories, and strategies required to serve the interest we share in social justice.
From the Editors

We are proud to present Volume 35 of the Berkeley Journal of Gender, Law & Justice. We are deeply grateful to you, our readers, for your continued support of the Journal and the community it fosters. This Volume of the Journal continues in our commitment to intersectional feminist issues. Our commitment has only grown in an increasingly volatile political climate in which the erosion of basic rights for the underrepresented, particularly undocumented persons and persons of color, is both unprecedented and normalized by those in power.

The articles in this Volume reflect these concerns. They call attention to the failings of political, judicial, and social systems that continuously marginalized communities we care most about. But these articles also reflect the Journal's continued optimism that by raising up the voices that call for change, we might play a small part in broadening the lens of legal scholarship.

Over the past thirty-five years, our membership has striven to read, analyze, and promote work that engages fully with the injustice that legal systems around the world reflect, perpetuate, and work to address. We are honored to continue that work through publication of academic scholarship. Our home institution, the University of California, Berkeley, School of Law, hosts all of our past issues in the online repository where every article we have published is available for free at https://www.law.berkeley.edu/library/ir/bglj/. Beginning with our next volume, we will no longer be publishing in print.

We open Volume 35 with a critical look at our own profession. In Women Law Deans, Gender Sidelining, and Presumptions of Incompetence, Laura M. Padilla updates her previous article examining the demographics of deans of ABA and AALS member law schools. Padilla presents her own data, based on surveys sent to the deans of ABA and AALS law schools. While the percentage of women and in particular women of color in deanship positions has increased since her last article, there is still a large gap between the percentage women in these powerful positions, and the percentage women make up in the general population. This article explores some of the possible reasons for such a gap, including the difficulties of gender sidelining and presumptions of incompetence that women face even if they are able to obtain these positions. Padilla uses data from surveys to illustrate these points, and to suggest actions that may help in closing the gender gap in law deanships.

As a membership, we remain dedicated to examining and reexamining our understanding of key terminology, not the least of which is “intersectionality”
itself. In their article Reconceptualizing Intersectionality in Judicial Interpretation: Moving Beyond a Formalistic Account of Discrimination in the HRC Opinions in Yaker and Hebbadj on French Prohibitions of Islamic Coverings, Monika Zalnieriute & Catherine Weiss critique the U.N. Human Rights Committee’s current interpretation of “intersectional” discrimination. Zalnieriute and Weiss advocate for a contextual approach to intersectionality that resists over-policing historically oppressed groups and instead encourages judicial systems to consider that patriarchal and oppressive practices transcend religion, race, and culture. Beginning with recent HRC decisions, Zalnieriute and Weiss put forward a call to judicial bodies globally to engage with questions of intersectional oppression in a more honest, holistic, and productive manner.

In the past several years, healthcare policy has become an issue that influences myriad other social justice reforms. In her article, When the Body Is a Weapon: An Intersectional Feminist Analysis of HIV Criminalization in Louisiana, Rachel Brown examines how women, particularly Black and trans women, living with HIV in Louisiana have been subjected to harmful state action as the result of their HIV positive status. Brown critiques the way Louisiana law has elided a medical condition with criminality, often to the detriment of marginalized groups of women. Brown provides history of the state’s response to HIV through legal systems and in the process depicts a number of ways that people who need assistance and compassion from state welfare systems have been penalized through no fault of their own.

In Locking Up Children: Detention-as-Protection for Child Sex Trafficking Victims, Venna Subramanian explains the dilemma of how to best service child victims of sex trafficking. First examining the depth and breadth of the problem, Subramanian explains the types of individual, familial, and social factors that put so many children at risk of becoming victims of trafficking. Subramanian then turns to the current systems in place for addressing the issue, arguing that juvenile detention punishes and re-traumatizes victims, while an underfunded child welfare system is unable to address the unique needs of trafficking victims and often creates a “revolving door” between the child welfare system and sex trafficking. Subramanian further discusses the ways in which these systems strip victims of their agency and net-widen in order to bring child victims within the system. To avoid these harms, Subramanian argues for a public health approach to trafficking victims that would focus on early prevention, community buy-in, and centering victim agency.

Lastly, James Hampton looks at the way the Supreme Court has responded to other intersections between the law and healthcare policy in The First Amendment and the Future of Conversion Therapy Bans in Light of National Institute of Family and Life Advocates v. Harris. By examining the recent developments surrounding First Amendment professional speech jurisprudence, Hampton argues that the
recent *NIFLA* decision should not roll back constitutional protections for conversion therapy bans enacted by state and local government. The decision, which struck down a California law requiring crisis pregnancy centers to post notices informing patients about access to abortion services, raises potential questions about which standard of scrutiny should apply to statutes banning medical professionals from participating in conversion therapy that attempts to “cure” a minor of homosexuality. Hampton argues that because conversion therapy bans apply to conduct that merely incidentally includes speech, they should be analyzed under intermediate scrutiny, and thus pass constitutional muster.

On behalf of the Journal’s membership and Editorial Board, we once again thank you for sharing our commitment to intersectional feminist legal scholarship. We hope the ideas put forth herein will open new avenues of thought and spur discussion in the legal field and beyond. It is our strongest desire that all of our collective voices be heard.
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**Summer 2020**

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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. This policy reflects our belief that in a struggle for equality all efforts are of equal value and importance.

**RECENT DEVELOPMENTS**

The First Amendment and the Future of Conversion Therapy Bans in Light of National Institute of Family and Life Advocates v. Harris  

James Hampton
Thank You, Friends & Sponsors

Since its inception, the Berkeley Journal of Gender, Law & Justice has relied on the tireless efforts of contributors and editors to bring thoughtful, passionate scholarship into publication. But we have not, and cannot, do so alone. We rely on our friends, alums, sponsors, and broader community to sustain the life of this journal. Without their support this journal would not be a community of advocates for social justice. One of many ways our friends have supported us is through financial contributions. To our friends:

Laura Beckerman
Barbara Flagg
Hannah Haksgaard
Sue Hansen
Becca Rausch

we thank you for your ongoing support and commitment to the journal.