
EDITORS' FOREWORD

Law journals are inequitable. We are inequitable in the student editors we select onto the journals. We are inequitable in the authors we select for publication. And we are inequitable in the very scholarship we publish. Law journals face the same challenges that many institutions of higher education face: our practices feed into a cycle of institutionalized racism, sexism, and classism. When we choose to admit only those applicants who are traditionally defined as the “top” students in a given law school’s class year, we neglect to acknowledge the structural barriers that many students of color, first-generation law students, and low-income students face. When we place a premium on the “ScholarRank” of the authors to whom we offer publication, we again fail to consider that some of those same structural barriers impede authors from historically underrepresented groups from achieving such recognition. When we publish a disproportionately high number of White cisgender male authors, the scholarship published omits the perspectives of a majority of the population. These oversights are intrinsically linked—if we select a more diverse group of student editors, they are likely to select a more diverse group of authors with more diverse perspectives in their scholarship.

A study forthcoming in the *Columbia Law Review* confirms this idea, but takes it a step further, finding that increasing the diversity of student editors ultimately increases the journal’s citability.¹ And isn’t citability one of the main goals of a law review?

In recent years, law journals across the country began to reconcile their long-ingrained practices with modern principles of diversity, equity, and inclusion. The *Boston University Law Review* was no exception. In 2021, we created the Diversity & Inclusion Editor position and made space for a seventh book in our publication schedule—this book. This book is, and will continue to be, dedicated to issues surrounding race and gender, with a focus on publishing diverse and untenured authors.

As the inaugural Diversity & Inclusion Editors, we knew that this new book would be a large undertaking. After putting out a special call for submissions for the first book of Volume 102, we received over thirty submissions from incredible scholars across the country. We were privileged to work with our Editor-in-Chief and Senior Managing Editor in a unique articles selection process, elevating our selection of articles to a panel of faculty reviewers. Once peer-reviewed, we ultimately offered to publish five pieces of scholarship that we feel will upend discussions of race, gender, and the law in this country. We are beyond honored that the authors accepted.

¹ See generally Adam Chilton, Justin Driver, Jonathan S. Masur & Kyle Rozema, *Assessing Affirmative Action’s Diversity Rationale*, 122 COLUM. L. REV. (forthcoming 2022).

Professor Blanche Bong Cook's Article *Something Rots in Law Enforcement and It's the Search Warrant: The Breonna Taylor Case* examines the Supreme Court doctrine that enabled and ultimately sanctioned the police killing of Breonna Taylor. Breaking down each step of how Louisville police acquired and executed a warrant, Professor Cook painstakingly demonstrates the warrant's illegality. Professor Cook looks beyond the scope of this single incident to explain how years of precedent led to this moment and offers ideas for reform that can prevent similar tragedies in the future.

In Professor Brandon Hasbrouck's Article *The Antiracist Constitution*, Professor Hasbrouck explains that the Constitution, as currently written, can and should be understood and utilized as an antiracist instrument. Examining the Reconstruction Amendments' abolitionist roots as well as their original public meaning from the perspectives of the Reconstruction Congress and contemporaneous Black Americans, Professor Hasbrouck argues that the Supreme Court's embrace of constitutional "colorblindness" runs counter to the Constitution itself. He invites readers to envision a world where the Reconstruction Amendments are read with their original public meaning and used to actively combat racism rather than subvert antiracist efforts.

Professor Marie Boyd's Article *Preemption & Gender & Racial (In)equity: Why State Tort Law Is Needed in the Cosmetic Context* argues that the federal preemption of state tort law in the cosmetic industry ultimately harms women and people of color. Through an examination of the currently lacking regulatory scheme in the Federal Food, Drug, and Cosmetic Act, Professor Boyd explains that federal regulation should complement state tort law rather than preempt it. Professor Boyd finds that state tort law remains necessary for protecting these vulnerable communities.

In *Asian Americans, Racial Stereotypes, and Elite University Admissions*, Professor Vinay Harpalani explores the history of racial bias against Asian Americans in the United States and the recent culmination of these issues in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*. Professor Harpalani innovatively analyzes the conflation of negative action and affirmative action, ultimately arguing for Asian American support of affirmative action in college admissions. With the Supreme Court's recent grant of certiorari to the Harvard case, this Article will impact future discussions of affirmative action.

Finally, in *Medical Error and Vulnerable Communities*, Professor Phoebe Jean-Pierre discusses the history of medical errors in the United States and their disproportionate harm on women, racial and ethnic minorities, and the LGBTQ population. Through this analysis, she argues for the need for federal legislation to support state apology laws, as well as federal funds to expand the use of communication and resolution programs.

These Articles, each a novel discussion in its own right, come together to create the first book of Volume 102 of the *Boston University Law Review*. We could not be more proud. We are so thankful that these authors trusted us with their important works, and we hope that this book is but one of many law journal

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books that shed light on the myriad racial injustices in the current legal landscape. We are tremendously grateful to the Lutie A. Lytle Black Women Law Faculty Workshop and Writing Retreat and the John Mercer Langston Writing Workshop for the opportunity to engage with their scholars and for spreading our call for submissions. We are sure that the many provocative pieces that we did not have the capacity to publish will inevitably find homes in other journals, and we cannot wait to read them in their published forms.

This book would not have been possible without the truly tireless work of our editorial staff, especially our Articles Editors, Senior Managing Editor, Executive Editor, and Editor-in-Chief, who put their whole hearts and an immeasurable amount of effort into editing these pieces. Thank you to Professor Frank Rudy Cooper, Dean Taja-Nia Y. Henderson, Dean Danielle Holley-Walker, and our own Dean Angela Onwuachi-Willig, who generously (and regularly) donated their ideas and insight as faculty reviewers. Publishing this book is just one step in the direction of diversity, equity, and inclusion in law journals and academia. This is not the final step, but it is one we are proud of, and so honored to have been a part of.

Ruth Fong Zimmerman & Archita Dwarakanath
Diversity & Inclusion Editors, 2021-2022
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