

The *Washington Free Beacon* has uncovered at least 88 examples of race- and gender-based decision-making at the *Harvard Law Review*. All of those examples can be found below, denoted by red text. The *Free Beacon* has also included some examples of editors vetting articles for “DEI values.”

### **First Stage of the Article Selection Process**

*The Harvard Law Review receives approximately 3,000 submissions each year. The vast majority of those submissions are cut by the law review’s articles committee, which screens each piece using a 5-point scale. The rubric meant to guide those ratings includes the following:*

Criteria	5.0	3.0	1.0
<b>Diversity</b> This category would generally add a plus for articles that contribute to our goals of <b>increasing diversity along multiple axes, including:</b> topic-area diversity, institutional diversity, <b>author diversity</b> , and author experience (e.g. publishing practitioners and younger/upcoming authors).	<b>We should consider expediting this piece because it may contribute to one of our Volume’s goals.</b>	N/A	N/A

### **Second Stage of the Article Selection Process**

*Only 400 or so submissions make it past the initial screening process. Each article is then anonymized and assigned to a random law review editor, a process known as the Rotopool. The editor analyzes the piece using a predetermined template, which, until July 2024, included a question about the diversity of the article’s citations. The Free Beacon identified at least 60 Rotopool memos in which editors discussed the race or gender of the scholars cited in the footnotes. It also identified one case in which an editor attempted to guess an author’s race and gender.*

*Excerpts from the 60 memos are included below. Each one is denoted by the editor who wrote the memo and the title of the piece being evaluated.*

### **Aidan Calvelli - Radical Restorative Justice**

- Excellent. This Article draws on huge range of sources, especially from the ADR and CRT and abolition traditions, **citing prominent education scholars including scholars of color**. My mentor Martha Minow got a nice set of cites too!
- On my interpretation of this question, the Article could have a huge impact on racial justice and education scholarship, as well as potentially influencing practitioners. The clean categories and frameworks the piece sets up are exactly the kind of moves that future scholarship can emulate. The focus on the racial justice transformations that students and teachers can (but don't always) engage in during RJ was simultaneously inspiring personal and thoughtfully academic. And the centering of teachers and students in CPS—and under-resourced district too often stereotyped as just underperforming—was a smart and powerful frame.

### **Julio Colby - Abortion Disorientation**

- As mentioned above, the article **cites several prominent reproductive justice scholars, most of whom are women and some of whom are women of color**. A cursory review of some sources includes citations to professors at UC Davis and Mizzou, as well as student notes. The article also discusses the real lived experiences of pregnant people.
- As mentioned above, **the article cites to scholars who are women of color** and argues for an expansive vision of reproductive rights in a way that could have an impact on women and pregnant people in the future. Though the article twice notes that these abortion laws have disparate impacts on women of color (TAN 222, 282), I felt it could have further discussed impacts and their implications.

### **R. Elliot DeRiso - Canon Against Conquest**

- On my read, the author supports their argument by showing that it is congruent with established views, which means a lot of citations to Supreme Court justices and T14-type folks. **Skimming footnotes, there do appear to be a number of footnotes citing to Native scholars, which seems particularly important here.**
- On my read, this article's focus is promoting DEI values because it advocates for greater recognition and protection of Native sovereignty given a recent trend in Supreme Court decisions undermining that sovereignty.

### **Tara Aida - Property and Prejudice**

- Nothing of significance to note either way. **I saw both T-14 and non-T-14 schools cited, some underrepresented groups, etc.**
- This piece certainly has a focus on discrimination against people due to their race / national origin / domicile (and links the current laws to past discrimination, e.g. against Japanese Americans) and in this sense does promote DEI values.

### **Nathan Poland - Policing Bias Without Intent**

- **The article consistently, thoroughly, and frequently cites junior scholars from non-T14 schools as well as authors from underrepresented groups, such as Charles Lawrence**

III, Allegra McLeod, Daniel Harawa, Alexis Hoag-Fojour, Nilanjana Dasgupta, and Andrew Taslitz. The breadth of the sources cited is very impressive, and the piece displays a deep citational practice that elevates other scholarship in the process.

- Racist policing in and of itself is directly and unequivocally related to DEI values. The solution intends to promote those DEI values within the law, but **the article itself embraces a citational practice that puts the DEI values into action.**

#### **Nick Gladstone - Legal Civil War**

- **Lots of citations to people other than white men at T14.**

#### **Jack Wilkins - Social Insurgency and Law Reform**

- The article cites an impressive breadth of authors. **Most of its citations were of scholars from underrepresented groups, non-T14 schools, and underrepresented disciplines (critical theory, etc.)**
- The article absolutely addresses an issue—solving racial violence by police—that promotes DEI values.

#### **Aditi Mittal - Contract or Prison**

- Based on a quick spot-check, the author seems to cite sources from a diversity of viewpoints. **She relies on the voices of underrepresented groups throughout the article.**
- This article certainly addresses an issue that promotes DEI values. Since IA contracting mainly preys on poor and vulnerable populations (who are often racial and ethnic minorities), the article highlights (and provides solutions for) an issue that disproportionately affects marginalized communities.

#### **Jack Wilkins - Determining Rights**

- **The authors cite a wide range of diverse sources, including a wide variety of female scholars and non-T-14 scholars.**

#### **Morgan Corley - Money & Federalism**

- From quick searches, the author **primarily cites T-14, male scholars who do not appear to be from underrepresented groups. Financial regulation is not known for its diversity...**
- This Article does not explicitly promote DEI values. Unless you believe that revolutionizing payments will “increase economic freedom in the world” (Coinbase’s motto), which some people do believe.

#### **David Caliguire - Guaranteeing the Press**

- On my quick perusal, **the author cites to some junior scholars and scholars from underrepresented groups. I did not identify scholars from outside the T-14, which may be the consequence of citing mostly to the leading scholars in the field.**

#### **Krista Stapleford - Systematically Valuable Transaction Costs**

- This author cites a lot from political science and economics journals, and it cites to what seems to me to be established scholars in the systems theory space (like Henry Smith). **It's not immediately clear to me that they are citing from underrepresented scholars.**
- Somewhat. The author provides examples of how the transaction costs can improve DEI initiatives by reducing the reviewer's access to information that tends to perpetuate inequities.

#### **Riya Sood - Black English for Lawyers**

- **The sources cited are definitely the most diverse ones I have seen in any law review article as they are predominantly Black singers, rappers, and members of Twitter.**
- The Article could have an impact on DEI values by providing another argument for advocates who are fighting for cases related to DEI values.

#### **Sidd Jejurikar - Fraudulent Families**

- Given that the author primarily cites cases and case filings, **it is not easy to evaluate the diversity of voices.** That being said, in the introduction, where the author details prior literature around this topic, **she cites many articles by women who wrote in journals of non-T14 law schools.** This seems true of Part III, too, which discusses other areas of law.
- The author is explicit that the impact of the Court's usage of fraud justifications is largely negative for women and children and supports sexist conceptions of the roles of unwed fathers and mothers. Further the author dedicates time to talking about the racialized register these fraud-based arguments can take as well as the ways in which they interact with immigration law. I believe this article addresses an issue with a plethora of DEI impacts. Part IIIA discusses some of the intersections with race, immigration, and sexuality in more detail.

#### **Jennifer West - Discrimination Law as Private Law**

- The article focuses on discrimination law, and thus provides a scholarly contribution to an area of law that is leveraged by advocates to promote diversity, equity, and inclusion. The article frequently references and examines concrete issues in antidiscrimination law that disproportionately affect marginalized groups, such as sexual harassment, disability discrimination, pregnancy discrimination, and religious discrimination. See, e.g., PTAN 292. The article also examines the law's effect on power dynamics in interpersonal relationships, and thus has implications for interrogating systemic power imbalances outside of the specific examples mentioned in the piece.
- **The author also appears to have made a commendable effort to cite female scholars, including in the traditionally male-dominated fields of torts and philosophy.**

#### **Taylor King - When Disciplines Disagree**

- **This article cites to sources from diverse voices. I noticed citations to women, non-T14 schools, and underrepresented groups.**

- Addressing errors in the criminal legal system's treatment of evidence definitely promotes DEI values.

#### **Aidan Calvelli - The Return of the Excluded**

- First, as always, this category is non-sensical and should be removed. The relevant metric is whether the author is engaging with the right literature: the sources that matter in the field. Second, on any metric, this article fails. **It cites like, maybe, 8 people. I think 100% of them are white.** Maybe 4 sources are from the 21st century. It does functionally no engagement with the development of property theory beyond its initial proponents.

#### **John Czubek - Regulating Algorithmic Harms**

- **It wasn't immediately obvious whether the cited sources were the work of authors from non-T14 schools or underrepresented groups.** The age of the cited authors was similarly unclear.
- The article is about how we can regulate AI to promote civil rights.

#### **Burke Craighead - The Importance of Civil Pathways to Protection Orders**

- **There is some engagement with non-T-14 and minority scholars. However, the article does not seem to emphasize that.**
- The article does discuss how the communities primarily affected by a lack of civil access to CPOs are primarily minority communities. However, this discussion is fairly brief, and it almost feels like an afterthought.

#### **Ashwin Fujii - The Supply of and Demand for Discrimination**

- The article includes breadth of research. **There are many citations to scholars early in their career (e.g. FN 229), from non-T14 schools (e.g. FN 98), and from underrepresented groups (e.g. FN 211).**

#### **Shaw Mettler - What About the Men**

- **The sources appear to be diverse, including non-T14 schools, underrepresented groups, and non-traditional legal sources (e.g., social media).**
- This article does further DEI issues. It is intersectional, discussing how the intersection of regional/state identity, race, religion, and gender can all impact rhetoric and social hierarchy. It also proposes potential solutions to promote DEI values. For example, it suggests that Jewish and Muslim allyship could be a useful tool to resisting Orientalism, anti-Semitism, and Islamophobia.

#### **Marissa López - Waste, Property, and Useless Things**

- See note above about the inherent limitations to diverse voices in the theoretical property law space. I think this should not be counted heavily against the author, but worth noting—**many areas of private law are often lacking in diverse voices, and my impression is that there was at least some effort to include more diverse and underrepresented scholarship in a Locke-focused piece.**

### **Scarlett Park - Comstockery: How Government Censorship Gave Birth to the Law of Sexual and Reproductive Freedom, and May Again Threaten It**

- From a scan of the sources, there's no special effort to cite sources from diverse voices. Above the line, the article focuses on the work of White suffragists and doesn't distinguish it from experiences/advocacy of non-white suffragists.
- The article does discuss a means through which abortion access advocates/litigants may counter arguments made by antiabortion activists using the Comstock Act. To the extent that this may assist in ensuring sexual healthcare for women, the articles does promote such values.

### **Aditi Mittal - Coopting Disruption**

- The article cites many economists, which gives the article an interesting interdisciplinary outlook. And some scholars from non-T14 schools are also cited. Most of the theorists and scholars that the authors rely on to support their arguments are not from underrepresented groups, however.
- The article mainly deals with the importance of competition and innovation in the economy, particularly the technology sector. I am sure that much can be said about the relationship between DEI values and the technology sector as it currently exists, but this relationship is not directly or indirectly addressed in the article.

### **Ashwin Fujii - The Reality of the Good Faith Exception**

- The article includes breadth of research. There are citations to scholars early in their career (e.g. FN 72), from non-T14 schools (e.g. FN 62), and from underrepresented groups (e.g. FN 74).
- This article does not directly involve an issue that is related to DEI values.

### **Will Searcy - Cryptofraud and the Private Ledger Problem**

- The sources do not seem that diverse. I did see a reference to a scholar of color from Lewis and Clark Law School, but the main references were to professors from schools like UChicago, Yale, Harvard, etc.
- On my read, it is unclear about what impact this article would have in the field. It could promote DEI values because it is trying to better protect consumers, but I don't think the cryptoworld is currently that diverse of a place to have a broader impact.

### **Mikaela Rabb - Tribal Courts are Courts of General Jurisdiction**

- The scholar seems well versed in authors working in the tribal law space such as Prof Fletcher who is Native and based at UMich.
- Yes, it advocates for more power to tribal courts.

### **Aly Kersley - Black Lawyers Matter**

- Yes. [In response to the question about diversity.]
- Yes! This Article provides a compelling argument for the importance of affirmative action and highlights to perspectives of Black former law students at Yale.

### **S-21066 (Fujii) – On Listening to Defendants**

- The article includes breadth of research. There are many citations to scholars early in their career (e.g. FN 56), from non-T14 schools (e.g. FN 11), and from underrepresented groups (e.g. FN 15).
- Yes, the article is about the criminal justice system, and extensively discusses the role of race.

### **Nathan Poland - Indiscriminate Data Surveillance**

- The article cites junior scholars from non-T14 schools as well as underrepresented groups, such as Nicole Mo and Ángel Diaz. The breadth of the sources cited is impressive, although the breadth of the research does not translate into a more compelling argument.
- The issue in the article is related to DEI values but the article itself does not frame the issue through the lens of any particular DEI value.

### **Teni Odugbesan - Transnational Corporate Law Litigation**

- See above. The article cites a wide variety of sources – many from non-T-14s and underrepresented groups (especially in the human rights space).
- Yes – human rights, some post-colonialism themes.

### **Morgan Corley - What's in a Name? The Implications of Strategic Naming Choices in Legal Advocacy**

- The author is not citing from legal journals, so the T-14 comparison does not directly apply here. On a quick check, the linguists/psychologists cited do not appear to be from underrepresented groups.
- At several points the author integrates concerns about equity, fairness, and bias into naming practice. See, e.g. end of Section V.B.b. This piece therefore works to ensure that attorneys are adhering to principles of fairness in legal proceedings.

### **Jessenia Clàss - History and School Prayer Cases**

- Given this is an originalist argument, much of the research cites to Founding-era history and case law. Naturally, the pool isn't that diverse. Citations to modern journal articles and books – on a quick skim – didn't seem that diverse either.
- This could meet the Law Review's DEI goals in terms of the big picture: the Article advocates for a way to save the School Prayer Cases, which helps avoid mandating the supremacy of some religious practices over others.

### **Burke Craighead - Challenging Legacy Discrimination: The Persistence of School Pushout as Racial Subordination**

- There is some non-T-14 representation, but not an emphasis. There are number of Black scholars cited.
- The article has clear DEI potential.

### **Gabriel Babuch – Examining Anti-Youth Courts: A Case Content Analysis of Youth’s First Amendment Claims in Schools**

- Yes, but considering the quality of research, I’m not sure that this is doing anything for it. For example, Vivian E. Hamilton is Black, and Laura B. Kelly (both FN 17) is a scholar that focuses on education studies/elementary literacy.
- Yes. I think children are not typically written about and deserve further and more scholarship, especially that looking at how the law treats them.

### **Benjamin Dinovelli - Administrative Violence in Immigration Law**

- Yes. Several authors are junior (e.g., JD ’17, current academic fellow), from non-T14 schools (Brooklyn, Georgia State, Loyola, Seton Hall, U.S.C., U. of Wash., Wash. U., Widener) and/or from underrepresented groups.

### **Taylor King - A Longitudinal Perspective of Diversity in the Legal Profession**

- Definitely cites some diverse scholars – primarily Native and Asian scholars – from non-T14 institutions. That being said, they cite to a pretty small universe of sources. Which is probably explained by the quantitative subject matter and the type of analysis.
- Diversity in the legal profession definitely relates to DEI values.

### **Taylor King - Reestablishing Religion**

- The article largely cites to cases. However, once it turns its focus elsewhere, the citations do include non-T14 publications. The article does, though, cite to A LOT of old white men. There are some citations to women and very few to people of color.
- This article doesn’t really present a solution to anything or address an issue. Rather it is more an exploration of where the Court is and how it got here.

### **Riya Sood – The Lost History of History and Tradition**

- A quick spot-check reveals that the Article primarily cites to non-diverse voices. There are citations to women and people of color – but they are all very well known names from top institutions and published in top journals. In general, the Article predominantly cited very well-known legal scholars.
- The Article could have an impact on DEI values by providing another argument for advocates who are fighting for cases related to DEI values.

### **Sebastian Miller - Disclosure Puzzles in Patent Law**

- I counted 26 footnotes in all that referenced one or more of the authors, which is not an insignificant amount. Beyond that, the sources provided did not strike me as either notably inclusive or exclusionary.

### **Pearson Goodman - What is Reasonable? A Study Across Languages and Cultures**

- The author cites lots of pieces, that seem to be well footnoted. It’s not immediately obvious what institutions or the identities of those authors cited in the footnotes.

### **Ben Weinberg - Investor Justice**

- Again, hard to tell, but I think so. [In response to the question about diversity.]
- And for what it's worth -- if my guess about the author is correct, it's worth noting that she herself is a Latina professor at a non-T14. She also workshopped this article at a conference specifically for Latinas in legal academia.

#### **Aditi Mittal – A Structural Account of Implicit Bias**

- Based on a quick spot-check, the authors cite the voices of many underrepresented groups. There seems to be a slight bias toward scholars from T-14 schools, but non-T14 schools are certainly represented in the Article.

#### **Aditi Mittal - Exclusionary Ableism**

- Based on a quick spot-check, the Article seems to cite sources from many different underrepresented groups.

#### **Robert Shepard - Torts Mismatches**

- While the article cites a broad range of sources, its engagement with diverse voices could be improved. Incorporating insights from junior scholars, non-T14 schools, and underrepresented groups would enrich the analysis and reflect a wider spectrum of perspectives within the legal community.

#### **Jennifer Ding - The Rise of Form Contract in the First Corporations**

- The author focuses a lot on contract law, economics, and legal theory, and I do not notice a lot of underrepresented voices being cited in this respect.

#### **Nathan Poland - The Renaissance of Private Law**

- Perhaps I am overlooking some positive aspects of this piece, but one of the most disappointing features for me was the lack of diverse scholars being cited or referenced in the footnotes.
- The article does not cite many scholars from underrepresented groups or non-T14 schools. I was rather disappointed that the citations often quoted the most prominent scholars in particular fields repeatedly without injecting new voices into the conversation. The breadth of the sources cited is somewhat impressive, but it would be more impressive to see research that brought in a variety of perspectives.

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*[[Editor's note: Poland appears to have used the exact same language in two different memos.]]*

### **Jack Wilkins - The New Homelessness**

- The article cited diverse voices, including work from non-T14 scholars and people from underrepresented groups.

### **Robert Shepard - Deterring Unenforceable Terms**

- It appears that the article's citations are primarily from well-known scholars and institutions, with less representation of diverse voices, such as junior scholars or those from underrepresented groups. Expanding the range of sources could enhance the article's perspective and inclusivity.

### **Noam Krainin - Punishing Involuntary Resistance**

- A spot-check reveals that this article cites sources from an impressively diverse and broad array of voices. **Several junior scholars, authors from underrepresented groups, non-T14 professors, and practitioners are cited.** Critically, the piece cites a significant number of authorities in fields such as psychology, evolutionary biology, neuroscience, sociology, philosophy, and more non-legal disciplines. The author includes all these voices while also citing prominent works in the area. These sources are all well utilized to support the article's propositions.

### **Jennifer Ding - The Counterfeit Sham**

- The author's argument is centered more around legislation, patents, cases, and treaties that speak for themselves in some ways, but the amount of scholarship cited from junior faculty, non-T-14 schools, and underrepresented groups especially for key arguments is impressive. The use of Prof. Osei-Tutu's argument in framing **Part IV** was particularly appropriate.

### **Robert Shepard - Contractual Commitments and the Right to Change Religions**

- Truth be told, I was unable to verify to my satisfaction what extent the sources are diverse. I cannot accurately answer this question, so I withhold any judgment.

### **Ada Onyimah - Involuntary Baselines**

- Yeah I think a good range of law reviews are cited! **Not sure about the junior scholars or underrepresented groups though.**

### **Taylor King - Spirit**

- **Because so much of the article is backward-looking, there is not much engagement with diverse scholars (which I believe is more a function of the historical homogeneity of the legal field than it is a function of narrow research).** The author cites primarily to pretty prominent scholars (Blackstone, Manning, Eskridge, etc.).

### **Sarah McClellan - Native Nations & Diplomacy**

- The article cites diverse voices from underrepresented groups.

### **In Kyu Chung - Cities and the Rule of Law**

- Not particularly broad. I was initially excited when **Part I** led with interesting contemporary examples of self-built cities. My guess is that this movement must have generated discourse in the legal community, as well as in the technological industry. The ensuing discussion in the Essay failed to bring in such literature. **I also do not see a salient effort to cite sources from junior or underrepresented scholars.**

### **Lewit Gameda - Health Care Freedom Premium**

- **It pulls from diverse sources but im not sure if it pulls from diverse voices. There are cites to non T-14 schools and does account for underrepresented groups by including first person accounts in its research.**

### **Aditi Mittal - Et Tu, Agent Commission-Based Steering in Residential Real Estate**

- **The authors could likely have cited more sources from diverse voices. Most of the sources in this article derive from the economics literature, which means that there seems to be an underrepresentation of voices from underrepresented groups.**

### **John Czubek - Free the Market**

- **It wasn't immediately obvious whether the cited sources were the work of authors from non-T14 schools or underrepresented groups.** The age of the cited authors was similarly unclear.

## **Third Stage of the Article Selection Process**

*Based on the Rotopool memos, the articles committee selects approximately 50 pieces for further review. Those articles are unblinded and divvied up amongst the committee's 10 members, who write memos on the pros and cons of each piece. Those memos, known as "M-Reads," sometimes cite protected characteristics as a ground for publication. The Free Beacon identified 10 M-Reads in which editors discussed the race or gender of the author, and two in which they discussed the race or gender of the author's sources.*

## **2013**

### **Ronni Sadovsky - The New Nexus**

- For the articles committee: **I also note that this piece was written by a woman of color, making it desirable from the perspective of our committee's diversity goals.**

## **2022**

### **Elena Vazquez - Public Defenders as Gatekeepers of Freedom**

- Centrality of race: I appreciated that this article made race a central theme of the argument at various points. It discusses the way in which the nature of bail changed as the criminal legal system became more racialized after the end of slavery. It also talks about how gatekeeping transfers the decision making power and agency from largely

people of color who are incarcerated to predominantly white public defenders. I think it is important that criminal law and procedure pieces grapple with race as a central theme, and this article does so.

- **Diversity:** This article is written by a woman of color outside of the T14.

## 2023

### **Aidan Calvelli - Rethinking School Integration**

- Career impact: I'm always skeptical that L. Rev. Articles will change the law, but I am less skeptical that HLR publications will make a difference in academic careers. **This scholar is a young academic of color on an upward trajectory at UVA, and I think our publication would help advance his career** (and legitimate the kind of mixed-method, center-impact writing that he's propounding).

### **Aidan Calvelli - Calvelli Becoming Fundamental**

- Author Diversity: **Prof. Ross is a progressive Black scholar** – a description not applicable to many people who are engaged in this deep an originalist project. **I will also note that at the time of this writing, 80% of the authors we have published in Vol. 137 are white.**

### **Aidan Calvelli - The Color of Social Security**

- Important Lens: The author is right that the history of the SSA seems unavoidably racialized. And he's right that this has material, massive consequences on Black welfare and intergenerational Black wealth. This article's detailed elaboration of this claim, **done by a leading Black scholar**, could thus be a valuable contribution in a debate where legislation is on the table and could do real good.

## 2024

### **Riya Sood - Criminal Procedure as the Law of Cooperation**

- **Our Goals:** I also want to flag that this piece doesn't meet many of our Articles team's goals for this last piece. This piece is on procedural criminal law, not substantive criminal law. It is not an essay length. Nor does it cite state law pieces – instead many of these citations are to well established professors. **Lastly, this author is not from an underrepresented background.** He is from a non-T14 school but his resume includes many articles in top-tier journals.

### **Riya Sood - Pre-Arrest Promise**

- I strongly recommend we move this piece to C-Read. As you'll see from my pros/cons below, I think this is an extremely strong contender for our journal! It meets many of our priorities – it essay length, on criminal procedure, **and is written by a woman of color** who is also a practitioner. It also reminds me a lot of the Chicago teachers piece we were all very excited about in the spring in that it is a slightly

unconventional article that draws a lot on personal experiences, but still has a strong legal tie-in. And it cites a Kendrick song in the Conclusion! I believe we should O-Read this piece and, barring any literature review or faculty review concerns, I think this is an extremely strong last (or second to last?) piece.

- As I laid out above, this meets a lot of our priorities! **The author is a woman of color** who is drawing on her own experiences as a public defender who participated in this program. She also is a clinical faculty member. The piece is on criminal procedure and is essay length – which was exactly what we were looking for!

### **Tashrima Hossain - The Shadow Defendants**

- I recommend this article advance to C-Read. I have mixed opinions on this piece. On one hand, The Shadow Defendants pays much-needed attention to a real-world phenomenon of the criminal legal system: women who support system-involved men. Its intersectional focus and pragmatic solutioning reflects the potential to tangibly shift the dynamic for a growing community of shadow defendants. It is clearly structured, well-written, and engaging throughout. Furthermore, this article is one of the few critical race theory pieces to reach the M-Read stage, **and it is written by a Black, early career, non-T14 female professor** with a background in public defense. On the other hand, the solutions section (Part IV.B) left me wanting more, there is limited engagement with potential counterarguments, and the premise of the piece may be gender exclusive in nature. I also wonder if this work is sufficiently legal, as it highlights a feature of the criminal legal system but largely focuses on non-legal responses. These challenges are highly fixable through workshopping, as the piece has good bones. Those good bones are what ultimately lead me to recommend this article, as I think it could benefit from further discussion.
- **Underrepresented author and subject matter.** Hinds is a Black female professor from a non-T14 school. She is early in her legal career, having just graduated from Stanford Law School in 2014. Finally, she has an extensive practitioner background, including as an attorney at The Bronx Defenders and The Public Defender Service for the District of Columbia. This article is also one of the few critical race theory pieces that has advanced to the M-Read stage, and I have not seen a gender-focused piece this articles season (though I am sure there are others).

### **Tashrima Hossain - The Forgotten History of Prison Law**

- **Underrepresented author.** Graham co-teaches UCLA's Prisoners' Rights Clinic and is a Liman Law Fellow in the Supreme Court and Appellate Program of the Roderick & Solange MacArthur Justice Center. She is a civil rights practitioner, 2022 law school graduate, **and a woman.** **While these are not necessary reasons to advance the article, her background can offer a novel perspective in our pages — and her litigation experience might imbue a certain level of practicability to her work. To the extent that we view our journal as one that can uplift the work of underrepresented authors, publishing this piece would likely have a tremendous impact on Graham early in her career.** (She's 29-ish!)

## Leah Smith - Consent & Causation

- **Engagement with feminist literature, and citing non-men scholars more generally:** Given the subject matter, I was surprised at how little the author engaged with feminist literature on sexual autonomy, consent, and criminalization of sex. I agree with the Rotopooler's critique here too about the really glancing discussion of overcriminalization/Aya Gruber's work. But the same problem was repeated elsewhere: just one sentence devoted to feminist scholars' efforts to redefine and "refurbish" sexual consent, and the same with the concepts of agency vs. autonomy in sex. The article isn't short and, frankly, doesn't make much of an effort to be concise in many areas, so this weakness felt particularly pronounced.
- Additionally, the author cited a lot of scholars above the line when discussing the other literature in the field, which I really appreciated. But as I went on, **I noticed a gender disparity in the scholarship cited. On my read, the author cited 20 men by name above the line. Several of the names repeated most frequently in the article are men (e.g., Weston and Schulhofer). At the same time, the author cited 9 women and 1 non-binary scholar (a second co-author) above the line. The imbalance was stark enough that it jumped out to me as I was reading, before I was looking for it. This is something I'd appreciate at the very least discussing as a committee about this article, given the combination of subject matter and the critique about feminist literature discussed above.**

## Tashrima Hossain - Policing Bias Without Intent

- **Diverse authorship and real-world impact.** Professor Hochman Bloom's career represents an invaluable fusion of a practitioner background (she was previously an Assistant Public Defender in Florida, as well as a litigation associate at Cleary) and a firm footing in the legal academy. At Foreword Selection, the body expressed a value for representing both practitioner and scholarly perspectives in our journal; Professor Hochman Bloom easily embodies both. She is relatively early in her career as well, having earned her J.D. in 2009, and teaches at a non-T14 law school. **(She also amply cites scholars who are junior, from non-T14 schools, and from underrepresented backgrounds.)**

## Tashrima Hossain — The Counterfeit Sham

- My impression is that IP law is a less represented topic in our pages, and **it would be remiss if I did not mention the opportunity to elevate a female scholar from a non-T14 school earlier in her career.**

## Fourth Stage of the Article Selection Process

*Articles that receive a strong M-Read are discussed by the entire articles committee, which votes on whether to advance them to a journal-wide vote. During one of those discussions—which took place in March of this year—editors debated whether the journal*

had “enough Black and Latino/Latina authors.” Below are some excerpts from the meeting minutes.

- AC Member #1:
  - **Thinks we have too many Yale JDs and not enough Black and Latino/Latina authors**
  - **But that we shouldn't be checking a box; just something to be mindful of**
- AC Member:
  - Switching to a “yes” since people seem to be positive on the merits
  - Thinks we should be thinking about having too many Yale people
  - **But we've already sent a lot of diverse authorship pieces to O-Read and they've been failed**
- AC Member:
  - Doesn't want to send pieces that don't deserve to go forward because of diversity
  - **But we should be cognizant of this**
  - Some of the punishing later articles for what is already published because it's just part of the nature of the rolling articles process

### **Selection Process for Supreme Court Forward**

*The foreword to the Harvard Law Review's Supreme Court issue is one of the most prestigious articles a law professor can write. When deciding who to solicit for the foreword, editors frequently discuss the race and gender of various candidates.*

*The Free Beacon found two foreword selection memos in which editors recommended a scholar based in part on protected characteristics. It also found a spreadsheet by the law review's diversity committee, which helps narrow down the candidates, that suggested four different scholars based on race and gender.*

### **2020**

#### **Foreword Selection Memorandum on Yale Law School's Cristina Rodríguez (by Alexandra Avvocato, Sun Young Hwang, and Abe Kanter)**

- Rodríguez grew up San Antonio, Texas, but “New York City is probably the place where [she] feel[s] most at home.”<sup>8</sup> She received a B.A. in History from Yale in 1995, from where she also graduated law school in 2000. Between college and law school, she was a Rhodes Scholar at Oxford, earning a Master of Letters in Modern History in 1998. After graduating from YLS, Rodríguez clerked for Judge David Tatel of the D.C. Circuit and Justice O'Connor of the Supreme Court. Rodríguez is many things besides a law professor: she is a fan of Junot Diaz, a “wonderful chef” and

“magnificent salsa dancer,” and bilingual. **If selected, Rodríguez would be the third woman of color, and the first Latino/a scholar, to write the Foreword.**

**2023**

**Foreword Selection Memorandum on UC Berkeley’s Ian Haney López (by Tashrima Hossain)**

- If chosen as the Volume 138 Foreword author, Haney López may write about race as an overarching theme of the Term, Alexander v. South Carolina State Conference of the NAACP (a pending equal protection and election law case regarding South Carolina’s redistricting map), or the legitimacy of the Court. A Foreword by Haney López can be expected to draw on his deep understanding of critical race theory, constitutional law, and jurisprudence. **Finally, if selected, Haney López would likely be the second Latinx scholar to write the Foreword – a momentous step for the Harvard Law Review and the legal academy in itself.**

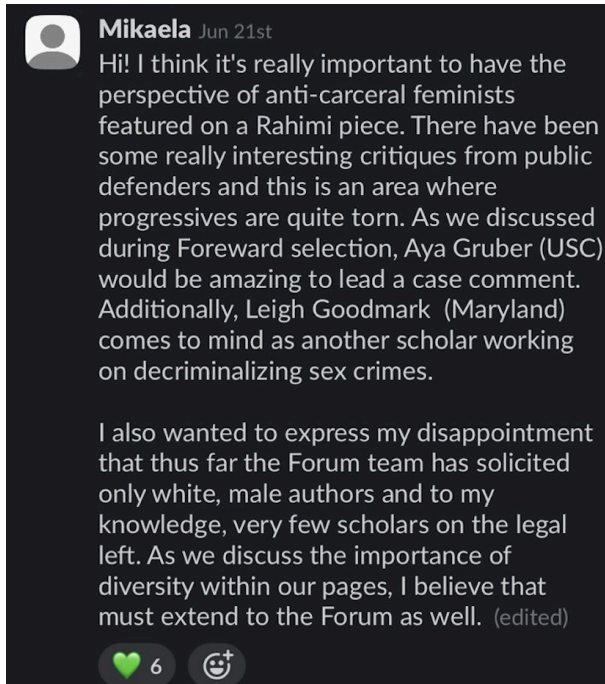
**2024**

**Diversity Committee spreadsheet on why various scholars should write the foreword**

DivComm Foreword Nominee List						
Name	School	Legal Expertise	Why should they write the foreword?	Bio	Important Works/Articles	Comments/Discussion
Shirin Sinnar	Stanford Law	Civil Procedure, Civil Rights	Focuses on the procedural dimensions of civil rights and the roles of institutions in protecting individual rights. Speciality in national security / executive override. Sinnar would also be the first hijabi, Muslim woman to write the Foreword.	<a href="https://law.stanford.edu/directory/shirin-sinnar/">https://law.stanford.edu/directory/shirin-sinnar/</a>		
Mari Matsuda	University of Hawaii	Antidiscrimination law, civil rights, critical race theory, conlaw	Prof. Matsuda was on the shortlist of nominees last year - she's an activist and a scholar, was one of the pioneers of critical race theory (especially as applied to legal studies), and was the first tenured female Asian American law professor in the US			
Ryan Doerfler	Harvard Law School	Admin, court reform and judicial review	"Ryan Doerfler's research focuses on the role of the judiciary within a democratic system. His recent work includes a critical reassessment of the embrace of judicial review within the liberal legal tradition and an analysis of the relationship between theories of statutory and constitutional interpretation and a fundamental commitment to democratic self-rule" One of few Latino professors in this space	<a href="https://hls.harvard.edu/faculty/ryan-d-doerfler/">https://hls.harvard.edu/faculty/ryan-d-doerfler/</a>		Latine scholar
Ian Haney-Lopez	Berkeley	constitutional law, civil rights	"teaches in the areas of race and constitutional law. One of the nation's leading thinkers on how racism has evolved since the civil rights era, his current research emphasizes the connection between racial divisions in society and growing wealth inequality in the United States. In Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism and Wrecked the Middle Class (2014), Haney López detailed the fifty-year history of how politicians exploit racial pandering to fracture social solidarity and ultimately to convince many voters to support rule by the rich."	<a href="https://www.law.berkeley.edu/our-faculty/faculty-profiles/ian-haney-lopez/#tab_profile">https://www.law.berkeley.edu/our-faculty/faculty-profiles/ian-haney-lopez/#tab_profile</a>		Latine scholar

## Slack Messages

*Editors also exchanged multiple Slack messages about the race and gender of the authors they were considering. One editor, Layla Rao, implied that a piece should be expedited because its author was a “POC.”*





## Thread

#onlinefriends



**Riya Sood** Aug 31st, 2024

For 2) would personally love to see someone else instead of Garrett West. I like the idea of elevating young scholars but would think it would be great to look beyond HYS. Additionally, four of the five people raised in this message are white men, which I find concerning. Having read the article pretty thoroughly, I think a huge missing piece was that of how race fits into policing and misconduct in these contexts (which is very relevant to Bivens claims). I think it would be great to have someone like Prof Brandon Hasbrouck perhaps write a response as they would likely speak to that angle. Open to other suggestions, though, since I'm not an expert on this! (edited)



7



**Leah Smith** Aug 31st, 2024

very much agree with Riya that I think adding in the lens of race and policing would be helpful and generative in the forum response--and shed light on why constitutional torts/Bivens more generally have been under such sustained attack. Fred Smith Jr. is a co-author of the Constitutional Torts casebook and would increase non-T14 representation in forum



**Layla Rao** 9:38 AM

I got an email about an expedite request on S-17854 (Black Liberty in Emergency) until 2/11. POC author from outside T14. Publication offer from Northwestern. Let me know what either of you think -- we should send for Roto tonight if we want to move on this!

# diversitycommittee



Wednesday, October 4th



**Laura Aguilar** 11:51 AM

Thanks so much for the great conversation yesterday! To help in the brainstorming process, DivComm has started to put together a list of all the past Foreword authors with their institutional affiliations and self-identified demographic information. It's incomplete and not the best methodology (demographic info pulled from bios, gleaned from professional affiliations, and other self-identifying indicators).

<https://docs.google.com/spreadsheets/d/1Gh52LV05rzcuGq4ovDgHjSF026bhebW3gBhKoDURIU/edit?usp=sharing>

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F 1 reply 20 days ago



**Laura Aguilar** 11:55 AM

To the best we've been able to put together so far, in the past 57 years, we've selected 13 women, 5 Black authors, 1 Latinx author, 1 Native author, 1 Asian author, and 2 LGBTQ authors. (edited)



**Laura Aguilar** 12:08 PM

We've selected 2 judges, with the vast majority being professors from Harvard/T-3/T-14 schools:

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Institution	Count
Berkeley	1
Columbia	6
Gould School of Law at USC	1
Harvard	19
Judge	2
NYU	5
Penn	1

## Editor Selection Process

*It's not just the selection process for articles. Each year, the law review's holistic review committee selects 24 students to serve on the journal. That journal has pledged to consider race and gender as part of this process, passing a resolution in 2021 that made the inclusion of "underrepresented groups" the "first priority" of the admissions committee. As of May 4, 2025, the journal's application materials encouraged applicants to disclose their race so that the journal could select "diverse" editors. The materials were later changed without explanation.*

## **2021 resolution**

TEXT: The below statement shall comprise the mandate of the Holistic Review Committee (HRC) and guide the HRC's selection process:

1. The HRC shall be comprised of the President and two members selected through a full body election.
2. The HRC shall hold as its first priority the inclusion of qualified editors from underrepresented groups, considering factors including but not limited to race, socioeconomic background, gender identity, sexual orientation, and disability, and recognizing the importance of considering candidates' intersectional identities.

## **2025 online application packet (as of May 4)**

Twenty-four editors shall be selected through a holistic but anonymous review that **considers all available information**, including Competition score and grades but with a special emphasis on improving the quality of the Law Review through the **selection of candidates that can contribute a diverse set of backgrounds** and experiences to the editorial work of the Law Review.

**Applicants will have the opportunity to convey aspects of their identity, including but not limited to their racial or ethnic identity, disability status, gender identity, sexual orientation, or socioeconomic status, through the Law Review's holistic consideration process.** Applicants can do so by submitting an additional expository statement. Should they elect to write them, applicants are encouraged to draft their expository statements before the Competition week begins. The prompt for the statement is as follows:

"You are strongly encouraged to use the space below to submit a typed expository statement of no more than 200 words. **This statement may identify and describe aspects of your identity not fully captured by the categories on the previous page, including, but not limited to, racial or ethnic identity, socioeconomic background, disability (physical, intellectual, cognitive/neurological, psychiatric, sensory, developmental, or other), gender identity or expression, sexual orientation, country of origin or international status, religious identity or expression, undergraduate institution(s), age, academic or career trajectory prior to law school, military status, cultural background, or parental/caretaker status.** Additionally, or alternatively, you

may use this statement to identify and describe areas of academic or scholarly interest, career goals, or any other element of your identity that you would bring to your work on the Law Review.