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COLORBLINDNESS: AFFIRMATIVE ACTION AND BEYOND

ALSO FEATURING

Editors' Note on the Theme

Prompted by the U.S. Supreme Court's decision to grant the petition for writ of certiorari in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*,[1] we at the Harvard Law & Policy review dedicated this issue to "colorblindness." Our aspiration with the articles in this issue is to shed light on the doctrinal areas where and how the law permits consideration of race and the doctrinal areas where it does not. We also hope that the articles in this issue help readers develop their views about the doctrinal areas where and how the law *should* permit consideration of race and where it *should not*.

The first two articles in this issue directly address the pending *Students for Fair Admissions* case. The issue opens with Christopher J. Ryan, Jr.'s empirical analysis of the past, present, and future of federal court deference to race-conscious university admissions policies.[2] His predictive models reveal that affirmative action jurisprudence is likely to undergo a sea change, starting with *Students for Fair Admissions*. Elijah McDonnaugh places this data in its historical context.[3] Doing so lays bare the normative and conceptual problems with ruling in favor of Students for Fair Admissions.

The next three articles in this issue explore other areas of the law, beyond affirmative action, that implicate "colorblindness." William J. Aceves charts the history of the term 'people of color' and its legal significance.[4] The legal history of term informs his assessment that use of 'people of color' should be embraced. Tina Al-Khersan and Azadeh Shahshahani scrutinize the "colorblind" implications of the plenary power doctrine in the context of immigration policy.[5] They succeed in showing how plenary power doctrine upholds white supremacist immigration policies, which have deep roots in U.S. history. Guyora Binder and Ekow N. Yankah expose the racially disparate outcomes that flow from an ostensibly "colorblind" rule: the felony murder rule.[6] They urge legislatures to abolish felony murder on these grounds and caution against using an expansive version of the rule to check excessive police violence.

Determining the proper place for "race consciousness" in the law is a vital step toward establishing a healthy multiracial democracy. In publishing this issue, we hope to contribute to that determination.

—Editors of the Harvard Law and Policy Review,
Students of Harvard University

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[1] 142 S. Ct. 895 (2022).

[2] Christopher J. Ryan Jr., *Affirmatively in Peril: Predicting Federal Judicial Decision Making in University Admissions Cases*, 17 HARV. L. & POL'Y REV. 1 (2022).

[3] Elijah McDonnaugh, *The Limits of Equality: A People's History of Affirmative Action*, 17 HARV. L. & POL'Y REV. 43 (2022).

[4] William J. Aceves, *On the Meaning of Color and the End of White(ness), 17* HARV. L. & POL'Y REV. 79 (2022).

[5] Tina Al-Khersan & Azahdeh Shahshahani, *From the Chinese Exclusion Act to the Muslim Ban: An Immigration System Built on Systemic Racism*, 17 HARV. L. & POL'Y REV. 131 (2022).

[6] Guyora Binder & Ekow N. Yankah, *Police Killing as Felony Murder*, 17 HARV. L. & POL'Y REV. 157 (2022).