

Besting Bias in Juvenile Contexts

Sean Darling-Hammond

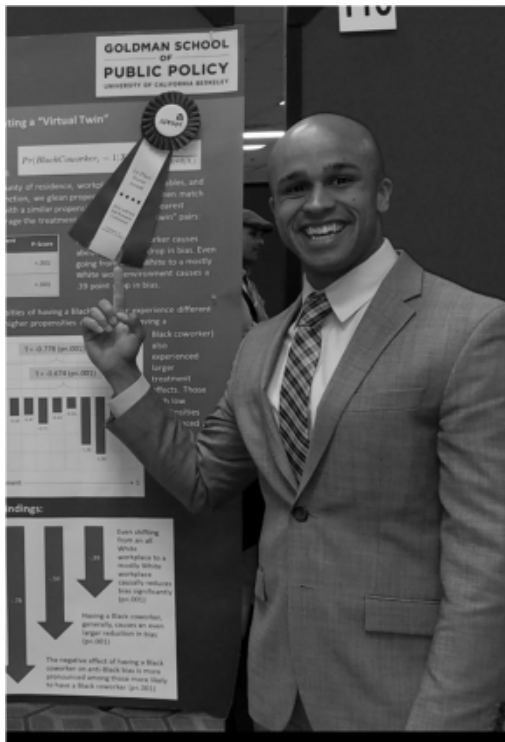
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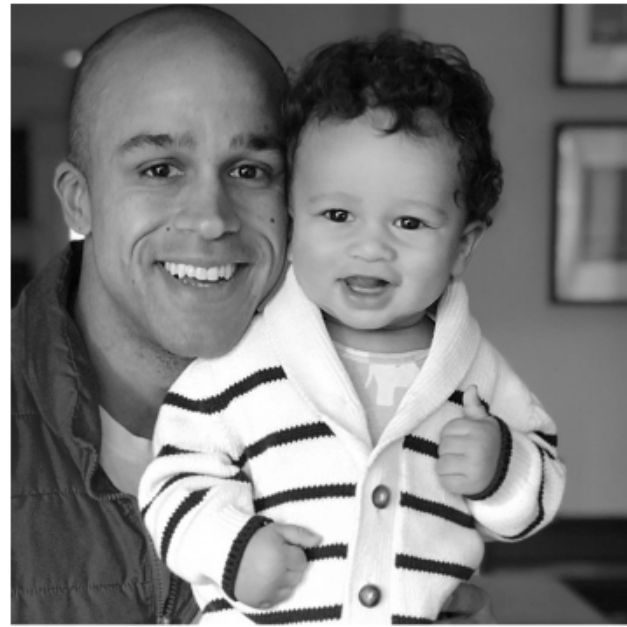
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A Nerd... and a Ninja?!

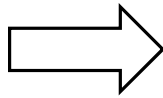


But mostly, just someone
who really cares about this topic



“Besting Bias” Goals

Immediate Goal



Eventual Goal



Topics

- I. Foundational knowledge of **systems and structures**
- II. Foundational knowledge of **cognition**
- III. Cognitive and systemic sources of **biased outcomes**
- IV. Combatting **biased outcomes**

Where we are

- I. Foundational knowledge of **systems and structures**
- II. Foundational knowledge of **cognition**
- III. Cognitive and systemic sources of **biased outcomes**
- IV. Combatting **biased outcomes**

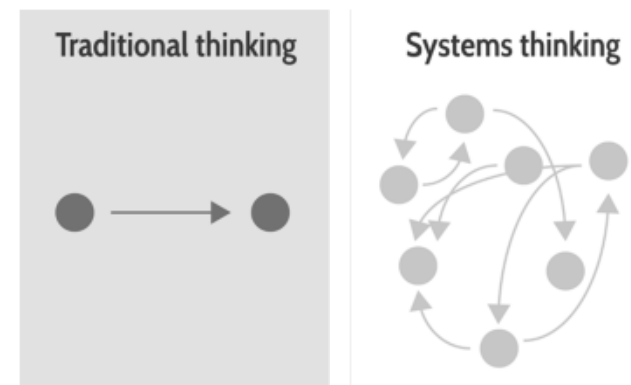
Before we dive into the mind...

Juvenile courts are *systems*.
Thus, they:

- are products of systemic inertia
- involve complex webs of decisions involving many individuals
- are guided by systemic structures / practices

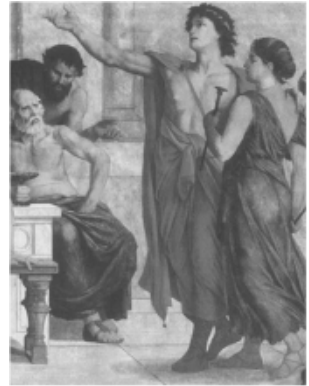


"I want you to find a bold and innovative way to do everything exactly the same way it's been done for 25 years."



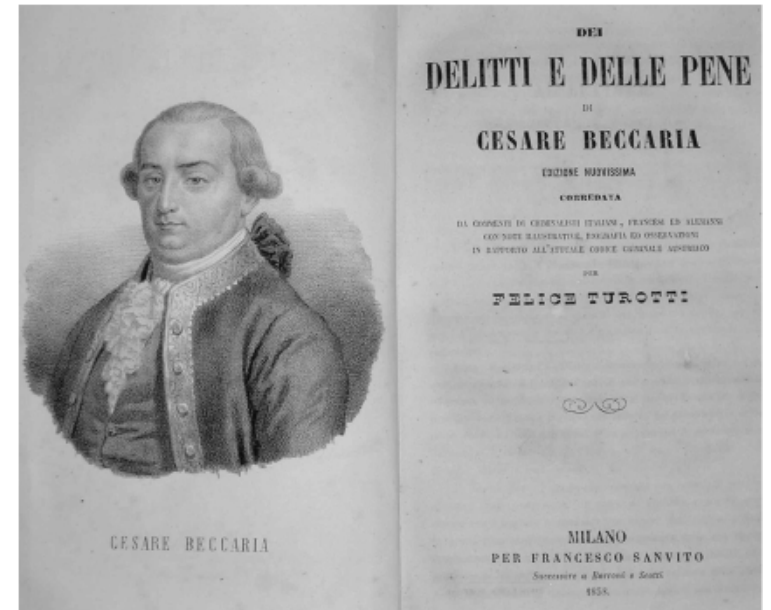
Beyond Individuals: Systemic Inertia

- Systems often reflect the beliefs that prevailed at the time of their formation.
 - Socratic instruction in law schools
 - Adversarial legal systems (concerning to social psychologists as competition encourages information hoarding / system gaming)



Beyond Individuals: Systemic Inertia

- Juvenile courts also reflect ideas that were popular at the time of their formation
 - Punishment as the primary psychological lever for deterrence (worrying to child psychology and restorative justice experts)
 - To be fair, juvenile courts created long after Beccaria published “On Crime and Punishment,” but his ideas were (and are) still very much en vogue



Beyond Individuals: Systemic Inertia

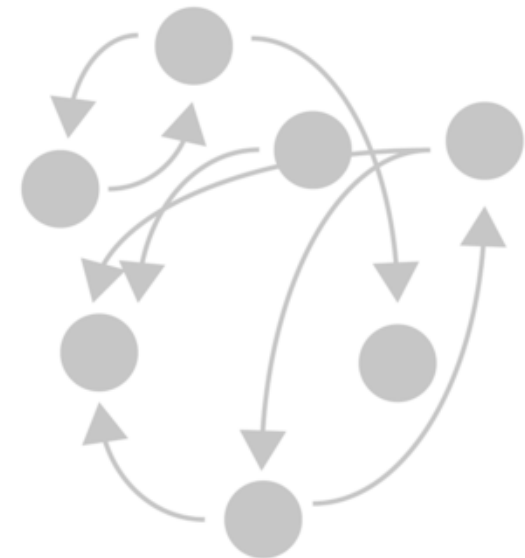
- We become numb to systemic features sustained by inertia for the same reason we don't notice our own scent – **we only notice what is novel.**
- When a society becomes numb to unideal behaviors, it is often called “normalcy of deviance.”
 - E.g. excessive car honking.



Beyond Individuals: Complex Webs

- Juvenile systems involve multiple, **interrelated, discretionary** decisions, each guided by preexisting systems. For example...
- Arrest ->
- Prosecution ->
- Public defense ->
- Judge determination ->
- Detention center employees ->
- Social workers and probation managers ->
- Teachers working on reentry

Systems thinking



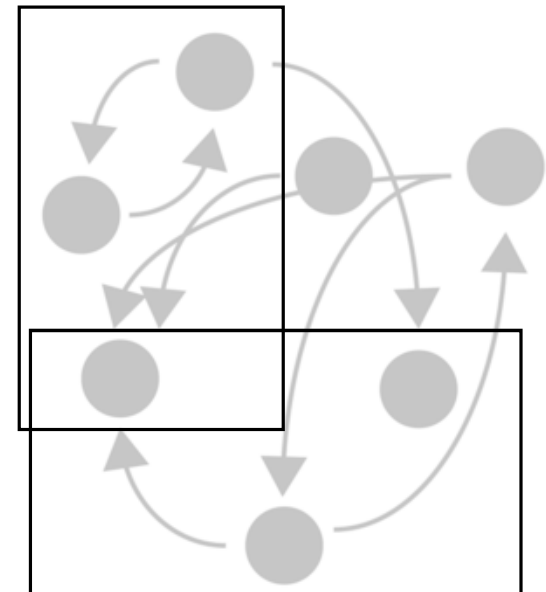
Guiding social webs: Systemic structures

Structures guide decisions and outcomes. E.g. in juvenile systems, structures answer these questions:

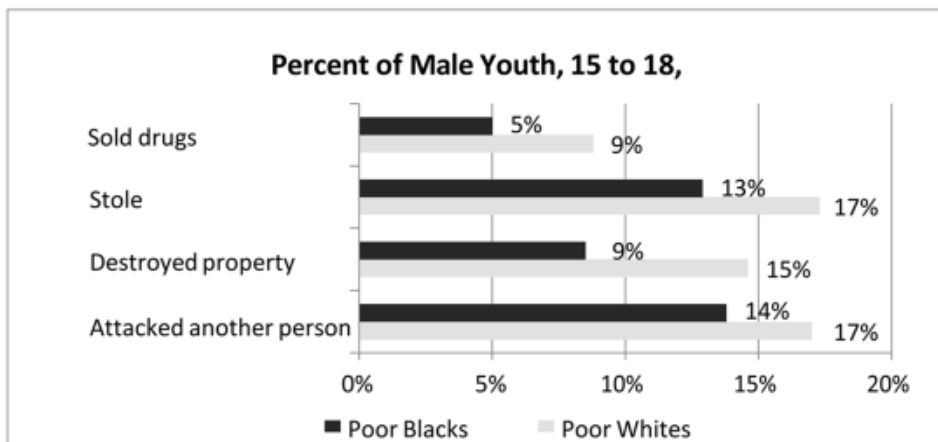
- Which kinds of conduct can result in a juvenile hearing? Who decides the types of conduct that can result in a hearing?
- Who decides when a child has engaged in that conduct? How and when do they make that decision? Are there guard rails that ensure a given situation warrants a juvenile hearing?
- What are the possible outcomes of a juvenile hearing? Who decides the possible outcomes? What kinds of conduct can lead to different outcomes? Who decides when a given outcome is appropriate?
- Etc...

You can replace “a child having a juvenile hearing” with “parents losing custody of a child” and the same structural statements apply

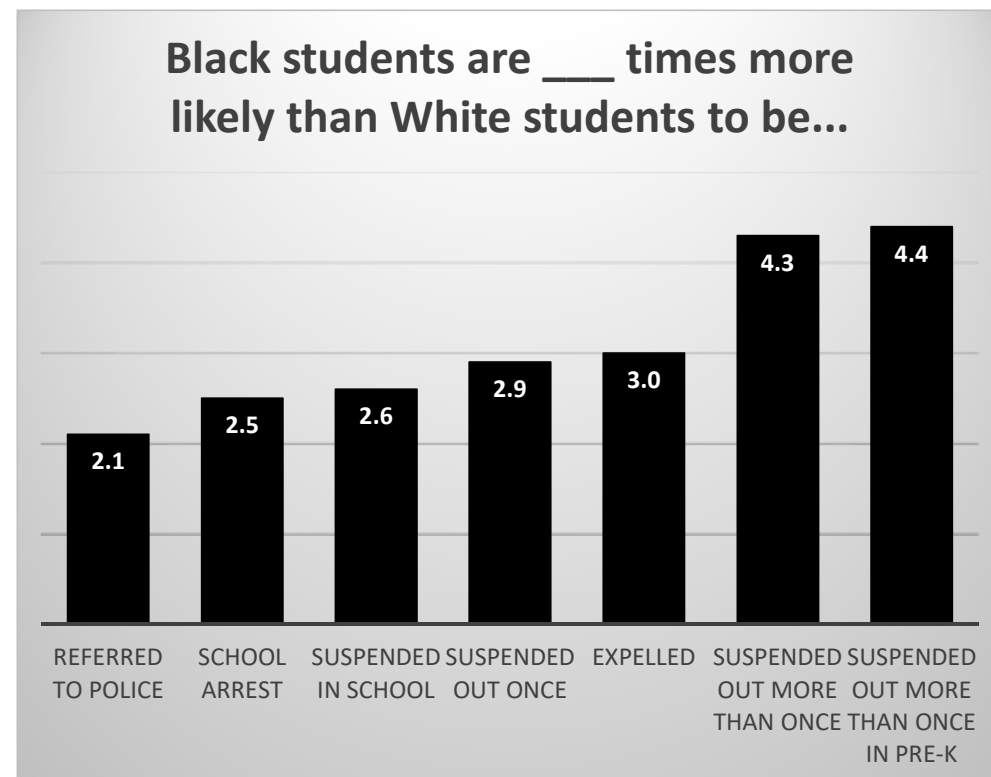
Thinking Structurally



What can happen when we shift our structures?



- Despite offending at comparable rates, Black youth are negatively overrepresented at every stage
- I and many other researchers have found that where disparities in conduct exist, they do not come close to explaining disparities in discipline



What can happen when we shift our structures?

- Disparities in response appear even in controlled environments
 - Eye tracking showed that when preschool teachers were asked to look for “troubling behaviors” they focused their attention most on Black boys (there was actually *no troubling behavior*)
 - When k-12 teachers read about *the same* conduct, but student race is varied, they are far harsher when the student is Black. Also more troubled by the behavior, more likely to label the student a troublemaker, and more likely to say the behavior is part of a pattern
 - BUT when we shifted the structure in which teachers engaged with students (providing training in a growth perspective, and letting teachers get student perspective), racial disparities in response disappeared

A RESEARCH STUDY BRIEF

Do Early Educators' Implicit Biases Regarding Sex and Race Relate to Behavior Expectations and Recommendations of Preschool Expulsions and Suspensions?

Walter S. Gilliam, PhD
Angela N. Mappin, PhD
Chin H. Reyes, PhD
Marla Accorini, BS
Friedrick Shiu, PhD

Yale University Child Study Center // September 28, 2016

Research Article

Two Strikes: Race and the Disciplining of Young Students

Jason A. Okonofua and Jennifer L. Eberhardt

Stanford University

Abstract

There are large racial disparities in school discipline in the United States, which, for Black students, not only contribute to school failure but also can lay a path toward incarceration. Although the disparities have been well documented, the psychological mechanisms underlying them are unclear. In two experiments, we tested the hypothesis that such disparities are, in part, driven by racial stereotypes that can lead teachers to escalate their negative responses to Black students over the course of multiple interpersonal (e.g., teacher-to-student) encounters. More generally, we argue that race not only can influence how perceivers interpret a specific behavior, but also can influence perceivers' detection of behavioral patterns across time. Finally, we discuss the theoretical and practical benefits of employing this novel approach to stereotyping across a range of real-world settings.

Keywords

stereotyping, racial disparities, school discipline

SCIENCE ADVANCES | RESEARCH ARTICLE

SOCIAL SCIENCES

When policy and psychology meet: Mitigating the consequences of bias in schools

Jason A. Okonofua^{1,2}, Amanda D. Panza¹, Sean Darling-Hammond²

Such exclusionary discipline predicts major negative life outcomes, including adult incarceration and unemployment. This breeds racial inequality because Black students are disproportionately at risk for this type of discipline. Can a combination of policy and psychological interventions reduce this kind of discipline and mitigate this inequality? Two preregistered experiments (N_{teachers} = 248 teachers; N_{children} = 243 children) used an established paradigm to systematically test integration of two and then three policy and psychological interventions to mitigate the consequences of bias (troublemaker labeling and pattern perception) on discipline (discipline severity). Results indicate that the integrated interventions can curb teachers' troublemaker labeling and pattern predictions toward Black students who misbehave in a hypothetical paradigm. In turn, integration of these components reduced racial inequality in teachers' discipline decisions. This research informs scientific theory, public policy, and interventions.

aps
PSYCHOLOGICAL SCIENCE

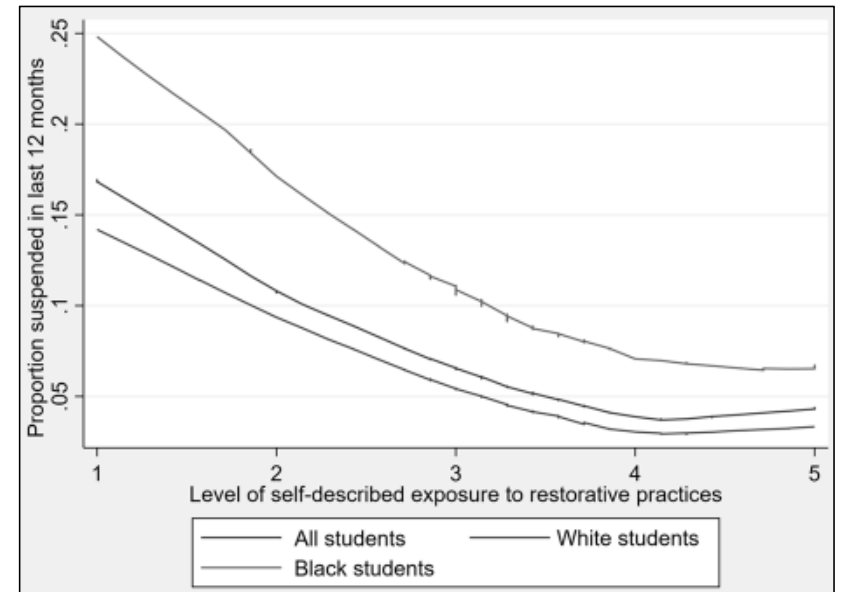
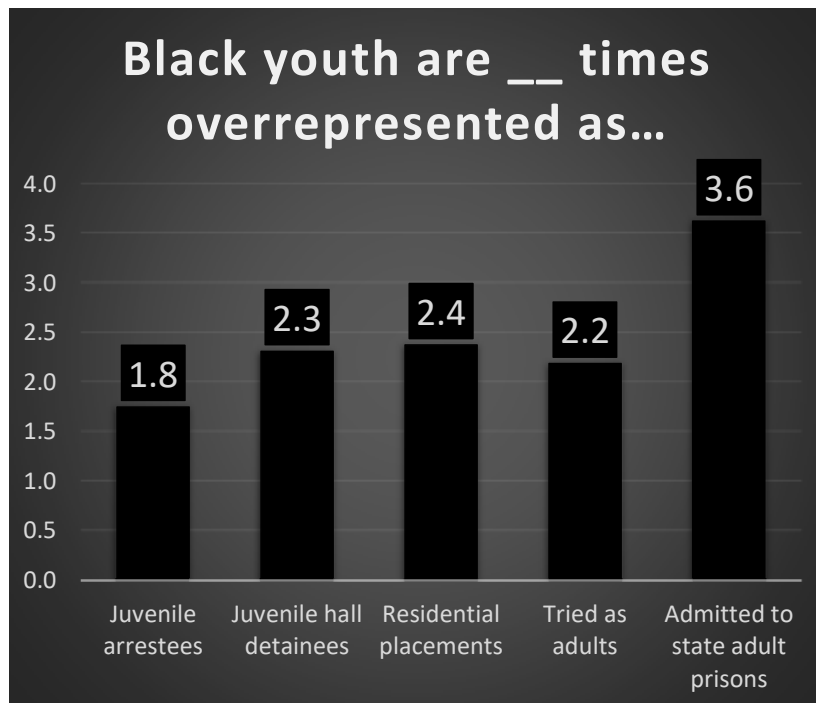
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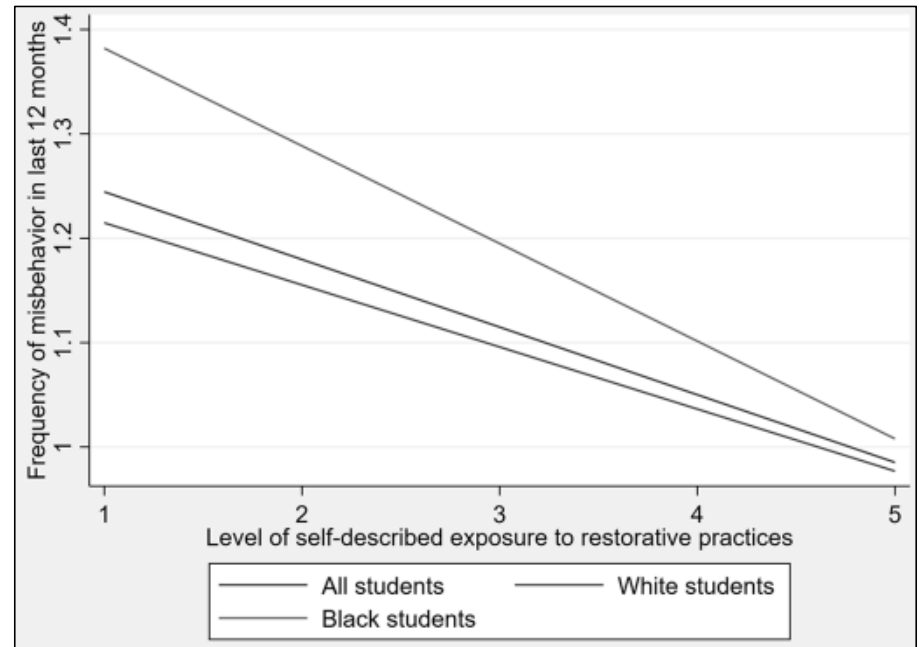
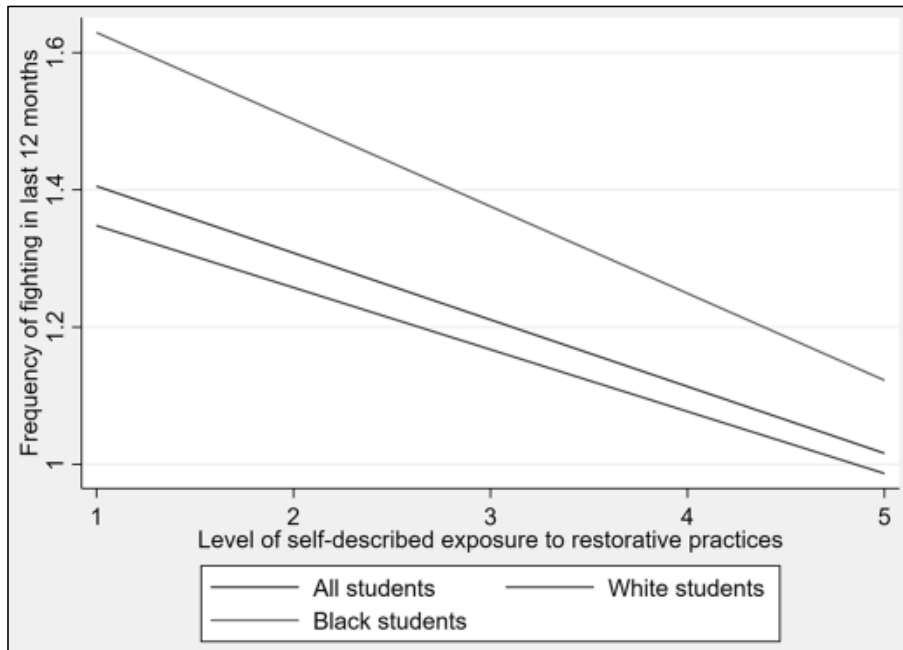
What can happen when we shift our structures?

When we look at observational data, we see the same trend – students with more exposure to systems that allow for perspective getting see smaller discipline gaps



What can happen when we shift our structures?

And we see that students with more exposure to systems that allow for perspective getting *also* see smaller disparities in behavior



Recap on Systems and Structures

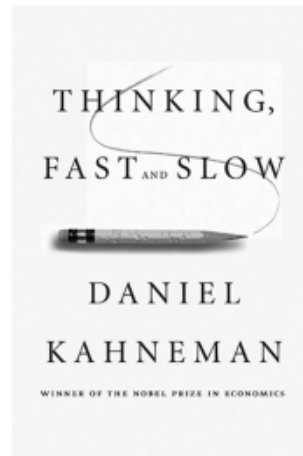
- Systems often reflect systemic inertia
 - We notice what is novel. We therefore tune out systemic inertia
 - Inertia persists unless we focus our attention on it
- Systems result in a complex web of discretionary decisions
 - Each presents opportunities for biased outcomes
- Structures guide decisions and ultimately outcomes
 - **Being intentional about the structures we create, or how we adapt and improve structures, can help vastly reduce biased outcomes**

Where we are

- I. Foundational knowledge of **systems and structures**
- II. Foundational knowledge of **cognition**
- III. Cognitive and systemic sources of **biased outcomes**
- IV. Combatting **biased outcomes**

The Psychology of Bias

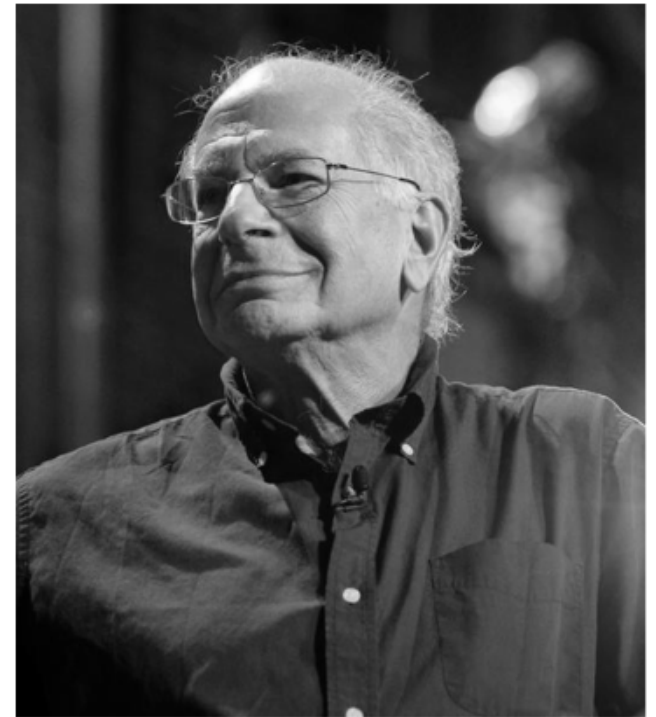
- Subconscious processes dominate our cognition and drive discretionary decision making
- As social animals, we use beliefs about groups to inform decisions about individuals
- Our juvenile systems are not designed to address some subconscious proclivities
- But there are ways we can improve our systems, and ourselves



Thinking Fast and Slow

We have two “systems” operating in our minds—

- System 1: Rapid, subconscious system
- System 2: Plodding, rational system
- System 1 is “automatic, effortless, often unconscious, and associatively coherent,” It is fast and free.
- System 2 is “controlled, effortful, usually conscious, tends to be logically coherent, rule-governed.” It is slow and deliberate.
- If the two types of systems were in a movie, “Type 2 would be a secondary character who thinks that he is the hero . . . but in fact, it’s Type 1 that does most of the work, and it’s most of the work that is completely hidden from us.”

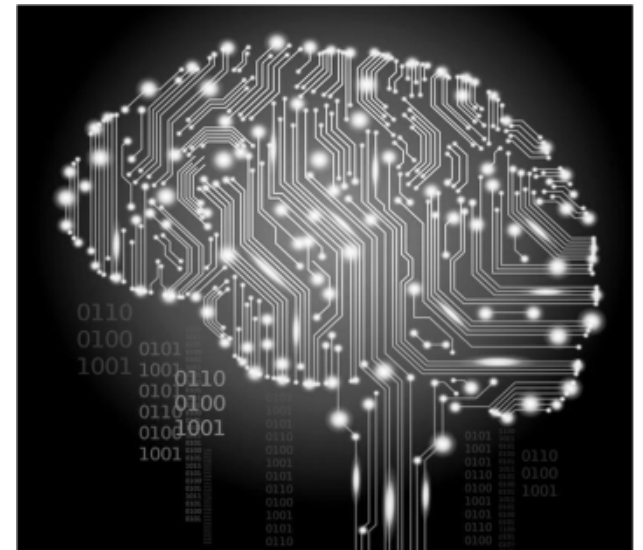


Daniel Kahneman:

Thinking Fast and Slow

11 million pieces
of information!!!

40 pieces of information...



An Example of Thinking Fast and Slow

Linda is young, single, outspoken, and very bright. As a student, she was deeply concerned with discrimination and social justice.

Is it more probable that she is a bank teller or a feminist bank teller?



An Example of Thinking Fast and Slow

Question substitution: Our brains **substitute complex (system 2) questions with simple (system 1) questions.** The actual question was a probability question (and not even a hard one!).

Probability logic: All feminist bank tellers are bank tellers.

Social logic: A woman who is “young,” “single” and “outspoken” is more likely a feminist

System 1 can only handle the social question, so that’s the one your brain will occasionally answer



Fast but not discerning

Our subconscious brains take in information largely without filtering (or at least while filtering in ways that may not align with our conscious desires)



Sources of Social Beliefs

We rely on subconscious beliefs about groups to make a huge range of important decisions.

Our subconscious beliefs about groups are not purely a result of individual experiences or of our *conscious* beliefs. They are also driven by what our brains “take in”:

- Media depictions
- Widespread social beliefs

Overrepresentation and Underrepresentation of African Americans and Latinos as Lawbreakers on Television News

by Travis L. Dixon and Daniel Linz

We conducted a content analysis of a random sample of local television news programming in Los Angeles and Orange counties to assess representations of Blacks, Latinos, and Whites as lawbreakers and law defenders. “Intergroup” comparisons of perpetrators (Black and Latino vs. White) revealed that Blacks and Latinos are significantly more likely than Whites to be portrayed as lawbreakers on television news. “Intralevel” comparisons (lawbreakers vs. law defenders) revealed that Blacks and Latinos are more likely to be portrayed as lawbreakers than as defenders, whereas Whites are significantly more likely to be portrayed as defenders than as lawbreakers. “Interreality” comparisons of lawbreakers (television news vs. crime reports from the California Department of Justice) revealed that Blacks are overrepresented as lawbreakers, and Latinos and Whites are underrepresented as lawbreakers on television news compared to their respective crime rates obtained from the California Department of Justice for Los Angeles and Orange counties. Interreality comparisons of law defenders (television news vs. county employment records) revealed that Whites are overrepresented, Latinos are underrepresented, and Blacks are neither over- nor underrepresented as police officers on television news compared to employment reports. We speculate on the psychological effects of exposure to these intergroup, intralevel, and interreality differentials on television news viewers.

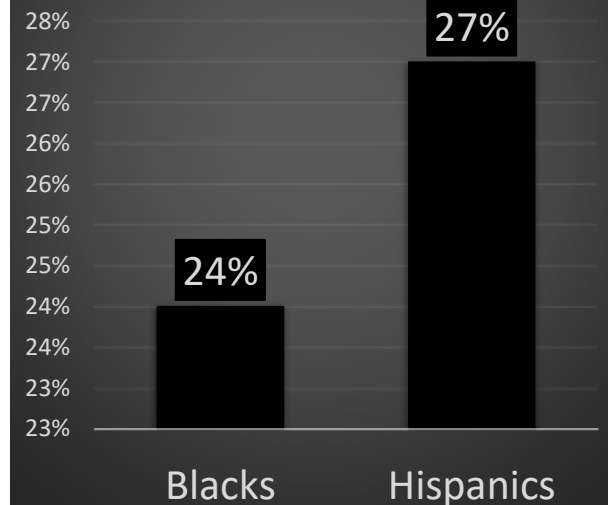
Crime stories in the news may shape public conceptions of order and justice in society (Gans, 1979; Hall, Critcher, Jefferson, Clarke, & Roberts, 1978). Hall et al. (1978) theorized that crime news reaffirms the “consensual morality” of society.

Travis L. Dixon is assistant professor of communication studies and a faculty associate at the Institute for Social Research at the University of Michigan. He is primarily interested in the portrayal of African Americans in the mass media and the effects of these images on audiences. Daniel Linz is professor of communication, law, and society and chair of the law and society program at the University of California, Santa Barbara. His major research interests are in social science and the law, psychology and the law, and communication law, particularly with regard to issues of sex and violence. An earlier version of this work was presented at the International Communication Association in Jerusalem, Israel, July 1998. The authors would like to thank the numerous research assistants who helped collect data for this project. Correspondence concerning this article should be addressed to Travis L. Dixon, University of Michigan, Department of Communication Studies, 3020C Fricke Building, Ann Arbor, MI 48109-1285 USA; email: tdixon@umich.edu.

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Percent of US residents who believe Whites are smarter than...



One result: Subconscious bias

Banaji and Greenwald used data from the **Implicit Association Test**, which measures the strength of our associations between groups and concepts (e.g. “women are domestic,” “men are hard-working,” “Blacks are criminal,” etc.).

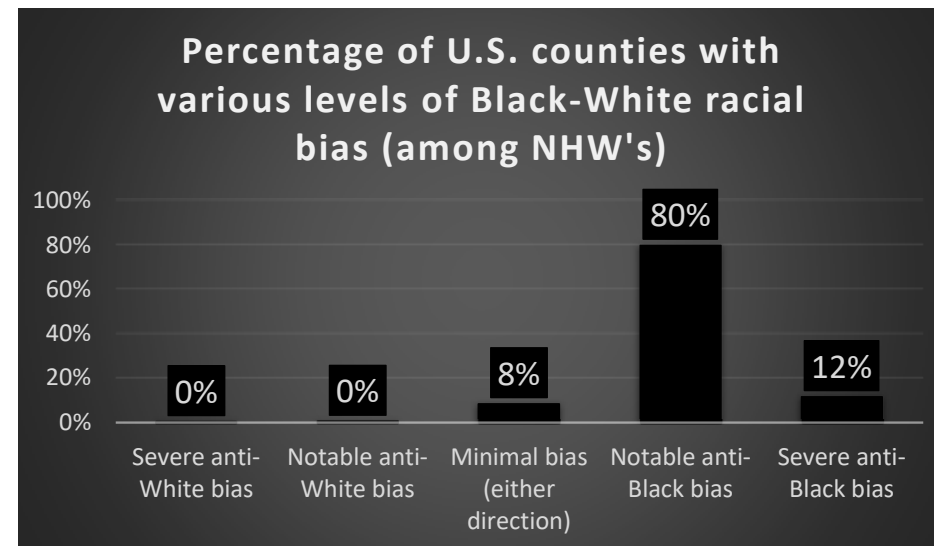
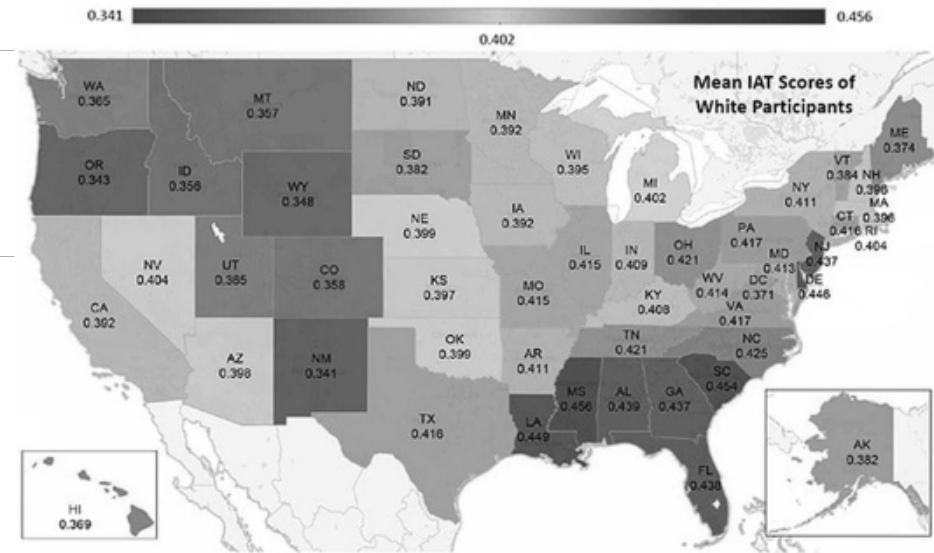
They found that various biases persist (Asian = foreign; women = domestic), but the most notable finding was that most people harbor an implicit bias that

Black = bad things

White = good things

Here, a score of 0 is unbiased, and a score of 0.5 is severely biased. **The takeaway isn't that the South is biased. It's that the average White person in every state is fairly biased.**

County level data tell the same story. Bias is nearly ubiquitous.



Judges, too

Judges likely have far higher than average conscious commitments to egalitarianism, but...

Judges are people too!

Studies have found that, on net, **judges also harbor anti-Black (pro-White), anti-Jewish, and anti-Asian implicit biases**

DOES UNCONSCIOUS RACIAL BIAS AFFECT TRIAL JUDGES?

Jeffrey J. Rachlinski,* Sheri Lynn Johnson,† Andrew J. Wistrich,‡ & Chris Guthrie††

Race matters in the criminal justice system. Black defendants appear to fare worse than similarly situated white defendants. Why? Implicit bias is one possibility. Researchers, using a well-known measure called the Implicit Association Test, have found that most white Americans harbor implicit bias toward black Americans. Do judges, who are professionally committed to egalitarian norms, hold these same implicit biases? And if so, do these biases account for racially disparate outcomes in the criminal justice system? We explored these two research questions in a multi-part study involving a large sample of trial judges drawn from around the country. Our results—which are both discouraging and encouraging—raise profound issues for courts and society. We find that judges harbor the same kinds of implicit biases as others; that these biases can influence their judgment; but that given sufficient motivation, judges can compensate for the influence of these biases.

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†† Professor of Law, Vanderbilt Law School. The authors are grateful for the comments and assistance of Ian Ayres, Steve Burbank, Jack Glaser, Tracey George, Tony Greenswald, Matthew Patrick Henry, Reid Hastie, Christine Jolls, Dan Kahan, Jerry Kang, Cass Sunstein, and the participants in workshops at the University of Arizona Law School, Bar Ilan University Law School, Brooklyn Law School, the University of Chicago Law School, Chicago-Kent Law School, Cornell Law School, George Washington University Law School, Harvard Law School, Hebrew University Law School, the University of Illinois School of Law, Notre Dame Law School, Ohio State University Law School, St. Louis University Law School, Syracuse University Law School, Tel-Aviv University Law School, Temple Law School, Villanova Law School, the University of Zurich, the Annual Meeting of the American Law and Economics Association, and the Annual Conference on Empirical Legal Studies.

JUDGING IMPLICIT BIAS: A NATIONAL EMPIRICAL STUDY OF JUDICIAL STEREOTYPES

Justin D. Levinson*, Mark W. Bennett** & Koichi Hioki*** ****

Abstract

American judges, and especially lifetime-appointed federal judges, are often revered as the pinnacle of objectivity, possessing a deep commitment to fairness, and driven to seek justice as they interpret federal laws and the U.S. Constitution. As these judges struggle with some of the great challenges of the modern legal world, empirical scholars must seek to fully understand the role of implicit bias in judicial decision-making. Research from the field of implicit social cognition has long documented negative implicit biases towards a wide range of group members, some of whom may well be harmed in various ways across the legal system. Unfortunately, legal scholarship, and particularly empirical legal scholarship, has lagged behind in terms of investigating how implicit biases, beyond Black and White, may lead to unfair outcomes in a range of legal areas, including those relevant to judges' potentially landmark legal decisions.

This Article proposes, and then empirically tests, the proposition that even today negative implicit biases may manifest in federal and state judges against even so-called privileged minorities, such as Asian-Americans and Jews. We present the results of an original empirical study we conducted on 239 sitting federal and state judges (including 100 federal district judges representing all Circuits) and consider the ways in which these judicial implicit biases may manifest. The study found that the judges harbored strong to moderate negative implicit stereotypes against Asian-Americans and Jews, while holding favorable implicit stereotypes towards Whites and Christians. These negative stereotypes associate Asians and Jews with immoral traits, such as "greedy," "dishonest," and "controlling," and associate Whites and Christians with moral traits, such as "trustworthy," "honest," and "giving." The study further found that federal district court judges sentenced Jewish defendants to marginally longer prison terms than identical Christian defendants and that implicit bias was likely the cause of the disparity.

* Professor of Law & Director, Culture and Jury Project, Carlsmith Ball Faculty Scholar, University of Hawai'i at Manoa, William S. Richardson School of Law. The researchers would like to thank Dean Aviam Soifer for providing generous summer support. Patrick Forscher provided thoughtful input as a collaborator during early stages of this project. Finally, thank you to Krysti Urusaka for superb research assistance. U.S. District Judge D. Bussck Henry and Professor Jeff Rachlinski provided thoughtful feedback and advice.

** Mark W. Bennett is in his 23rd year as a U.S. District Judge in the Northern District of Iowa.

*** Assistant Professor, Kobe University, Graduate School of Business Administration.

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Consequences of cognitive bias

What should predict sentence length?

- Offense severity,
- Number of prior offenses,
- Severity of prior offenses

What probably also predicts sentence length?

- Race
- Facial attractiveness (“halo effect”)

After controlling for *all* of those factors, Florida judges issued longer and harsher sentences to criminal defendants with more **Afrocentric features** ($p < .05$)

DISCRIMINATION IN SENTENCING ON THE BASIS OF AFROCENTRIC FEATURES†

William T. Pizzi*
Irene V. Blair**
Charles M. Judd***

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† The authors are most grateful to Robert Nagel and Richard Delgado for their comments on an earlier draft of this Article.

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Juvenile consequences of cognitive bias

Black juveniles *subconsciously* seen as older / more culpable / more deserving of punishment:

Participants: Police officers and probation officers

Subconscious prime: Words associated with either Blackness (dreadlocks, homeboy, Harlem) or that were ethnically neutral and neutral overall

Results: When *subconsciously* primed to believe a juvenile in a vignette was Black, participants saw them as older and more culpable; and endorsed harsher punishments against them

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Priming Unconscious Racial Stereotypes About Adolescent Offenders

Sandra Graham¹ and Brian S. Lowery²

Two studies examined unconscious racial stereotypes of decision makers in the juvenile justice system. Police officers (Experiment 1) and juvenile probation officers (Experiment 2) were subliminally exposed to words related to the category Black or to words neutral with respect to race. In a presumably unrelated task, officers read 2 vignettes about a hypothetical adolescent who allegedly committed either a property crime (shoplifting from a convenience store) or an interpersonal crime (assaulting a peer). The race of the offender was left unstated and the scenarios were ambiguous about the causes of the crime. Respondents rated the hypothetical offender on a number of traits (e.g., hostility and immaturity) and made judgments about culpability, expected recidivism, and deserved punishment. They also completed a self-report measure of conscious attitudes about race. As hypothesized, officers in the racial prime condition reported more negative trait ratings, greater culpability, and expected recidivism, and they endorsed harsher punishment than did officers in the neutral condition. The effects of the racial primes were not moderated by consciously held attitudes about African Americans. The implications of the findings for racial disparity in the juvenile justice system and for changing unconscious stereotypes were discussed.

KEY WORDS: stereotypes; adolescents; offenders.

Rates of violent crime appear to be easing back up following an unexpected decline in the late 1990s. That increase has raised new concern about the treatment of ethnic minority offenders, particularly African American males, who continue to be disproportionately represented in both the adult and juvenile justice systems. In the juvenile system, which is the focus of this paper, racial disproportionality is evident across all decision points, from arrest to disposition. For example, African American youth age 10–17 comprise about 15% of their age group in the population, yet they represent about 25% of all juvenile arrests, 30% of referrals to juvenile court, 40%

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Race and the Fragility of the Legal Distinction between Juveniles and Adults

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Abstract

Legal precedent establishes juvenile offenders as inherently less culpable than adult offenders and thus protects juveniles from the most severe of punishments. But how fragile might these protections be? In the present study, simply bringing to mind a Black (vs. White) juvenile offender led participants to view juveniles in general as significantly more similar to adults in their inherent culpability and to express more support for severe sentencing. Indeed, these differences in participants' perceptions of this foundational legal precedent distinguishing between juveniles and adults accounted for their greater support for severe punishment. These results highlight the fragility of protections for juveniles when race is in play. Furthermore, we suggest that this fragility may have broad implications for how juveniles are seen and treated in the criminal justice system.

Caption: Rattan A, Levine CS, Dweck CS, Eberhardt JL (2012) Race and the Fragility of the Legal Distinction between Juveniles and Adults. *PLoS ONE* 7(5): e36066. doi:10.1371/journal.pone.0036066

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Introduction

The U.S. is a world leader in punitiveness. Research has documented that the U.S. applies harsher penalties and incarcerates more of its adult populace (for longer periods of time) than any other industrialized, democratic nation in the world [1–3]. Despite the trend of increasing punitiveness in the adult criminal justice system, one slice of individuals has been consistently protected: juveniles. As a general rule, the law considers juvenile offenders to be less culpable than adults, and for this reason juveniles cannot avoid punishment as severe as those available for adults, even for the same crime [4,5].

Although these protections have existed for some time, their application to severe offenses has been more recent [4,5]. When juveniles commit serious violent crimes, this protection may seem at odds with the goal of casting out punishment appropriate to the severity of the offense. In other words, when juveniles commit “adult”-enough crimes, there may seem to be a justifiable basis for assigning them adult punishments. Indeed, this argument was evident in the debate before the Supreme Court over whether life in prison without the possibility of parole, the most severe punishment available for juveniles, might be remains legal for non-lethal cases. Although the Court ultimately determined that juveniles' reduced standard of culpability should protect them from such severe sentencing in non-lethal cases, the Justices issued a split 5–4 decision [6], suggesting that some of the Justices may have been moved by the “adult time for adult crime” argument that the established protection associated with juveniles.

Given how recent this protection is in the context of severe offenses, might a heightened desire to punish weaken it? One factor that has been reliably shown across justice contexts to inappropriately heighten people's desire for severe punishments is

race. Black American adults are incarcerated at a higher rate than White Americans [1,5,6] and are disproportionately likely to receive severe sentences such as the death penalty [7]. Research has even shown that the more “Black” an adult offender is perceived to be, the greater their likelihood of being sentenced to death [8]. Moreover, Black juveniles who are transferred to adult court for trial and sentencing receive significantly more punitive sentences than White juveniles, and this practice is on the rise [9].

Extending this past research, we systematically examined whether priming participants with (i.e., subtly increasing the salience of; see Fig S1, Note 1) the social category Black (vs. White) would affect both perceptions of the relative difference in culpability between juveniles and adults and the acceptability of severe punishments for juvenile offenders who have committed serious crimes. We hypothesized that, even when they are presented with the same serious crime, people would see juvenile offenders as less different from adults and worthy of more severe punishment when exposed to an example case that included a Black American as compared with a White American. As noted, this distinction between juveniles and adults is considered foundational in the law. For example, cases that ultimately extended the protections associated with juveniles to severe crimes have hinged on this relative difference in culpability [4,5]. At the same time, however, there are practices that may be seen as placing this distinction in jeopardy, such as assigning juveniles to adult courts for sentencing, which has been on the rise [9]. For these reasons, it is critical to understand factors that might inappropriately affect perceptions of this legal distinction, and particularly the role of race.

Contemporary social-psychological research has largely focused on disparate negative outcomes occurring for the individual in the criminal justice context as a function of race: Black targets are

Recap So Far

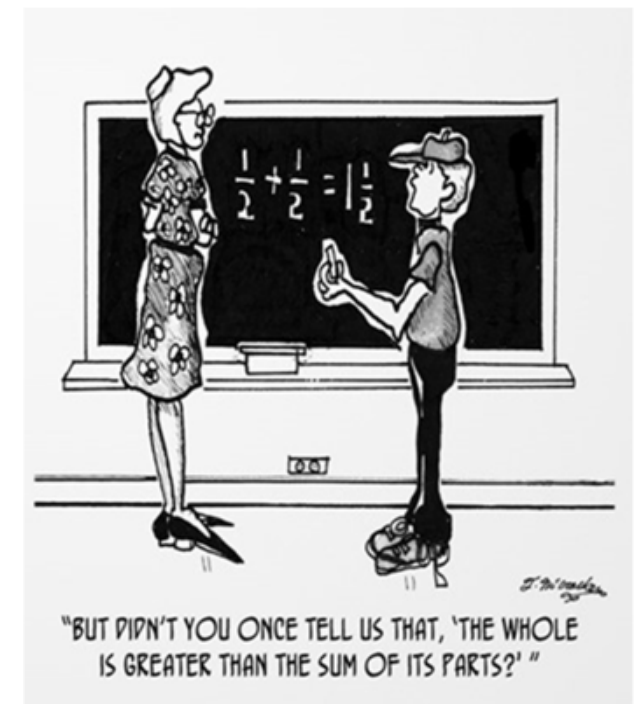
- Our brains prefer to utilize fast and powerful “System 1” cognition over slow and resource intensive “System 2” cognition
- System 1 leans on social beliefs
- Our social beliefs are determined without filtration or conscious awareness, and reflect *media depictions* and *broad social beliefs*
- As a result, we all (even judges!) harbor subconscious biases. Common ones are “White is good,” “Black is bad,” “Black is criminal / unruly.” Another is “Black youth are more culpable / deserving of punishment”
- **Without our conscious awareness, System 1 eagerly recruits these social biases in decision making. This yields biased outcomes.**

Where we are

- I. Foundational knowledge of **systems and structures**
- II. Foundational knowledge of **cognition**
- III. Cognitive and systemic sources of **biased outcomes**
- IV. Combatting **biased outcomes**

How bias filters into decision making

- Racial bias combines with other psychological phenomena to drive biased outcomes, e.g.
 - Fundamental attribution error
 - Confirmation bias / criteria adjustment
 - Cognitive load
 - ... any other cognitive phenomena that dictate differential responses to individuals

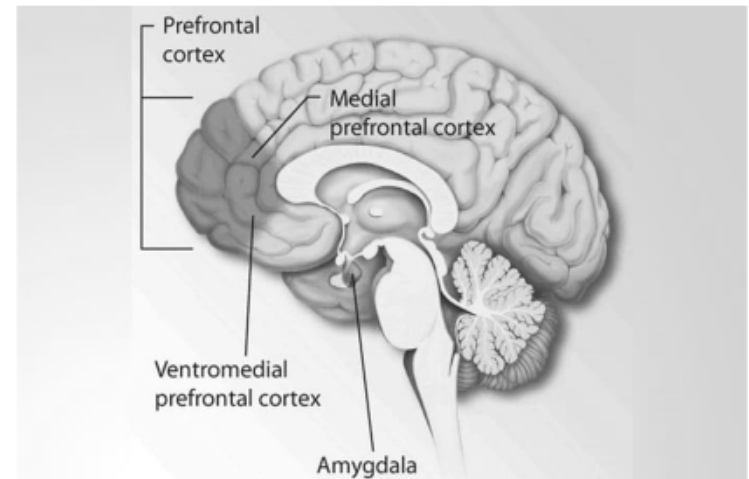


Why it matters: Implicit Bias at Work

The medial prefrontal cortex (**vmPFC**) assists System 2 **individuation**.

We activate the vmPFC when we think of individuals we consider **similar to ourselves**.

When we don't recruit the vmPFC, we rely on System 1's associations about groups to make determinations about individuals. Folks tend to... blend together...

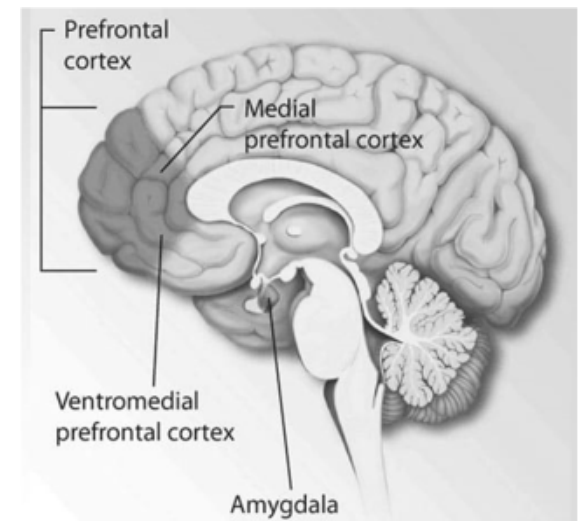


Implicit Bias at Work



Selective VmPFC activation + Social bias = Unequal treatment

- The “cross race effect” (or difficulty individuating) can encourage myriad actors in court systems to treat individuals as amalgamations of the negative stereotypes attached to their social group
- Individuals who are perceived as amalgams may not always have the power that Samuel L. Jackson has to call it out and demand individuation



How bias filters into decision making

The fundamental attribution error

When we succeed, we believe the cause is our *personality*; but when *others* succeed, we believe the cause is *situational*.

When we make mistakes, we believe the cause is situational; but **when *others* make mistakes, we believe the cause is their *personality*.**

Due to the vmPFC (a part of the brain), **we are more likely to commit this error when considering the conduct of individuals we deem different from ourselves**



Who did it?

		myself	someone else
Outcome	positive	personality	circumstances
	negative	circumstances	personality

How bias filters into decision making

The fundamental attribution error and race

- A review of 233 narrative reports of juvenile offending showed that attributions of causes of juvenile offending differ depending on the race of the juvenile
 - Blacks: Personality traits
 - Whites: Situation
- This leads to the depiction of Black juveniles as being “more criminal,” in line with existing stereotypes
- This also leads to Black youth as being depicted as more likely to reoffend (a key criteria for determining punishment)

RACIAL DISPARITIES IN OFFICIAL ASSESSMENTS OF JUVENILE OFFENDERS: ADDITIONAL STEREOTYPES AS MEDIATING MECHANISMS*

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Despite extensive sociological research, little evidence exists on how court officials' perceptions of offenders influence their classification, assessment, and final recommendations for punishment. We examine the links among these factors, focusing specifically on the race of the accused. Our analysis combines information from probation officers' written accounts of juvenile offenders and their crimes and court records about the offenders. We find pronounced differences in officers' attributions about the causes of crime by white versus minority youths. Further, these differences contribute significantly to differential assessments of the risk of reoffending and to sentence recommendations, even after adjusting for legally relevant case and offender characteristics. These results suggest that differential attributions about the causes of crime act as a mediating factor between race and sentencing recommendations.

How do professionals within organizations perceive and classify the clients they encounter? Professionals' perceptions help explain organizational outcomes, linking decisions about clients to professionals' diagnoses of their problems and needs (Abbott 1988). Perceptions shape diagnostic and treatment processes by forming the base of information professionals use to classify clients into meaningful categories (Farnell and Swigert 1978; Scull 1975; Sudnow 1965). Because the classification of clients sorts persons perceived as having similar diagnoses and requiring similar outcomes or dispositions, differential perceptions of individuals and groups of clients will yield different diagnoses and treatments (Heimer and Staffen 1995). Further, inequalities in professionals' perceptions and diagnoses of clients may produce inequalities in treatment. Sociological accounts of inequalities in the treatment of persons by organizations are widespread. Studies of racial biases in juvenile courts over the past 30 years have examined whether court officials treat minority youth more severely than white youth (Aday 1986; Arnold 1971; Bishop and Frazier 1988; Borner and Reed 1985; Carter and Wilkins 1970; Fagan, Slaughter, and Hartstone 1987; Fagan, Forst, and Vivona 1987; Horowitz and Pottjoger 1991; Piliavin and Briar 1964). Although such studies repeatedly raise the specter of racial discrimination in the courts, few identify the mechanisms by which the accused's race influences official assessments of youths and their cases.¹ A critical but overlooked concern is how court officials' perceptions of juvenile offenders contribute to racial differences in legal dispositions. Differential perceptions of youth and their crimes may legitimate racial disparities in official assessments of a youth's dangerousness and risk of future criminal behavior. They also may foster the differential treatment of minority and white offenders in the disposition of criminal cases.

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Bias + cognitive load

- Researchers knew folks biases at baseline from a pre-survey
- They divided folks – some forced to have lower working memory
- Then divided folks again – some read about Black defendant, some about White
- **Racially biased individuals with *lower working memory* showed larger Black-White disparities in response to trial vignettes.**
 - **The higher our cognitive load, the more our biases can dictate our behavior**

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Deciding the Fate of Others: The Cognitive Underpinnings of Racially Biased Juror Decision Making

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ABSTRACT. In criminal law, jurors are supposed to ignore defendant race when considering factual matters of culpability. However, when judging the merits of a criminal case, jurors' ability (or inability) to avoid bias may affect verdicts. Fact-based decision making expend cognitive resources, while heuristic-based decisions (e.g., using criminal stereotypes) conserve resources. Here, we investigated whether differences in cognitive resources and prejudice attitudes about Blacks influenced trial outcomes. We tested the impact of working memory capacity (WMC), cognitive load, prejudice, and target race (Black, White) on penalties ascribed to fictional criminal defendants in ambiguous-fact cases. Results showed that when "loaded," prejudiced-low-WMC persons supported guilty verdicts with higher confidence more often for Black than White defendants. Conversely, regardless of WMC or prejudice attitude, participants penalized White defendants more often when not loaded. We suggest that cognitive resources and prejudice attitude influence fact-based decisions. Links to juror judgments and potential trial outcomes are discussed.

Keywords: cognitive resources, decision making, race, stereotype

Implicit Bias + Motivated Cognition



Juvenile courts are structurally susceptible to bias

Differential fundamental attribution error / VmPFC activation: Limited opportunities for individuating information -> decisions tied to biases about Blacks as a social group (e.g. criminality)

Cognitive depletion: Heavy case loads -> relying more heavily on System 1 and bias

Discretion: Lack criteria for decisions encourages us to lean more on System 1 biases

Also:

Time scarcity: When we face time scarcity, we tunnel and push out information we deem irrelevant (like individuating information). Heavy case loads -> relying more heavily on System 1 and bias

Structural motivation: When we don't have structural motivation, we lean more on our biases to make decisions. Very few review processes -> lack of structural motivation.

Designed to Fail: Implicit Bias in Our Nation's Juvenile Courts

SEAN DARLING-HAMMOND*

* Copyright © 2017 Sean Darling-Hammond. Sean Darling-Hammond is an education policy consultant at EducationCounsel in Washington D.C. Before joining EducationCounsel, he was an education attorney at Hogan Lovells and clerked for the Honorable Judge Charles B. Day in the District Court for the District of Maryland. He earned his J.D. from U.C. Berkeley where he represented children with special needs in juvenile proceedings and Individualized Education Plan (IEP) meetings at the East Bay Community Law Center. He also served as the Director of the Berkeley High School Student Court, a restorative justice program that helped markedly reduce in-school recidivism. Before law school, Sean earned his B.A. in Sociology and spent five years serving as the Director of Research for Hattaway Communications, a public affairs firm in Washington D.C.

Recap So Far

- Racial bias combines with other psychological phenomena to drive biased outcomes, e.g.
- Juvenile courts are particularly susceptible to biased decision making because of
 - a lack of opportunities to individuate youth (leading to differential VmPFC activation and the fundamental attribution error)
 - heavy case loads (leading to cognitive depletion and tunneling)
 - a lack of criteria (leading to criteria adjustment)
 - a lack of review opportunities (leading to little structural motivation to reign in bias)

Where we are

- I. Foundational knowledge of **systems and structures**
- II. Foundational knowledge of **cognition**
- III. Cognitive and systemic sources of **biased outcomes**
- IV. Combatting **biased outcomes**

What Can We Do?

Accept That You're Going to
~~Don't~~ Think of a Pink Elephant!



Prepare for the Pink Elephant



- Richeson and Nusbaum (2003) found that students encouraged to take a colorblind approach showed more implicit and explicit bias than students encouraged to take a multicultural approach
- Apfelbaum and colleagues (2008) found that attempting to achieve “colorblindness” while in cross-racial interactions lead to less friendly nonverbal behavior and less executive functioning capacity



Prepare for the Pink Elephant

- Rudman and colleagues, and Richeson and Nusbaum (among others) have found that cultivating greater awareness of and sensitivity to folks group identities is more effective
- Individuation: Seeing the unique aspects of an individual has been powerful in many decisional experimental contexts
- **Balance both**
 - accepting that we all have unique, salient positionalities (don't be blinded by colorblindness)
 - striving to see and *feel similar to* the unique individual (get that vmPFC firing! Don't conflate Jackson and Fishburne)



What Can We Do?

Be Mindful:

- Sommers and Ellsworth (2001) conducted a study investigating White mock jurors' judgments of a fictional trial summary
- Mock jurors were less biased (and more accurate) in verdicts when the case summary was clearly racially charged—when they were encouraged to consciously attend to race
- When we are conscious of the potential for prejudice, we can attempt to correct for it. This can improve performance

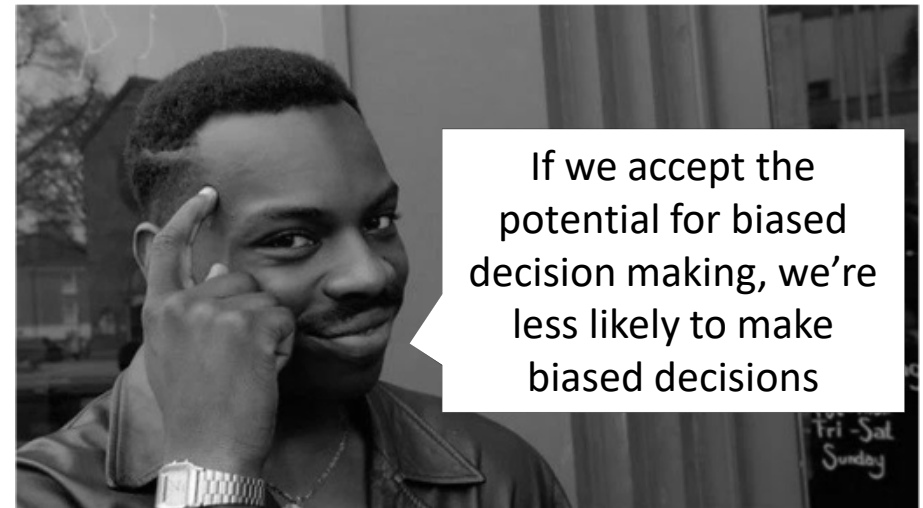


Prepare for the Pink Elephant



In the Yale Law Journal, Elizabeth Ingriselli (2015) described an original randomized controlled trial

- mock jurors were randomly assigned to receive normal or “egalitarian” jury instructions (beware of bias)
- also, randomly assigned to have race salient (openly discussed) or not
- less inclined to assume guilt of Black defendant when they were primed with an egalitarian instruction and race was salient



Pink Elephant Summary

- Embracing the pink elephant can take many forms. We can accept that
 - people *do* have different racial identities, and our brains are aware of it
 - race may play a role in how the system responds to individuals
 - race may play a role in how *we* respond to individuals
 - race may play a role in how individuals respond to *us* or to *systems*
 - e.g. earned skepticism
- **Bringing awareness to the salience of race allows us to recruit behaviors that reduce biased outcomes**



Overcoming differential responses: Individuate, individuate, individuate

Create structural opportunities for individuation

When teachers got the perspectives of students, they showed no racial disparity in disciplinary responses.

Could juvenile systems create opportunities to get individuating information?

- Opportunities for responding youth to talk about themselves, guided by adults
- Letters in support from family / teachers / community members / friends
- Testimony by family / teachers / community members / friends

SCIENCE ADVANCES | RESEARCH ARTICLE

SOCIAL SCIENCES

When policy and psychology meet: Mitigating the consequences of bias in schools

Jason A. Okonofua^{1*}, Amanda D. Perez², Sean Darling-Hammond²

Harsh exclusionary discipline predicts major negative life outcomes, including adult incarceration and unemployment. This breeds racial inequality because Black students are disproportionately at risk for this type of discipline. Can a combination of policy and psychological interventions reduce this kind of discipline and mitigate this inequality? Two preregistered experiments ($N_{\text{experiment1}} = 246$ teachers; $N_{\text{experiment2}} = 243$ teachers) used an established paradigm to systematically test integration of two and then three policy and psychological interventions to mitigate the consequences of bias (troublemaker labeling and pattern perception) on discipline (discipline severity). Results indicate that the integrated interventions can curb teachers' troublemaker labeling and pattern prediction toward Black students who misbehave in a hypothetical paradigm. In turn, integration of the three components reduced racial inequality in teachers' discipline decisions. This research informs scientific theory, public policy, and interventions.

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Overcoming differential responses: Individuate, individuate, individuate

Make youth individuation a personal goal

Provide extensive and emotionally salient information about what makes each youth unique

- Conduct great interviews to get the information.
 - Consider cultural competence training to improve capacity to build rapport and glean deep insights
- Interview family and community members to get a “fuller picture” of your client.



THE FIVE HABITS: BUILDING CROSS-CULTURAL COMPETENCE IN LAWYERS

SUSAN BRYANT*

“Yet the challenge confronts us: Build a unified society without uniformity.”¹

This article describes a process called “the Habits” that was developed by Professors Bryant and Jean Koh Peters that can be used by lawyers to increase their cross-cultural competence. By outlining

* Associate Professor, City University of New York School of Law (CUNY). As described in the epilogue, this article grows out of a collaborative project with Jean Koh Peters, to whom I am deeply grateful. In our work on developing the Habits and the teaching module to teach the Habits, Jean and I were aided by many wonderful colleagues, students, and staff. I want to thank those colleagues who first worked with me on issues of diversity in AALS presentations, including Victor Goode, Isabelle Gunning, Steve Hardwell, and Jennifer Rockow. Jean and I have wonderful colleagues who have taught cross-cultural lawyering using these materials or watched us use them and given us feedback on the Habits and these materials. They include my colleagues at CUNY: Beryl Blaustone, Rhonda Copelon, Sam Dulberg, Ellen Fried, Gail Gray, Pamela Goldberg, Sharon Horn, Ron Lindeman, Steve Loffredo, Joe Rosenberg, and Susan Taylor; and Jean’s colleagues at Yale: Carroll Lucht, Michael Pinard, Jay Pottenger, and Steve Winner. Jean’s colleague and our friend, Kathleen Sullivan, passed away before this article was published. She was an enthusiastic supporter and contributor to our work. She is missed deeply. I am especially grateful to Maria Aris, my co-teacher for ten years at CUNY, for her insights and conversations about teaching in general and about cross-cultural issues, and to my colleagues, Bob Seibel and Alice Morcy, and to Harvey Weing for their careful reading and suggestions.

Overcoming cognitive depletion

Allay structural causes of cognitive depletion

- Survey workforces to identify structural causes of consistent cognitive depletion
 - inadequate personnel?
 - too many hats?
 - inadequate time / space to decompress?
- Work collaboratively to overcome these sources of depletion



Overcoming cognitive depletion

Take personal steps to overcome cognitive depletion

- Make changes to your workday / work-style to ensure you have necessary cognitive tools when engaging with situations where bias could creep in
- Slow things down when you can. Overscheduling means relying on system 1 to get things done



Overcoming criteria adjustment

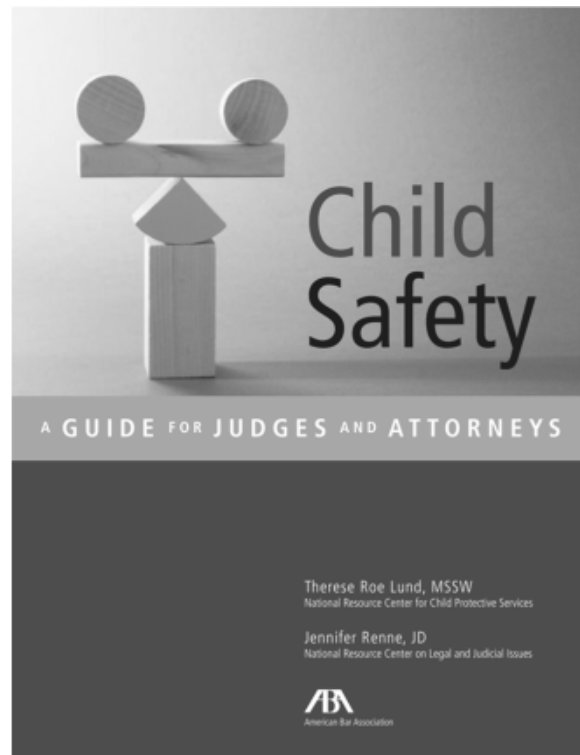
Embrace criteria!

- David Quinn (2019) randomly assigned 1,549 school teachers to grade a writing sample with or without a rubric
- He also randomly assigned some to grade work by a “Black male” and some to grade work by a “White male”
- No rubric? Racial Bias.
- But! “[T]eachers showed no bias when using a rubric with more clearly-defined evaluation criteria.”



Overcoming criteria adjustment

- The APA guide for judges and attorneys on child safety provides criteria that can be embraced at the personal or systemic level



CHAPTER 3

Key Elements for Safety Decision-Making: Standardizing Criteria for Threats, Vulnerability, and Protective Capacity

The First Element: Threats of Danger

BENCHMARK 2

A threat of danger is a specific family situation or behavior, emotion, motive, perception or capacity of a family member.

These criteria must be present to constitute a threat:

- Specific and observable/discernible
- Out-of-control,
- Imminent or liable to happen soon, and,
- Severe consequences

Understanding what is happening in a family depends on how volatile and transparent the threats of danger are, and how difficult it is to answer the six questions in Chapter 2.

Threats of danger occurring in front of the CPS worker demonstrate the need for protection and urgent response. These threats are the basis for emergency removal decisions.

Because little is known, often the only protective action the agency can make is removing the child. And typically, at the emergency removal hearing, little information has been gathered besides the maltreatment.

However, information collection must continue. The protective action, removal, is temporary

until a more complete picture can be offered to the court about ensuring the child's safety.

By collecting answers to the six questions from Chapter 2, the worker and the court should have which, if any, of the 15 threats of danger listed below are present. At each review hearing, the judge should ask if, and to what degree, threats still exist. Officers at review hearings, the parties and the court finger the original safety concerns surrounding the removal.

Who should be considered when assessing threats?

Evaluate the child's safety in his own home. The threats appeared in the original home, so don't be distracted if the child is temporarily placed. Would these threats exist if the child were now home with parents?

Who are the parents and who is the family? Consider who interacts or responds with the child as a parent. So consider biological parents, the sleep-over boyfriend, and live-in grandmother.

Would these threats exist if temporarily absent boyfriend returns home?

You may need to consider more than one household if the child spends time in the home of the other parent.

Unsafe child:

- Children are unsafe when:
- threats of danger exist within the family and
- children are vulnerable to such threats, and
- parents have insufficient protective capacities to manage or control threats.

Activity: Sharing your expert insights on how to overcome systemic and individual bias

I'll paste this link in the chat:

<https://forms.gle/2gtFMeCh4tRLiHsM6>

Please take the survey there and anonymously share your insights about how we can overcome systemic and individual bias.