

IMPLICIT SOCIAL COGNITION AND LAW

WAKE FOREST UNIVERSITY - SPRING 2013
ASSISTANT PROFESSOR OF LAW GREGORY S. PARKS

THE COURSE: This course will focus on the ways in which implicit (automatic/subconscious) biases intersect with legal issues—i.e., doctrinal areas, public policy, legal actors, and civic activism issues. To perform well in this course will require that students be engaged with a substantial body of scholarly literature in law and psychology. The class meets at times and places TBA; if, however, the class wants to meet at the regularly scheduled time on Monday afternoons, that is when we will meet..

REQUIRED READING MATERIALS: I will post pdfs of the other reading materials to the class TWEN account.

OFFICE HOURS: Please feel free to stop by my office, room 3346, at your convenience. My office hours are from 3:00 p.m. to 4:00 p.m., Monday and Wednesday. If you need to schedule an appointment with me, please email me at parksgs@wfu.edu to arrange a time. My office telephone number is 336.758.2170. If you cannot reach me, you may reach my assistant, Ms. Sonya Casstevens at casstesa@wfu.edu or in office 3340.

CLASSROOM PROCEDURE: In this class, I will not be lecturing. You will be expected to have read all of the assigned material before class and prepared to discuss the readings during class. I realize that the reading load is heavy, especially for the first few weeks. While we may not necessarily discuss each reading in detail, they should be helpful to giving you a broad picture of the issues in this area, especially as you think about paper topics. Some of the law review articles will be redundant in their discussion of the social science, so feel free to skim the redundant sections. Aside from reading assigned pages, you must generate at least 4 questions per chapter/article you read to aid in promoting class discussion about assigned readings. You must forward me your questions via email by 24 hours the day before each class.

GRADING: Class participation counts for 50% of your grade and will be determined by the extent to which you do the readings, submit questions, and engage in class dialogue. You will be required to write a final paper, which will count for the other 50% of your grade. Paper topics must be approved by March 1. You may not write a paper on topic already addressed in the literature in the same fashion that it is addressed in the literature. You will be required to meet with a library liaison to determine the best and most efficient method of research, search engines, and sources (you must use legal and social science sources). The paper must be 20 pages, including citations (Bluebooked in footnotes).

CLASS ATTENDANCE & PREPARATION: If you need to be absent for illness, personal or family emergency, or job interview, please email me before class. There is no need to give me the specifics of why you will be absent. Please be prepared for each class, which means, having done the readings and taking notes. Turn your cellular phones off before attending class.

ASSIGNED READINGS

Week 1: Implicit Social Cognition: Scientific Foundations and Critiques

Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945 (2006).

John T. Jost et al., *The Existence of Implicit Bias is Beyond Reasonable Doubt: A Refutation of Ideological and Methodological Objections and Executive Summary of Ten Studies that No Manager Could Ignore*, 29 RES. ORG. BEHAV. 39 (2009).

Gregory Mitchell & Philip E. Tetlock, *Antidiscrimination Law and the Perils of Mindreading*, 67 OH. ST. L.J. 1023 (2006).

Amy L. Wax, *The Discriminating Mind: Define It, Prove It*, 40 CONN. L. REV. 979 (2008).

Week 2: Implicit Social Cognition: Moral Culpability

Angela M. Smith, *Control, Responsibility, and Moral Assessment*, 138 PHILOSOPHICAL STUDIES 367 (2008)

Angela M. Smith, *Responsibility for Attitudes: Activity and Passivity in Mental Life*, 115 ETHICS 236 (2005)

George Sher, *Out of Control*, 116 ETHICS 285 (2006)

Neil Levy, *Restoring Control: Comments on George Sher*, 36 PHILOSOPHIA 213 (2008)

Week 3: Implicit Social Cognition: Broader Debates and the Classic

Jerry Kang & Kristin Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA LAW REVIEW 465 (2010)

Ralph Richard Bank & Richard Thompson Ford, *(How) Does Unconscious Bias Matter?: Law, Politics, and Racial Inequality*, 58 EMORY LAW JOURNAL 1053 (2009)

Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STANFORD LAW REVIEW 317 (1987)

Week 4: Implicit Social Cognition of Legislators and Judges

Reshma Saujani, *The Implicit Association Test: A Measure of Unconscious Racism in Legislative Decision-Making*, 8 MICHIGAN JOURNAL OF RACE AND LAW 395 (2003)

Efrén O. Pérez, *Explicit Evidence on the Import of Implicit Attitudes: The IAT and Immigration Policy Judgments*, 32 POLITICAL BEHAVIOR 517 (2010)

Eric D. Knowles et al., *Racial Prejudice Predicts Opposition to Obama and His Health Care Reform Plan*, 46 JOURNAL OF EXPERIMENTAL SOCIAL PSYCHOLOGY 420 (2009)

Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME LAW REVIEW 1195 (2009)

Week 5: Implicit Social Cognition of Judges (Cont.)

Fatma E. Marouf, *Implicit Bias and Immigration Courts*, 45 NEW ENGLAND LAW REVIEW 417 (2011)

Justin D. Levinson et al., *Guilty by Implicit Racial Bias: The Guilty/Not Guilty Implicit Association Test*, 8 OHIO STATE JOURNAL OF CRIMINAL LAW 187 (2010)

Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE LAW JOURNAL 345 (2007)

Week 6: Implicit Social Cognition of Lawyers/Mediators

Justin D. Levinson & Danielle Young, *Implicit Gender Bias in the Legal Profession: An Empirical Study*, 18 DUKE JOURNAL OF GENDER LAW & POLICY 1 (2010)

Jerry Kang et al., *Are Ideal Litigators White?: Measuring the Myth of Colorblindness*, 7 JOURNAL OF EMPIRICAL LEGAL STUDIES 886 (2010)

Justin D. Levinson & Robert J. Smith, *The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion*, SEATTLE LAW REVIEW (forthcoming, 2012)

Carol Izumi, *Implicit Bias and the Illusion of Mediator Neutrality*, 34 WASHINGTON UNIVERSITY JOURNAL OF LAW & POLICY 71 (2010)

Week 7: Implicit Social Cognition of Juries

Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions*, 4 HARVARD LAW & POLICY REVIEW 149 (2010)

Antony Page, *Batson's Blind-Spot: Unconscious Stereotyping and the Peremptory Challenge*, 85 BOSTON UNIVERSITY LAW REVIEW 155 (2005)

Janet Bond Arterton, *Unconscious Bias and the Impartial Jury*, 40 CONNECTICUT LAW REVIEW 1023 (2008)

Week 8: Implicit Social Cognition in Employment Law

Linda Hamilton Krieger & Susan T. Fiske, *Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment*, 94 CALIFORNIA LAW REVIEW 997 (2006)

Natalie Bucciarelli Pederson, *A Legal Framework for Uncovering Implicit Bias*, 79 UNIVERSITY OF CINCINNATI LAW REVIEW 97 (2010)

Natasha Martin, *Immunity for Hire: How the Same-Actor Doctrine Sustains Discrimination in the Contemporary Workplace*, 40 CONNECTICUT LAW REVIEW 1117 (2008)

Deana A. Pollard, *Unconscious Bias and Self-Critical Analysis: The Case for a Qualified Evidentiary Equal Employment Opportunity Privilege*, 74 WASHINGTON LAW REVIEW 913 (1999)

Week 9: Implicit Social Cognition in Communications and Contracts Law

Jerry Kang, *Trojan Horses of Race*, 118 HARVARD LAW REVIEW 1489 (2005)

IAN AYRES, *PERVASIVE PREJUDICE?: UNCONVENTIONAL EVIDENCE OF RACE AND GENDER DISCRIMINATION* 19-44 (University of Chicago Press 2001)

Damian S. Stanley et al., *Implicit Race Attitudes Predict Trustworthiness Judgments and Economic Trust Decisions*, 108 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES 7710 (2011)

Laura J. Kray et al., *Battle of the Sexes: Gender Stereotype Confirmation and reactance to Negotiations*, 80 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 942 (2001)

Week 10: Implicit Social Cognition in Election Law and Race & Crime

Antony Page, *Poll Workers, Election Administration, and the Problem of Implicit Bias*, 15 MICHIGAN JOURNAL OF RACE AND LAW 1 (2009)

Gregory S. Parks & Jeffrey J. Rachlinski, *Implicit Bias, Election '08, and the Myth of a Post-Racial America*, 37 FLORIDA STATE UNIVERSITY LAW REVIEW 659 (2010)

Eric Louis Uhlmann et al., *The Motives Underlying Stereotype-Based Discrimination against Minority Members of Stigmatized Groups*, 23 SOCIAL JUSTICE RESEARCH 1 (2010)

H. Andrew Sagar & Janet W. Schofield, *Racial and Behavioral Cues in Black and White Children's Perceptions of Ambiguously Aggressive Acts*, 39 JOURNAL OF PERSONALITY & SOCIAL PSYCHOLOGY 590 (1980)

Week 11: Implicit Social Cognition: Racial Profiling and Self Defense

Paul B. Hutchings & Geoffrey Haddock, *Look Black in Anger: The Role of Implicit Prejudice in the Categorization and Perceived Emotional Intensity of Racially Ambiguous Faces*, 44 JOURNAL OF EXPERIMENTAL SOCIAL PSYCHOLOGY 1418 (2008)

Alex Geisinger, *Rethinking Profiling: A Cognitive Model of Bias and Legal Implications*, 86 Oregon Law Review 657 (2007)

Joshua Correll et al., *The Influence of Stereotypes on Decisions to Shoot*, 37 European Journal of Social Psychology 1102 (2007)

Week 12: Implicit Social Cognition: Hate Crimes / Death Penalty

Margaret Bull Kovera, *Implications of Automatic and Controlled Processes in Stereotyping for Hate Crime Perpetration and Litigation*, in LEGAL DECISION MAKING IN EVERYDAY LIFE: CONTROVERSIES IN SOCIAL CONSCIOUSNESS 227-46 (Richard L. Wiener et al. eds., Springer 2007)

Jennifer S. Hunt, *Implicit Bias and Hate Crimes: A Psychological Framework and Critical Race Theory Analysis*, in LEGAL DECISION MAKING IN EVERYDAY LIFE 247-65

Scott W. Howe, *The Futile Quest for Racial Neutrality in Capital Selection and the Eighth Amendment Argument for Abolition Based on Unconscious Racial Discrimination*, 45 WILLIAM & MARY LAW REVIEW 2083 (2004)

Phillip Atiba Goff et al., *Not Yet Human: Implicit Knowledge, Historical Dehumanization, and Contemporary Consequences*, 94 Journal of Personality and Social Psychology (2008)

Week 13 Implicit Social Cognition and Public Policy: ADA / Second Amendment / Affirmative Action / Health Care Disparities

Dale Larson, *Unconsciously Regarded as Disabled: Implicit Bias and the Regarded-As Prong of the Americans with Disabilities Act*, 56 UCLA LAW REVIEW 451 (2008)

Adam Benforado, *Quick on the Draw: Implicit Bias and the Second Amendment*, 89 OREGON LAW REVIEW 1 (2010)

Jerry Kang & Mahzarin R. Banaji, *Fair Measures: A Behavioral Realist Revision of "Affirmative Action"*, 94 CALIFORNIA LAW REVIEW 1063 (2006)

Michael Shin, *Redressing Wounds: Finding a Legal Framework to Remedy Racial Disparities in Medical Care*, 90 CALIFORNIA LAW REVIEW 2047 (2002)

Week 14 Rethinking Implicit Bias and Law: Gender, Colorism and Racial Prototypicality

Michael J. White & Gwendolen B. White, *Implicit and Explicit Occupational Gender Stereotypes*, 55 SEX ROLES 259 (2006)

Laurie A. Rudman & Stephen A. Goodwin, *Gender Differences in Automatic In-Group Bias: Why Do Women Like Women More Than Men Like Men?*, 87 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 498 (2004)

Justin D. Levinson & Danielle Young, *Different Shades of Bias: Skin Tone, Implicit Racial Bias, and Judgments of Ambiguous Evidence*, 112 WEST VIRGINIA LAW REVIEW 307 (2010)

Jennifer L. Eberhardt et al., *Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes*, 17 PSYCHOLOGICAL SCIENCE 383 (2006)

Week 15 Rethinking Implicit Bias and Law: System Justification and Shifting Standards, and Moral Credentialing

Avital Mentovich & John T. Jost, *The Ideological "Id"?: System Justification and the Unconscious Perpetuation of Inequality*, 40 CONNECTICUT LAW REVIEW 1095 (2008)

Monica Biernat et al., *Stereotypes and Shifting Standards: Some Paradoxical Effects of Cognitive Load*, 33 J. APPLIED SOCIAL PSYCHOLOGY 2060 (2003)

Diane Kobrynowicz & Monica Biernat, *Decoding Subjective Evaluations: How Stereotypes Provide Shifting Standards*, 33 J. EXPERIMENTAL SOCIAL PSYCHOLOGY 579, 581 (1997)

Monica Biernat & Diane Kobrynowicz, *Gender- and Race-Based Standards of Competence: Lower Minimum Standards but Higher Ability Standards for Devalued Groups*, 72 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 544 (1997)

Week 16: Implicit Social Cognition, Social Justice, and Civic Action

B. Keith Payne & C. Daryl Cameron, *Divided Minds, Divided Morals: How Implicit Social Cognition Underpins and Undermines Our Sense of Social Justice*, in HANDBOOK OF IMPLICIT SOCIAL COGNITION

Christine Jolls & Cass R. Sunstein, *The Law of Implicit Bias*, 94 CALIFORNIA LAW REVIEW 969 (2006)

Anne Hobbs, *Aversive Racism and Implicit Bias Among Civil Rights Workers in the United States*, GEORGE MASON UNIVERSITY CIVIL RIGHTS LAW JOURNAL (forthcoming 2012)

Catherine Smith, *Unconscious Bias and “Outsider” Interest Convergence*, 40 CONNECTICUT LAW REVIEW 1077 (2008)