

Implicit Bias
Legal Studies 180 Fall Semester 2014
MW 4-5:30, 88 Dwinelle

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COURSE DESCRIPTION

Implicit bias—automatic or unconscious stereotyping and prejudice that guides our perception of and behavior toward social groups—is one of the fastest growing areas of law and psychology. It also lies at the heart of one of the raging debates in American Law: whether the results of psychological studies showing the operation of unconscious gender, racial, and other biases can be used as courtroom evidence to prove discrimination. Students will be introduced to cutting edge research that bears not only on the highly relevant substantive areas of employment discrimination and criminal law, but also on questions regarding other legal contexts, such as communications, education, voting, health care, immigration, and property. Students will learn how implicit bias works, how to interpret and use empirical research findings from psychology, how to understand the major critiques of implicit bias research, and how to understand courts' use of implicit bias findings. Remedies to implicit bias will be discussed throughout the course.

REQUIREMENTS

- **Participation (10%)**
 - Section attendance and participation will be considered in grading. You are expected to attend and participate actively in all discussion section meetings and complete section assignments. All class members are encouraged to participate and enrich discussions with their unique experiences, perspectives, and ideas. If you must miss a class meeting, please notify your GSI as soon as you know that and indicate the cause of your absence. Unexcused absences will detract from your participation grade.
- **Three (3) In-Class Exams (20% each)**
 - Three in-class exams will assess your knowledge of course material and will ask you to analyze facts, debates, arguments, and interpretations covered in the course. They will employ a combination of multiple-choice and short essay. Though some material will naturally be relevant throughout the course, each exam is largely non-cumulative. There is no “final exam.”
- **Final Paper (30%)**
 - An 8-page written paper will be due on the first day of finals: December 15, 2012 (topic due Nov 10). You will be asked to choose one topical area of law and describe and analyze how implicit bias operates in this domain. You must draw on both empirical evidence from social science and on legal sources in addressing particular facts, arguments, and issues in your chosen area. You will receive more information about the assignment in section. Papers should be double-spaced with 1-inch margins and written in Times 12-pt font. The reference list does not count in the page limit. Papers will be submitted on bcourses. We will be unable to accommodate requests for paper extensions.

COURSE POLICIES:

- If you will request academic accommodations, please inform the professor at the beginning of the semester. Requests for religious accommodation should be submitted directly to the professor at the beginning of the semester. It is the student's responsibility to notify the instructor in writing by the second week of the semester of any potential conflict of an exam with an extracurricular activity.
- Please familiarize yourself with the University's academic honesty policy. *The penalties for academic dishonesty are severe and ignorance is not an acceptable defense.*
- Please turn off cell phones and restrict use of technology to course-relevant activities in class.
- You are expected to attend lecture on a regular basis (and on time) on Mondays and Wednesdays, though I will not take attendance or penalize you for missing class. I will post slide handouts after class, but these are meant as a study aid and not as a substitute for attendance. I urge you to become an active participant in discussions and activities to enhance your learning experience.

TOPICS AND READINGS

Students should obtain the following book, which is available for purchase at the campus bookstore and will be on reserve at Moffitt Library:

Levinson, J. D., & Smith, R. J. (Eds.). (2012). *Implicit racial bias across the law*. New York, NY: Cambridge University Press.

All other readings will be posted on bcourses. This is a tentative list and is subject to change.

Section I: Introductions

1. Sep 3 Introduction to Stereotyping, Prejudice, and Implicit Bias, Part I

Excerpt from *Situations Matter* by Sam Sommers (Chapter 7: Hate)

Excerpt from *Blink* by Malcolm Gladwell (Chapter 3: The Warren Harding Error)

2./3./4. Sep 8, 10, and 15 Introduction to Stereotyping, Prejudice, and Implicit Bias, Part II

[Book Intro] Levinson, J. D. (2012). Introduction: Racial disparities, social science, and the legal system. In J. D. Levinson & R. J. Smith (Eds.), *Implicit racial bias across the law* (pp. 1-8). New York, NY: Cambridge University Press.

[Book Ch 1] Levinson, J. D., Young, D. M., & Rudman, L. A. (2012). Implicit racial bias: A social science overview. In J. D. Levinson & R. J. Smith (Eds.), *Implicit racial bias across the law* (pp. 9-24). New York, NY: Cambridge University Press.

Greenwald, A.G., & Krieger, L.H. (2006). Implicit bias: Scientific foundations. *The California Law Review*, 94(4), 945-967.

Hardin, C. D., & Banaji, M. R. (in press). The nature of implicit prejudice: Implications for personal and public policy. In E. Shafir (Ed.), *Policy implications of behavioral research*.

Blair, I. V., Dasgupta, N., & Glaser, J. (2014). Implicit Attitudes. In P. Shaver & M. Mikulincer (Eds.), E. Borgida & J. Bargh (Vol. Eds.) *Handbook of Personality and Social Psychology*, Vol. 1, *Attitudes and Social Cognition*. American Psychological Association.

5. Sep 17 Sources of Implicit Bias: The Media

[Book Ch 8] Kang, J. (2012). Communications law: Bits of bias. In J. D. Levinson & R. J. Smith (Eds.), *Implicit racial bias across the law* (pp. 132-145). New York, NY: Cambridge University Press.

Orbe, M. P. & Harris, T. M. (2006). Race/ethnicity, the mass media, and interracial communication. *Interracial communication: Theory into practice* (Chapter 11). Stamford, CT: Wadsworth.

6. Sep 22 Sources of Implicit Bias: Historical Context & Maintaining the Status Quo

Jost, J. T., & Hamilton, D. L. (2005). Stereotypes in our culture. In J. F. Dovidio, P. Glick, & L. A. Rudman (Eds.), *On the nature of prejudice: Fifty years after Allport* (pp. 208–224). Malden, MA: Blackwell.

[Book Ch 13] Serrano, S. K. & Nu ‘uhiwa, B. S. (2012). Federal Indian law: Implicit bias against native peoples as sovereigns. In J. D. Levinson & R. J. Smith (Eds.), *Implicit racial bias across the law* (pp. 209-228). New York, NY: Cambridge University Press.

7. Sep 24 Introduction to the Law of Implicit Bias, Part I

Lawrence, C.R. III (1987). The Id, the Ego, and Equal Protection: Reckoning with unconscious racism. *Stanford Law Review*, 39 (2), 317-388.

Lawrence (2008) article in *Connecticut Law Review* issue celebrating 20th anniversary of “The Id, the Ego, and Equal Protection”

8. Sep 29 Introduction to the Law of Implicit Bias, Part II

Faigman, D.L. (2010). Evidentiary incommensurability: A preliminary exploration of the problem of reasoning from general scientific data to individualized legal decision-making. *Brooklyn Law School*, 75, 1-22.

Kang, J., Dasgupta, N., Yogeeswaran, K. and Blasi, G. L. (2010). Are ideal litigators White? Measuring the myth of colorblindness. *Journal of Empirical Legal Studies*, 7(4), 886–915.

9. Oct 1 Implicit Bias and Education Law

[Book Ch 7] Lawrence, C. R. III (2012). Education law: Unconscious racism and the conversation about the racial achievement gap. In J. D. Levinson & R. J. Smith (Eds.), *Implicit racial bias across the law* (pp. 113-131). New York, NY: Cambridge University Press.

Walton, G. M., Spencer, S. J., & Erman, S. (in press). Affirmative meritocracy. *Social Issues and Policy Review*.

Cheryan, S., Plaut, V. C., Davies, P. G., Steele, C. M. (2009). Ambient belonging: How stereotypical cues impact gender participation in computer science. *Journal of Personality and Social Psychology*, 97, 1045-1060. (read intro and study 1 only)

Oct 6 *EXAM #1*****

Section II: Employment Discrimination

10. Oct 8 Implicit bias, Intent, and Disparate Treatment, Part I

Washington v. Davis, 426 U.S. 229 (1976). (abridged version)

Krieger, L.H. (1995). The content of our categories: A cognitive bias approach to discrimination and equal employment opportunity. *Stanford Law Review*, 47(6), 1161-1248. (read ONLY parts I and II)

Equal Justice Society short piece on intent doctrine

11. Oct 13 Implicit bias, Intent, and Disparate Treatment, Part II

Krieger, L.H., & Fiske, S.T. (2006). Behavioral realism in employment discrimination law: Implicit bias and disparate treatment. *California Law Review*, 94(4), 997-1062. (abridged version – read ONLY pages 3-6 of the document)

[Book Chapter 5] Judge Nancy Gertner & Melissa Hart, Employment law: Implicit bias in employment litigation (pp. 80-94).

12. Oct 15 Biased Decision-making in Organizational Contexts: Price Waterhouse v. Hopkins

Hopkins, A. *Price Waterhouse v. Hopkins: A personal account of a sexual discrimination plaintiff* (read ONLY pp 357-367, which summarize the background and litigation)

Fiske, S. T., Bersoff, D. N., Borgida, E., Deaux, K., & Heilman, M. E. (1991). Social science research on trial. *American Psychologist*, 46, 1049–1060.

Heilman, M.E., & Haynes, M.C. (2008). Subjectivity in the appraisal process: A facilitator of gender bias in work settings. In E. Borgida & S.T. Fiske (eds.), *Beyond common sense: Psychological science in the courtroom* (pp. 127-156). Oxford: Blackwell Publishing. (Read ONLY pp 127-132 and 135-140: this is important background for Wal-Mart)

13. Oct 20 Biased Decision-making in Organizational Contexts: Dukes v. Wal-Mart

Expert Report of William T. Bielby, *Betty Dukes, et al. v. Wal-Mart Stores, Inc. Feb. 3, 2003*

Betty Dukes, et al. v. Wal-Mart Stores, Inc. (2011) (read syllabus, pp 1-23 of Scalia’s opinion, and Ginsburg dissent)

14./15. Oct 22 and Oct 27 The Evidence Debate

Hart, M., & Secunda, P. (2009). A matter of context: Social framework evidence in employment discrimination class actions. *Fordham Law Review*, 78, 37-70.

Monahan, J., Walker, L., & Mitchell, G. (2009). The limits of social framework evidence. *Law, Probability, and Risk*, 8(4), 307-321.

Section III: Individual Rights, Part I

16. Oct 29 Property

[Book Ch 2] Anderson, M.W. & Plaut, V.C. (2012). Property law: Implicit bias and the resilience of spatial colorlines (pp. 25-44).

[Book Ch 12] Godsil, R. D. (2012). Environmental law: A tale of two neighborhoods: Implicit bias and environmental decision-making (pp. 192-208).

Nov 3 *EXAM #2*****

17. Nov 5 Immigration

Marouf, F. (2011). Implicit biases and immigration courts. *New England Law Review*, 45, 417- 448.

Pérez, E. (2010). Explicit evidence on the import of implicit attitudes: The IAT and immigration policy judgments. *Political Behavior*, 32, 517-545.

Section IV: Criminal Law

18. Nov 10 Suspicion and Shooter Bias; Sentencing

Correll, J., Park, B., Judd, C.M., & Wittenbrink, B. (2002). The police officer's dilemma: Using ethnicity to disambiguate potentially threatening individuals. *Journal of Personality and Social Psychology*, 83, 1314-1329. (read intro and study 1, pp. 1314-1318)

[Book Ch 3] Ogletree, C., Smith, R. J., & Wald, J. (2012). Criminal law: Coloring punishment: Implicit social cognition and criminal justice. In J. D. Levinson & R. J. Smith (Eds.), *Implicit racial bias across the law* (pp. 45-60). New York, NY: Cambridge University Press.

Nov 10: turn in paper topic proposal, due 11:59pm

19. Nov 12 Sentencing; Capital Punishment

McCleskey v. Kemp, 481 U.S. 279 (1987) (read majority opinion – to page 20 only)

[Book Ch 14] Smith, R. J. & Cohen, G. B. (2012). Capital punishment: Choosing life or death (implicitly). In J. D. Levinson & R. J. Smith (Eds.), *Implicit racial bias across the law* (pp. 229-243). New York, NY: Cambridge University Press.

20. Nov 17 Implicit Bias and Jury Selection

Sommers, S.R., & Norton, M.I. (2008). Race and jury selection: Psychological perspectives on the peremptory challenge debate. *American Psychologist*, 63(6), 527-539.

Section V: Individual Rights, Part II

21. Nov 19 Voting

Knowles, E. D., Lowery, B. S., & Shauberg, R. L. (2010). Racial prejudice predicts opposition to Obama and his health care reform plan. *Journal of Experimental Social Psychology*, 26(2), 420–423.

Page, A. & Pitts, M. J. (2009). Poll workers, election administration, and the problem of implicit bias. *Michigan Journal of Race and Law*, 15(1), 1-56.

22. Nov 24 Health Care

[Book Ch 6] Goodwin, M. & Duke, N. (2012). Health law: Cognitive bias in medical decision-making. In J. D. Levinson & R. J. Smith (Eds.), *Implicit racial bias across the law* (pp. 95-112). New York, NY: Cambridge University Press.

Blair, I. V., Steiner, J. F., & Havranek, E. P. (2011). Unconscious (implicit) bias and health disparities: Where do we go from here? *The Permanente Journal*, 15, 71-78.

Section VI: What to do with implicit bias?

23. Nov 26 Does implicit bias matter? The debates

Banks and Ford Selections from *Poverty and Race* issue (2011)

Wax and Tetlock *WSJ* op-ed (2005)

Jost et al *Research in Organizational Behavior* article (2009)

24. Dec 1 Remedies and Conclusions

NO ASSIGNED READING

Dec 3 *EXAM #3*****

RRR week: Dec 8-12

Final Paper Due: Monday, December 15, 2012 11:59pm