

UCLA

UCLA Public Law & Legal Theory Series

Title

Implicit Racial Bias Across the Law (Book Synopsis)

Permalink

<https://escholarship.org/uc/item/65t535k2>

Journal

UCLA School of Law Public Law & Legal Theory Series

Authors

Kang, Jerry

Levinson, Justin D.

Smith, Robert J.

et al.

Publication Date

2012

BOOK SYNOPSIS

IMPLICIT RACIAL BIAS ACROSS THE LAW

(CAMBRIDGE UNIVERSITY PRESS, MAY 2012)

Justin D. Levinson & Robert J. Smith (editors)

Despite cultural progress in reducing overt acts of racism, stark racial disparities continue to define American life. This book is for anyone who wonders why race still matters and is interested in what emerging social science can contribute to the discussion. The book explores how scientific evidence on the human mind might help to explain why racial equality is so elusive. This new evidence reveals how human mental machinery can be skewed by lurking stereotypes, often bending to accommodate hidden biases reinforced by years of social learning. Through the lens of these powerful and pervasive implicit racial attitudes and stereotypes, *Implicit Racial Bias Across the Law* examines both the continued subordination of historically disadvantaged groups and the legal system's complicity in the subordination.

The Volume begins by engaging the scientific underpinnings of implicit bias. In Chapter One, Justin Levinson joins with psychologists Danielle Young and Laurie Rudman to detail the science behind implicit racial bias, setting the stage for each of the remaining chapters. Readers without familiarity of implicit social cognition methods and findings will find this chapter to be a helpful starting point. The remainder of the Volume examines a wide range of legal areas in light of implicit bias.

Each contribution offers a new approach to discourse in its individual field, yet the authors' treatment of implicit racial bias throughout the Volume can be synthesized. First, the chapters paint a broad picture of the way implicit racial bias may function as an interconnected and often impenetrable barrier across law and society. In this lens, consider how the storylines of several chapters might intersect for members of a stereotyped family or community: *A young girl walks to school, eager for the opportunity to engage and learn, despite the so called "achievement gap". Later that morning, her mother reports to the courthouse, jury summons in hand, eager to participate in a civic responsibility. On the same day, her grandfather goes to the local Emergency Room, afraid that his chest pains might mean that has suffered a heart attack. Nearby, a non-profit serving underprivileged youth prepares to make its "pitch" to a local corporation, seeking a charitable donation that will allow it to survive and fulfill its mission.*

Each of these storylines, which by themselves illustrate separate challenges within the health, educational, and economic systems, become connected by implicit bias. Charles Lawrence, in his chapter on Education law, considers how implicit bias may affect the way that racial disparities in education are explained and addressed, resulting in powerful harms to black children. Michele Goodwin and Naomi Duke, in their chapter on Health Care Law, argue that quality medical treatment may, due to implicit racial stereotypes, be reserved for members of privileged groups. Robert Smith and Ben Cohen, in considering Capital Punishment, argue that implicit bias may lead to the disproportionate exclusion of African American jurors. And Justin Levinson, in his chapter on Corporations, suggests that implicit bias may lead companies to donate money to elite (white) charities, instead of to non-profits that benefit minorities. In reading the chapters, it is crucial not only to grapple with their topic-focused claims, but also to note that each potentially biased domain does not stand alone; rather, it is part of a network of interconnected forces that can impede justice.

Another way to synthesize the chapters in this Volume is to consider the similarities and differences in the authors' specific claims of biased decision making. By reflecting on the contributors' claims in this way, one can gain new perspective on each subject area, as well as understand how implicit bias may actually manifest in additional domains beyond those considered by the authors. Taking this decision focused perspective, the breadth of the authors' claims is striking: they explore decisions made by individual actors (e.g. neighbors, judges, or doctors), those made by groups (e.g. juries or corporate boards), and those made by government or administrative entities (e.g. Congress or the IRS).

Charles Ogletree and his colleagues, for example, suggest that a wide range of individual decision-makers, including prosecutors, defense counsel, police, and judges, may be biased in the criminal law context, perhaps even all related to a single trial. Jerry Kang takes a different approach in his chapter on Communications Law. He focuses on a unique relationship of law and bias: the biases triggered and heightened in large groups of citizens by a complicit system of law and policy. Other contributors blend their claims of bias. For example, Michele Wilde Anderson and Victoria Plaut claim that a range of biased decisions, including those made by groups (city councils) and individuals (tax assessors and neighbors), affect property law and development. When considering the authors' various claims of bias, it becomes apparent that some of these claims may inform even other chapters. For example, borrowing from Kang, criminal law commentators could explore whether certain crime policies might actually become

delivery mechanisms of bias, rather than reflections of bias. Or, borrowing from Ogletree and colleagues, communication law scholars could argue that administrative decisions serve not just a trigger for bias, but also a result of bias.

Focusing on the specific claims of bias also informs discussions of how to respond to implicit bias. For example, should implicit bias be countered by training decision-makers, advocating for more neutral laws, or through encouraging more diversity in organizations? In the context of employment discrimination law, Judge Nancy Gertner and Melissa Hart claim that current case law amplifies the opportunity for an individual judge's implicit biases to affect a summary judgment decision. To address this problem, one might attempt to reduce the influence of implicit bias on individual trial judges, perhaps through bias reduction or diversity training. Another solution might include a push for legislatively initiated change in order to reshape the bias supporting laws. Arguments made by other authors perhaps necessitate broader solutions. For example, Dorothy Brown argues that Congress and the IRS made stereotype driven decisions in deciding to audit citizens who claimed the Earned Income Tax Credit. Resolving potential bias by Congress may be harder to address through training, and, for obvious reasons, reforming federal law without congressional approval is unlikely. Thus, additional solutions may be required. Yet, if implicit bias is so powerful that Congress is susceptible to it, solutions short of cultural change may well be fleeting. As the chapters discuss, the potential for implicit bias to affect nearly all decision makers means that creative and comprehensive remedies will likely be needed.

These chapters, rooted across the major subjects of law, provide a comprehensive look at the dangers of implicit racial bias in the legal system. Individually, they offer a compelling look at the potential harms that implicit bias can play in a particular legal domain. Taken together, they amplify the depth and interconnectedness of implicit racial bias in all areas of the law. By doing so, they highlight the major challenges that lie ahead for policymakers, practitioners, scholars, and citizens as they participate in the continuing struggle for fairness and equality.