

THE ACADEMIC SWOON OVER IMPLICIT RACIAL BIAS

Costs, Benefits, and Other Considerations

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Abstract

In recent years, there has been a surge of discussion, debate, and research on the topic of implicit bias. Implicit bias has become the go-to form of racial bias that many academics, practitioners, and policy makers have identified as important and timely to study (Eberhardt et al., 2004; Levinson and Smith, 2017). Interventions to address implicit racial bias in policing have been particularly popular (Fridell 2008). Arguably, combatting implicit racial bias presents itself as a tool for protecting civil rights. This essay examines the emergence of the implicit bias paradigm as a way to address racial bias in justice system outcomes. The first part provides an overview of implicit bias, including how it is defined, how it is measured, and how it impacts the justice system. The second part examines the term “implicit bias.” This section assesses implicit bias as a social problem and considers whether the label illuminates or obscures the reality of racial bias in the criminal justice system. The discussion considers whether “implicit bias” is viewed as a more appealing approach for dealing with racial bias because it does not assign racial blame. The third part considers the contours of the relationship between implicit bias and explicit bias. The discussion highlights the interconnectedness between the two forms of racial bias. Is the implicit bias approach a signal of racial retrenchment? The final section considers how elementary and secondary education could be used as a proactive strategy for addressing implicit racial bias.

Keywords: Criminal Justice System, Explicit Bias, Implicit Association Test, Implicit Bias, Police Violence, Racial Bias, Racial Profiling, Unconscious Racial Bias

INTRODUCTION

“I am a Man.”

“Black Lives Matter.”

During the 1960s, civil rights marchers wore large sandwich board signs that stated “I am a man.” The protesters’ bold affirmative statement poignantly decried man’s

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inhumanity to man. Today, “Black lives matter” is the rallying cry of many civil rights protestors, particularly those marching in response to the alarming number of police shootings and killings of African Americans. Though separated by a half century, the declarations made by civil rights marchers in the 1960s and 2010s sound eerily similar. Both “I am a Man” and “Black Lives Matter” are extraordinary declarations because each one should be self-evident. It should be jarring to our collective ears to have men declare publicly that they are men. It should be just as jarring to have public protests where people demand that police officers be held accountable for killing African Americans.

While both expressions are public pleas to acknowledge and bear witness to anti-Black harm and violence, “I am a Man” and “Black Lives Matter,” represent distinct social moments that highlight different types of racial discrimination. The 1960s Civil Rights Movement centered on the problems of explicit, legally sanctioned racism—*de jure* racial discrimination. During this period of American apartheid, efforts were focused on dismantling explicit racial tracking mandated by Jim Crow legislation. Laws authorized separate and preferred spaces for Whites—these separate spaces included housing, schools, employment, health care, parks, swimming pools, public bathrooms and drinking fountains, and religious worship—away from Blacks and other groups of color (Browne-Marshall 2013; Russell-Brown 2009). Beyond racial segregation, Blacks were denied basic civil rights, including the right to vote and the right to wage equality. As well, states turned a blind eye towards anti-Black violence at the hands of law enforcement. Though “separate but equal” legislation has been outlawed (*Brown v. Board of Education* 1954), racial bias remains. Various theories and arguments seek to explain the sustained racial disparities in the United States, including conflict theory and critical race theory (Crenshaw et al., 1996). While explicit racial bias persists, in recent years, there has been increased attention focused on how implicit racial bias impacts the criminal justice system.

This essay takes stock of implicit bias as an approach to understanding and reducing racial bias in the criminal justice system. The first section provides an overview of implicit bias. This includes how it is defined, how it is measured, how it impacts actions taken by criminal justice administrators, and a discussion of the surging interest in the topic over the past decade. The second part examines “implicit bias” as a label and how the label makes the phenomenon more or less palatable to the general public. A specific concern is whether the focus on implicit racial bias enlightens or operates to obscure the problem of racial bias. The third part explores the relationship between implicit bias and explicit bias. This discussion highlights the interconnectedness between implicit and explicit racial bias, and their relationship to larger structural mechanisms of bias. The final section considers how curriculum changes in primary and secondary education could be used as a proactive strategy for addressing implicit racial bias.

OVERVIEW OF IMPLICIT BIAS

Implicit race bias refers to unconscious attitudes and stereotypes. These attitudes develop through a cognitive process by which individuals assign a collection of characteristics to others based on their appearance and race (Eberhardt et al., 2004). Implicit biases may lead people to misperceive reality and see things differently than they are—such as attributing increased muscularity to a Black person compared with a White person (Wilson et al., 2017). In the criminal justice context, a police officer’s implicit biases could lead her to mistake a suspect’s cell phone for a gun (or the reverse), or to perceive a Black suspect as more threatening than a White suspect. Such split-second decisions based on subconscious perceptions may have deadly consequences. The increasing number of video recordings showing violent and deadly encounters between police officers

and African American drivers, pedestrians, and others underscore this reality. A list of the well-known cases includes Sandra Bland, Michael Brown, Philando Castile, Stephon Clark, Sam DuBose, Eric Garner, Laquan McDonald, Tamir Rice, and Walter Scott.¹ These and other cases have sparked national interest in understanding how implicit bias operates and with identifying interventions that would reduce its negative consequences. It is worth noting that for all the attention and praise that addressing implicit bias has received as a corrective for racial bias, we continue to see the same type of response in cases involving police violence against Black victims. Notably, few cases have resulted in murder charges and none of those has resulted in a conviction.

The increased interest in unconscious bias has been propelled in part by the popularity of the Implicit Association Test (IAT).² The test was developed by a team of researchers and measures the strength of test takers' automatic mental associations. Users are asked to rapidly categorize target concepts (e.g., Black, White) with attributes (e.g., angry, lazy, or appealing). Easier pairings (i.e., quicker responses) are viewed as more strongly associated in one's memory than more difficult pairings (e.g., slower responses), with the former suggesting a higher degree of unconscious bias. Worldwide, millions of people have visited the website to take the test and it has been widely cited by U.S. scholars and policymakers. Over the past decade, researchers, judges, and policy makers have studied how implicit bias works and have applied their findings to the justice system. For instance, scholars have examined how hidden racial biases operate and how reducing them may lead to a decline in racially-disparate outcomes across the criminal justice continuum (Russell-Brown 2017). There has been a sharp rise in the number of law and social science journal articles and court cases that make reference to implicit bias. The information below provides a snapshot of the steep rise in scholarly acknowledgement of implicit bias.³ An examination of two time periods, 2000–2008 and 2009–2017, shows that there was a dramatic increase in the number of scholarly citations to implicit bias.

	2000–2008	2009–2017
Journal articles	83	2,096
Court Cases	8	104

The research findings on implicit bias have overwhelmingly supported the hypothesis that implicit racial bias exists and impacts decisions made within the criminal justice system. Specifically they establish that implicit racial bias works in a way that makes it more likely that African Americans will be perceived as criminals by the general public and by law enforcement officers. Based on this research, dozens of police agencies across the country have instituted training programs on implicit bias for police officers (Fridell 2008; Spencer et al., 2016). As well, the American Bar Association offers a “de-biasing” program for judges and lawyers (American Bar Association 2016). In a novel approach, to addressing unconscious bias in the court system, U.S. District Court judge Mark Bennett discusses implicit bias with jurors (this includes encouraging them to take the Implicit Association Test), and instructs them not to allow their biases to influence their decisions (Bennett 2010, 2017).

LABELING IMPLICIT BIAS

Scholars have long noted the power of language in describing, defining, and creating society. As Michael Coyle (2010) observes, “the use of language in social life can

privilege certain discourses to dominance, while marginalizing alternative discourses” (p. 14). Thus, the label assigned to a social problem has meaning. For instance, “juvenile delinquency,” “racial profiling,” and even “criminal justice,” are labels that have an embedded social perspective (Coyle 2010; Solan and Tiersma, 2005). Each one signals a viewpoint.⁴

There are several reasons that the label given to a social harm has significance: 1) the name may determine whether the social problem is treated as a serious social threat or as a low-level concern; 2) the label may affect whether researchers focus on the issue; and 3) the label may impact how the criminal justice system responds, e.g., which remedies are devised to address the problem. Given this country’s racial history and the general reticence to address racial issues, the labels assigned to race-related problems take on particular significance. It is important, then, to evaluate “implicit bias” as terminology. In the context of criminal justice, an assessment of the ramifications of “implicit bias” may yield insights about how the justice system works, and what the focus on implicit bias highlights and obscures about race and harm.

Public discussions about race are often uncomfortable and fraught with pitfalls. People who raise questions about racial issues, such as police violence or racial profiling, are often met with denial and dismissal. Indeed, researchers have documented that there is fatigue associated with race-related social problems. As Steven Gregory notes, many people believe that race is a “tiresome topic” (Gregory and Sanjek, 1994, p. 23). A 2015 YouGov survey found that 57% of Whites surveyed indicated that there is “too much” talk about race, compared with just 18% of Blacks; indeed, 49% of Blacks said that there is “not enough” talk about race (Moore 2015). The popularity of terms such as “colorblindness” and “post-racial,” underscore the reality that many people are weary of talk about race. These terms project a world where race no longer matters because racial discrimination and division are historical relics. Yet, there are obvious problems with a non-racial approach, particularly for criminal justice research. Namely, the dominant racial ideology of colorblindness may promote the illusion of race neutrality and exacerbate racial disproportionality (Van Cleve and Mayes, 2015).

An examination of the term “implicit bias” allows for a look at what the label means and what it signifies about the social problem it describes. First, “implicit bias” sounds like an objective description of a phenomenon or an approach to understanding unconscious attitudes and behaviors. To the degree that the term signals race, it is a colorblind racial reference. The all-races-are-equal tenor of “implicit bias” becomes apparent when we consider an alternative term: “implicit racism.” This latter term, a dramatic reframing, is arguably a more accurate label for what researchers examine when they study implicit racial bias in criminal justice; yet, it is *not* the label used to describe this research. Thus, the call here is for scholars to give due consideration to “implicit bias” as a language choice, with attention to whether it helps or impedes efforts to understand how unconscious racial bias works in the justice system.

A second observation about “implicit bias” is that the term describes a cognitive process—not a harm or a criminal wrong. Nor does the term communicate that the phenomenon of implicit racial bias has a racially-disparate impact within the criminal justice system (Eberhardt et al., 2004). In fact, implicit racial bias is a microlevel process that has a macrolevel impact. As noted earlier, a law enforcement officer’s unconscious biases about race may lead him to shoot a Black man because he wrongly believes the man is holding a weapon. Implicit biases may also result in unintended and inefficient outcomes. The fact that police officers are less likely to “see” White suspects holding weapons (even when they are holding them) could potentially mean that White offenders will have more time to cause harm to officers (and others) and more time to escape. These observations show how unconscious biases can upend the

fairness and efficiency of justice system outcomes. Yet, in contrast to the labels for some social problems—such as the “opioid epidemic” and “juvenile delinquency,”—“implicit bias” terminology neither signals the need for an intervention by the criminal justice system nor a criminal harm. “Implicit bias” does not signal a social problem label that requires urgent action. In this way, “implicit bias” masks the harm caused by its practice.

The above concerns notwithstanding, there may be other interpretations of “implicit bias.” It could be argued that because the term sounds objective and race neutral, it makes the term palatable to a larger, race-averse audience, and as such, may open the door for productive discussions and changes about racial bias in policing and prosecution. “Implicit bias” may be embraceable, particularly by people who work within the justice system—police officers, judges, lawyers, and correctional officials. As noted in the above-cited YouGov survey, there is a desire by many people—particularly by Whites—to avoid conversations about race. Using the term “implicit bias” (or even “implicit racial bias”), compared with “implicit racism,” avoids racial blame and guilt. For many people, addressing racial bias without directly talking about race may be an attractive approach. To the degree that this less obvious approach brings the issue of racial bias to large numbers of people, it may be successful. Yet, while implicit bias as a strategy may have benefits of raising awareness and fostering initial conversations, it remains problematic.

EXPLICIT VERSUS IMPLICIT BIAS

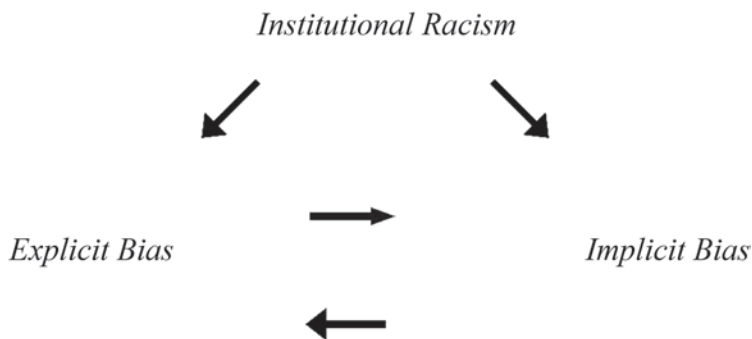
For many people, implicit racial bias may offer a more attractive approach to studying racial discrimination than explicit racial bias. Because implicit racial bias involves an unconscious process, individuals are less likely to be seen as culpable for having implicit biases—at least not in the same way a person would be held responsible for engaging in explicit racial bias (e.g., racial slurs, derogatory statements and actions against members of a particular racial group). That is, implicit bias may be heralded as an approach to understanding racial bias *because* it is less controversial, easier to discuss in public, and because it does not assign personal fault to individuals with racial bias. As well, the implicit bias paradigm may be appealing because it identifies racial bias but not racists. This constitutes a form of what Eduardo Bonilla-Silva refers to as “racism without racists” (Bonilla-Silva 2009). Thus, developing interventions to stem implicit bias may be more attractive to criminal justice system decision makers—judges, lawyers, and jurors—because they have the allure of an approach that involves utilizing race as a carrot and not as a stick (Russell-Brown 2017). The “carrot” offered includes any of the possible procedural steps that could be taken to address implicit bias (e.g., juror education, officer training on implicit bias). In contrast, an offer of a “stick” might include education and discussion about the U.S.’s history of race, including chattel slavery, the two-tier criminal justice system that developed, and the relationship between slave patrols and U.S. policing—facts of our past that many people are not familiar with and would prefer not to discuss. Implicit bias creates a pathway to avoid this racial thicket.

To the degree that implicit bias offers a new sociological approach to understanding how racial bias operates, we need to make sure that the empirical research adds to (rather than pivots away from) our understanding of how all forms of racial bias affect outcomes in the justice system. In his discussion of the “paradox” of implicit bias, Michael Selmi (2017) argues that the zeal to use the label “implicit bias” is based on a misunderstanding of bias and how it works. He observes that racial bias expands across

a continuum and cannot easily be reduced to either implicit or explicit. For instance, racial bias may be subtle and operate in ways that are neither totally explicit nor totally unconscious. Further, Selmi cautions, when an act of racial bias is categorized as an act of implicit bias, it makes establishing racial animus difficult and may place the racial discrimination beyond legal reach. Going a step further, Jonathan Kahn (2017) argues that implicit bias has become a “master narrative of race relations” (p. 11). Instead it should be viewed as *an* approach to understanding racialized behaviors.

Given the appeal of implicit bias, sociologists and criminologists should remain alert to how studying implicit bias may overshadow research on explicit bias as well as perspectives based on intentional racial discrimination—specifically whether the popularity of implicit bias masks the problem of intentional racial discrimination. For instance, while reforms designed to reduce levels of implicit bias may be effective, they may also work to obscure the racial hierarchy deeply embedded in U.S. racial history.

As forms of bias, implicit and explicit racial bias are interrelated and work together. Because they are connected, action is required to mitigate the harms caused by both forms. The following diagram is a visual articulation of this argument:



Explicit bias and implicit racial bias are both features of institutional racism. Institutional racial bias works in both overt and covert ways. For instance, some of the implicit biases that individuals have—such as associating Blacks with deviance, low education, and poverty—derive from historical and structural forces (e.g., segregation, redlining, etc.) (Eberhardt et al., 2004). The same structural paths can cultivate explicit biases. As well, people who demonstrate high levels of implicit racial bias may be less likely to express their explicit biases. Implicit racial bias operates alongside and in reaction to explicit bias. Likewise, explicit racial bias operates alongside and in reaction to implicit bias. Thus, a person can have both implicit and explicit racial biases; the two forms of bias are not mutually exclusive. It is important for criminologists to explore in detail the relationship between these phenomena. Most importantly, scholars must consider how these different forms of racial bias (including institutional racism), work to impact criminal justice system treatment and outcomes. As Ruth Peterson (2017) argues:

[T]he question for criminologists is how unconscious processes in the mind are turned into behaviors on the ground. In particular, we need to know when, where, and under what circumstances implicit biases are activated and turned into biased behaviors, speech, and discriminatory actions. [Further considerations include] whether implicit bias as a factor in disparities in criminal justice relates to legal culpability for disparate treatment (does it generally render disparate treatment as legally excusable); [and], whether implicit bias becomes explicit difference in

action in the same manner across various agencies/components of the criminal justice system, for different populations (as workers or targets), in public versus private spaces, when others are present or not (p. 254).

Peterson's statement highlights the rich empirical agenda offered by implicit bias. Analyses of implicit bias are integral to assessments of how explicit bias works (and how different types of racial bias interact). It is also important to determine whether the justice system is any more responsive to harms caused by implicit racial bias than to harms caused by explicit racial bias. Some researchers have noted the symbiotic relationship between implicit bias and the criminal justice system itself. For instance, Justin Levinson and Robert J. Smith (2017) state that the justice system itself is "culturally and cognitively inseparable from implicit bias" (p. 407). That is, understanding and addressing implicit bias requires understanding how race matters and courses through the larger justice system apparatus.

IMPLICIT BIAS THROUGH A CHILD'S EYES

Interventions designed to reduce the impact of implicit racial bias have been directed at various points along the justice system continuum—including police, courts, and corrections. For instance, police agencies across the country have implemented implicit bias training programs to help officers identify and alter their own unconscious biases.⁵ Likewise, there have been efforts to train judges, prosecutors, and jurors on the impact that implicit biases may have on case outcomes (Bennett 2017; Smith and Levinson, 2012). While these justice system adaptations are notable, they do not adequately account for how early individual biases develop, and how quickly biases can become entrenched. Thus, reducing racially-biased outcomes in the criminal justice system will require more than training the people who work within the justice system.

Early education and exposure to topics that involve race, racial groups, and race relations can work to mitigate implicit bias (Russell-Brown 2014). The primary and secondary years are a critical time for enhancing the educational curriculum around race. School-based interventions hold promise for stemming the development of racial biases (implicit and explicit). One example would be for the K-12 curriculum to include a robust and inclusive study of U.S. racial history and racial relations. Curricula efforts to reframe race may work to counteract stereotypical and degrading media images about racial groups of color. If left unchallenged, negative media portrayals of racial minorities may have longstanding consequences—ones that foster implicit racial biases. All told, the public education system should be treated as another site—along with the criminal justice system—for anti-bias work. This focus would also serve as a proactive strategy for addressing implicit bias.

CONCLUSION

Race matters in the everyday churn of the justice system. When compared with Whites, people of color, particularly African Americans, Latinos, and Native Americans, experience racially disparate treatment at every stage, from arrest to incarceration. These outcomes are sometimes the result of intentional racial discrimination. However, we now know that these disparities reflect more than conscious racial animus. Implicit racial bias is another road that leads to racial inequities in policing practices, court processes, and correctional treatment. In fact, an individual can hold both implicit and explicit biases at the same time, and these racial biases reinforce each other. Given the

general social and criminological reluctance to engage in race issues, the acute interest in implicit bias as an approach to addressing racial disparity should influence how researchers articulate and theorize about bias effects—particularly which problem solving approaches are used to address racial inequality.

We are at the front end of our understanding of how implicit racial bias operates and the harms it causes. As our collective knowledge expands, it is likely that researchers will identify intervention strategies—external to the justice system—that will curtail the impact of negative racial attitudes and stereotypes on justice system decisions. The stakes are high. Thus, the theoretical and empirical work to come must build on what we know and not lose sight of the fact that racial bias in any form is racial bias. People on the receiving end of implicit racial bias do not experience a “better” justice system than those who experience explicit racial bias.

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NOTES

1. There are several organizations that have developed databases to collect and provide information on cases involving police killing civilians. See for example, Swaine (2016), *The Washington Post* (2018), and Fatal Encounters (2017).
2. The Implicit Association Test (IAT), available online, is a popular method for measuring levels of implicit bias. <https://implicit.harvard.edu/implicit/education.html>.
3. The journal searches include articles based on searches of Hein Online and Academic Premier. The data provided for court cases includes both federal and state court cases.
4. In the case of juvenile delinquency, the term indicates that juveniles are a group distinct from adults, who have engaged in improper behavior. Also notable, the term “juvenile” indicates that there is a separation between members of the group and the rest of society. For instance, compare “children’s delinquency” to “juvenile delinquency.”
5. See The National Initiative for Building Community Trust and Justice (n.d.).

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