



The Lens of

Implicit Bias

By Shawn C. Marsh, Ph.D.

Consider for a moment the number of people and decisions involved in even the most common situations within our justice system. Take an adolescent who is accused of shoplifting. The store security officer first decides whether or not the youth actually shoplifted merchandise, then the store owner decides whether or not the act warrants involving the police. Law enforcement, if called, then decides whether or not to charge or even arrest the youth. Depending on that decision, detention or probation staff may become involved and make decisions around detainment or diversion. Decisions continue to accumulate as the youth moves through the system—up to and including decisions made by juvenile and family court judges.

Decision points exist from the moment of initial contact with the justice system until case resolution, and each decision point is an opportunity for dozens (if not many dozens) of people to make a choice that can have a profound effect on the life of the juvenile and his or her family. Given the impact of these decisions on children, youth, families, victims, and communities, it is in our best interest to understand factors that shape our thinking—particularly those that can lead to unintentional, but real, disparate treatment in cases before juvenile and family courts.

Social psychologists are fundamentally interested in understanding how people think, feel, and behave in the presence of others. Accordingly, social psychological research tends to focus on groups of two or more people (e.g., juries or gangs) and how people respond to social information (e.g., perceived norms and power). Many social psychologists have joined the “cognitive revolution,”

born in part from advances in neuroscience, which has refocused the science of psychology on developing a fuller understanding of how our brains process information and influence behavior. For social psychologists, this shift means exploring social cognition—or how we actually perceive and process information about others and our interactions with others. One area of research in social cognition that has gained substantial attention from social and cognitive psychologists alike is implicit bias. This phenomenon also has gained pop-culture recognition after being explored in Malcolm Gladwell’s best-selling book *Blink*. Before providing an overview of implicit bias, however, it is important to set a foundation for the discussion.

THE PROS AND CONS OF AUTOPILOT

We process a lot of information in a typical day, and not just the steady stream of phone calls, e-mails, and paperwork most of us face. For example, in one fashion or another, you are at this moment receiving information about the temperature of the room, the boldness of the typeset in this article, the hum of lights or nearby appliances, the feeling of being hungry or full, to name just a few possible sensory inputs. We are literally bombarded by stimulus and information. Imagine for a moment if you had to attend to and accurately process all of this data. Most would agree this would be a daunting or even impossible task. In fact, if we did have to attend to and fully process all of the stimulus and information we face, we likely could not function or at least not function well.

Fortunately for us, we have a (relatively) sophisticated brain. As human beings, we possess the ability to deal efficiently with the

KEY DEFINITIONS

Explicit bias is a conscious preference (positive or negative) for a social category.

Implicit bias is a preference (positive or negative) for a social category that operates outside of awareness.

Schemas are mental “maps” by which we process routine information with little or no conscious thought.

The components of bias include:

- **Stereotypes:** generalizations about the perceived “typical” characteristics of a social category (cognitive component).
- **Prejudice:** how one feels about members of a given social category (affective component).
- **Discrimination:** how one acts toward members of a given social category (behavioral component).

onslaught of stimulus and information we experience day-to-day. Based on our cumulative life experiences and understanding of how the world works, we develop schemas, or “mental maps,” that help us process information automatically. Automatic processing helps us preserve cognitive resources and is related to what is called the “primitive brain.” For example, once we master driving, we don’t spend a lot of energy thinking about how to do it—we just do it. This is possible because we have developed a schema for how to accelerate, brake, and steer that requires little or no effortful thinking. Another example is reading. When presented with groups of letters on a page, most people will automatically begin trying to process the series of letters as a word. If you see the three letters R-E-D, it is quite easy to process them as the word RED.

Sometimes, however, things don’t work so smoothly when our schemas compete or interfere with one another. If we were to present the letters R-E-D in the color green, and ask you to not read the word but state the color of the letters—you will probably experience difficulty in doing so with the same speed as just reading the word. This is an example of automaticity interference based on the Stroop Task. Basically, when faced with an incongruent task such as saying the color of a word versus reading the word (which is how we are accustomed to interpreting a string of letters), our response times are longer, we are less accurate, and it takes a lot of concentration to improve our performance. So depending on the situation or task, automaticity can be helpful or it can lead to diminished performance. This is an important point to keep in mind as we move on to the inner workings of bias.

SAMPLE STROOP TASK

Directions: From left to right, read out loud each word as quickly as you can. Pretty easy, right? Now, go back and from left to right, say out loud the color of each word as quickly as you can. Notice any difference? Most people will often say the word versus the color or take substantially more time to do the task.

RED GREEN BLUE YELLOW BLACK GREEN
BLACK RED BLUE RED YELLOW

OLD HABITS DIE HARD

Shortly after we are born we begin categorizing information. Often categories form around observables such as color, shape, and size. As infants we form attachments with our caretakers. Eventually, we develop a sense of self and the subsequent capacity to assess whether “you look like me and my caretakers” or “you don’t look like me or my caretakers.” Not far behind this rudimentary categorization process is developing associations of characteristics with social groups. Often, these groups fall along the lines of people like you (i.e., the “in-group”) and people not like you (i.e., the “out-group”). These generalized characteristics come from many different sources, including your parents, friends, and the media—and can be either positive or negative (e.g., Asians are good at math, teenagers are self-absorbed). Over time these associations strengthen and become automatic, and the seed of implicit bias is planted. Implicit bias is a preference—positive or negative—for a group based on stereotypes or attitudes we hold and that tend to develop early in life. In contrast to explicit bias, whereby we are aware of our biases toward a group, implicit bias operates outside our awareness: we don’t even know it is there.

We can think of implicit bias as a lens through which we view the world. It automatically filters how we take in and act on information. It is always present. Sometimes, if we pay attention, we can notice the results of implicit bias in ourselves. For example, most of us have had the following experience: You are in the car racing to an important meeting for which you are late. As you navigate through frustrating stop-and-go traffic, you come to a crosswalk where pedestrians have the right-of-way. Just as you approach the crosswalk—which has been clear for the half-dozen cars in front of you—a person steps out and forces you to stop suddenly. It happens that this person is “not like you,” perhaps in terms of age, body type, skin color, or gender. Suddenly you find yourself thinking (or even saying) a derogatory remark about that person—something you would typically find offensive and would never dream of saying in public. Remember, even though you don’t personally endorse the prejudiced attitude, the lens of implicit bias develops early and old habits do die hard.

GOT BIAS?

You might be wondering how we know implicit bias exists if it operates outside of awareness. Good question. We could just ask people about their biases. This approach, however, is likely to be ineffective since most people now realize it is not socially acceptable to admit to or act on prejudice. Further, since implicit bias is by definition nonconscious, people might not even be capable of reporting about its existence.

Although some researchers use physiological methods to get at implicit bias (e.g., functional magnetic resonance imaging), the most popular method involves latent response or reaction time measures. This approach is based on the idea that two pieces of information that are tightly associated in our minds should be easier to sort together. For example, for many European Americans, it is easier, based on response time, to pair a white face with a “good” word (e.g., honest) than it is for them to pair a black face to a “good” word. Further, for many European Americans, it is easier, based again on response time, to pair a black face with a “bad” word (e.g., violent) than it is for them to pair a white face with a “bad” word. Latent response time measures assess the speed with which you make these pairings. (An example of this kind of test is

IMPLICIT OR EXPLICIT BIAS? YOU BE THE JUDGE

Susan Boyle, an aspiring singer, recently appeared on a national talent show televised in the United Kingdom. Millions of people have seen the clip of her initial performance (which can be found easily by searching the Internet with her name). However, for those who have not seen her debut performance, Ms. Boyle presents as a somewhat naïve and awkward 40-something. In contrast to younger and more “hip” contestants, she appears in a conservative dress and tousled hair, gyrates unexpectedly, admits she has never been kissed, and reveals she lives alone in a small village. During her discussion with the judges, the camera pans the face of the audience and catches eyes rolling, heads shaking, muffled laughs, and even groans. Based on their body language and questions, the judges seem to share the same assessment of Ms. Boyle: her performance is going to be a train wreck. Ms. Boyle then began to sing. We won’t ruin the ending in case you have not seen the clip. (Hint: you should.) Was this implicit bias? Explicit bias? Both? You be the judge.

the Implicit Association Test (IAT) which can be found at <https://implicit.harvard.edu/implicit/>.) Regardless of method, the body of research on implicit bias suggests it operates not just as a function of race but also gender, age, and other categories—although not consistently or in the same manner or degree for all participants.

Recognizing that implicit bias appears to be relatively universal provides an interesting foundation for broadening discussions on issues such as minority over-representation (MOR), disproportionate minority contact (DMC), and gender or age discrimination. In essence, when we look at research on social cognitive processes such as implicit bias we understand that these processes are normal rather than pathological. This does not mean we should use them as an excuse for prejudice or discrimination. Rather, they give us insight into how we might go about avoiding the pitfalls we face when some of our information processing functions outside of our awareness.

“TRIAL” AND ERROR

As noted in the introduction, moving a case through the courts and allied systems involves a lot of decision makers and decisions. So how much attention is the role of implicit bias in decision making getting from the field? Quite a bit. (For an example of recent activities involving courts and implicit bias, see the article “Racial and Ethnic Fairness the Focus of NCSC Campaign” on page 26.) The most obvious context for discussions about implicit bias and the justice system are the issues of MOR and DMC. Few would disagree that minorities are over-represented in the justice system relative to their proportion in the general population. Substantial effort has been made to identify sources of this over-representation and enact legislation to encourage its reduction (e.g., the Juvenile Justice and Delinquency Prevention Act). Often, historical and sociological factors are presented to frame why MOR and DMC exist—and this context is absolutely critical to understanding the issue of disparate treatment and outcomes. Not until recently, however, has implicit bias and decision making been seriously explored as a potential contributor to MOR and DMC.

Although implicit bias is receiving increased attention in legal education, it is important to emphasize several key points. First,

the impact of implicit bias on issues such as MOR and DMC in the justice system is not being narrowed to imply any one person or role in the system is responsible. Rather, it is likely that implicit bias is operating at every single decision point as a person enters, moves through, and exits the system. In fact, some research suggests early biased decisions “load the pipeline” in terms of who tends to penetrate the system furthest—a condition that could strengthen certain stereotypes for later decision makers. Second, we must remember that finding associations between implicit bias and discriminatory behavior in controlled settings does not necessarily mean these associations will operate consistently in the real world (e.g., when we are motivated to monitor and change our thinking and behavior). Third, we also must remember that those who are subject to the justice system also have implicit biases coloring their responses to decision makers. The reciprocal process between actors sets the stage for a self-fulfilling prophecy that can “confirm” one’s implicit beliefs. Lastly, even if we were able to eliminate biased decision making at all points of the justice system, it still would not quickly overcome the inertia of societal

“We... have to more aggressively address disproportionate minority confinement (DMC), a phenomenon that is evident in almost every state. This means not only focusing on data and on policy changes, but at looking more closely at how implicit bias is likely affecting decision-making processes of teachers, school administrators, police, judges, probation and parole officers. There is new research on implicit bias that, if we can figure out how to effectively weave it into professional and educational training of law enforcement professionals, may actually begin to remedy some of the root causes of DMC.”

—Professor Charles Ogletree of Harvard University Law School in response to the question: “In your opinion what is the most pressing issue regarding juvenile justice today?” (*The American Bar Association, Criminal Justice Section Newsletter, Winter 2009.*) Professor Ogletree also served as the moderator for the historic Juvenile Justice Town Hall Meeting held in November 2008, two days after the election of President Barack Obama.

bias and history. Nonetheless, by acknowledging implicit bias and making efforts to limit its role in decision making in justice systems, we can begin to ensure the process is fair and equitable for all concerned.

CLEANING THE LENS...A LITTLE

How do we reduce implicit bias in our decision making when it is automatic and pervasive? There are some promising strategies for checking implicit bias including:

- **Education.** Simply being aware that implicit bias exists and that it is a normal and widespread consequence of “being human” is a good first step to help us reduce its influence on our decisions.
- **Cognitive load.** In general, cognitive load pertains to the amount and complexity of information one has to process in any given time frame. A judge hearing six truancy cases on the morning docket likely experiences a relatively low

cognitive load. In contrast, a judge hearing back-to-back complex and emotional dependency hearings all morning likely experiences a relatively high cognitive load. Under conditions of high cognitive load, it can be difficult to thoroughly and carefully analyze all the information presented. Reducing cognitive load can provide critical time to consider information and make decisions. In the context of decision making in justice systems, providing more time to process information—particularly large amounts of difficult information—is likely to result in better decisions if one is motivated.

- **High effort processing.** In contrast to low effort or “peripheral” processing that is relatively quick and dirty, high effort or “central” processing requires motivation and a concerted effort. This effort includes careful examination of the information with which you are faced and consideration of your potential thinking errors. Often these errors are rooted in heuristics (our gut instincts or “mental rules of thumb”) that reflect our “ordinary personology” – or our day-to-day understanding of how the world works. For example, many people employ heuristics around probability that lead to thinking errors when gambling (i.e., “I’m due to hit it big!”).
- **Mindfulness.** Mindfulness is a concept drawn from the cognitive behavioral therapies that encourage being in the moment, understanding your thought processes, developing awareness, and challenging thinking errors. It can be encouraged by reflecting on how and what you think, and purposefully focusing on the task at hand versus “what’s next.”
- **Exposure.** There is some evidence that exposure to people different than you can help counteract biased thinking about that group. This suggests, for example, that if you spend most of your time with male managers in your workplace, it would be good practice to spend time with female managers as well. In lieu of spending time with out-group members, research suggests that even thinking hard about out-group exemplars (those in an out-group that do not represent your stereotypical beliefs about that group) can be helpful.
- **Environment.** Cues within our environment can have subtle but pronounced influence on our thinking and behavior. For example, aggressive stimuli, such as weapons, have been associated with more aggressive actions by those exposed to the weapons. Similarly, there appears to be merit in conducting a thorough check of your workplace for stereotypical materials. For example, do your informational brochures reflect race or gender bias? Are symbols and signs reflective of a masculine stereotype? If so, these stimuli could be contributing to biased decision making.
- **Organizational review.** An honest review of roles and power structures can help illuminate inherent organizational bias. For example, are most judges in your jurisdiction male? White males? If a Latina woman was being considered for a judgeship, would she truly have the same consideration as another candidate who more closely resembles the judge you tend to envision in your mind’s eye? These types of questions, while difficult to consider at times, are critical for assessing the diversity and attitudes of your organizations. If imbalance in power is present or bias is uncovered, spending time with atypical hires or managers can help—as can hiring

“outside of the box.” Further, such exercises help encourage open and honest communication in the workplace, which can improve accountability.

- **Checklists.** Developing and employing checklists at various key decision points (e.g., detention intake) can encourage less biased decisions by providing an objective framework to assess your thinking and subsequent decisions. The methodical approach encouraged by checklists also can serve to reduce cognitive load by introducing more time into the decision-making process.
- **Debiasing.** Debiasing is a term that has been used in different ways depending on context, but in this case refers to external checks and balances. This approach assumes that implicit bias will occur, thus puts safeguards in place to “correct for” biased decisions. One oft-cited example of debiasing is affirmative action. In the justice system, it might include regular audits of decisions at various points, and ongoing monitoring of data regarding relative ratios of race, gender, and age, and other groups that experience bias.
- **Look to other fields.** Although implicit bias has some history in psychology and the law, it is important to remember that business, education, and medicine all have explored the effects of social cognition and implicit bias on organizational functioning, and we can learn much from them as we move forward in our own efforts.

THE EXPLICIT END

Evidence suggests that implicit bias exists for nearly everyone and can shape our decisions. Fortunately, if motivated to do so, it appears we have the capacity to control our biases. Although we should remember that completely eradicating bias will be difficult if not impossible, understanding how it develops and knowing that it is malleable is critical to moving toward social justice. With the right combination of strategies, we can begin to make meaningful progress toward reducing the impact of implicit bias on decisions involving the diverse populations with whom we work.

SUGGESTED READING AND RESOURCES

- Banaji, M. R., Bazerman, M. H., & Chugh, D. (December 2003). How (un)ethical are you? *Harvard Business Review*, 1-10.
- Carpenter, S. (2008). Buried prejudice. *Scientific American Mind*, 19, 32-39.
- National Center for State Courts Web site (includes links to other articles and resources on implicit bias): http://www.ncsconline.org/D_Research/ref/implicit.html/
- Project Implicit® Web site: <http://projectimplicit.net/index.php>



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