



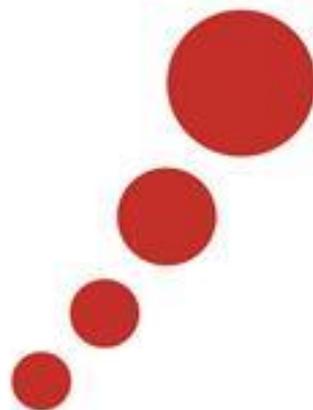
# Race on the Brain: What Implicit Bias Gets Wrong About the Struggle for Racial Justice

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# Race on the Brain

What Implicit Bias Gets Wrong  
About the Struggle for  
Racial Justice



# The Stories We tell About Racism and Bias

- Power of Framing
- How a Problem Get Characterized Shapes How We Respond to It
- Response to Bias
  - ▣ Technical: Privileges Expert Authority
- Response to Racism
  - ▣ Political: Privileges Legal and Democratic Authority

# Basic Concerns about Implicit Bias

- Too Much of a Good Thing
  - ▣ Supplement v. Master Narrative
- Unintended Consequences of Liberal Hubris
- Reinforcing Reductive Binaries
  - ▣ Conscious v. unconscious
  - ▣ Individual v. structural

# More Specific Concerns About Using Implicit Bias as a Master Narrative

- Accepting the Conservative Frame for Legal Redress
- Deracinating the Legal Subject
  - ▣ Erasing intersectionality
- Obscuring Power
  - ▣ Recreational Anti-Racism
- Seeking a Technical Fix
  - ▣ Subordinating Democracy to Expertise
- Biologizing Racism
  - ▣ Pills for racism

# Implicit Bias and the Search for the Cognitive Basis of Racism

- Explicit Bias - Bad!!! (and rare)



- Implicit Bias – We all have it ㄟ(っ)ㄟ

# Measuring Bias: Implicit Association Test

- “The Implicit Association Test (IAT) measures attitudes and beliefs that people may be unwilling or unable to report. The IAT may be especially interesting if it shows that you have an implicit attitude that you did not know about. For example, you may believe that women and men should be equally associated with science, but your automatic associations could show that you (like many others) associate men with science more than you associate women with science. “

# What It Measures

- The IAT measures the strength of associations between concepts (e.g., black people, gay people) and evaluations (e.g., good, bad) or stereotypes (e.g., athletic, clumsy). The main idea is that making a response is easier when closely related items share the same response key.

# How It Measures It

- When doing an IAT you are asked to quickly sort words into that are on the left and right hand side of the computer screen by pressing the “e” key if the word belongs to the category on the left and the “i” key if the word belongs to the category on the right.
- E.g. categories on the left hand side would be Fat People/Good and the categories on the right hand side would be Thin People/Bad.
- Then flip

<b>FEMALE or career</b>	<b>A</b>	<b>MALE or family</b>	<b>FEMALE or career</b>	<b>B</b>	<b>MALE or family</b>
<input type="radio"/>	<b>SHE</b>	<input type="radio"/>	<input type="radio"/>	<b>WOMEN</b>	<input type="radio"/>
<input type="radio"/>	<b>garden</b>	<input type="radio"/>	<input type="radio"/>	<b>home</b>	<input type="radio"/>
<input type="radio"/>	<b>HER</b>	<input type="radio"/>	<input type="radio"/>	<b>MAN</b>	<input type="radio"/>
<input type="radio"/>	<b>office</b>	<input type="radio"/>	<input type="radio"/>	<b>manager</b>	<input type="radio"/>

African American

European American

or

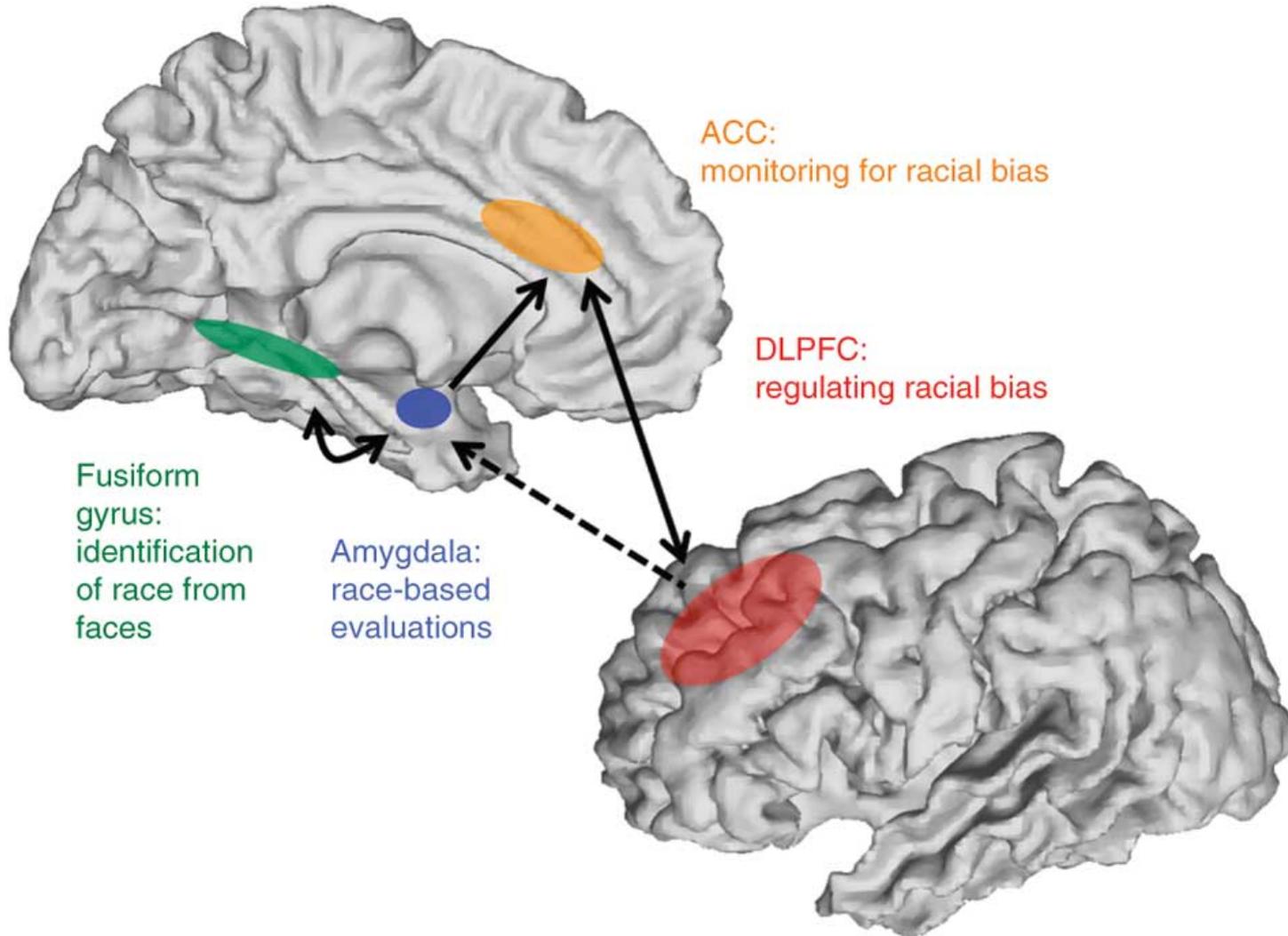
or

Good

Bad

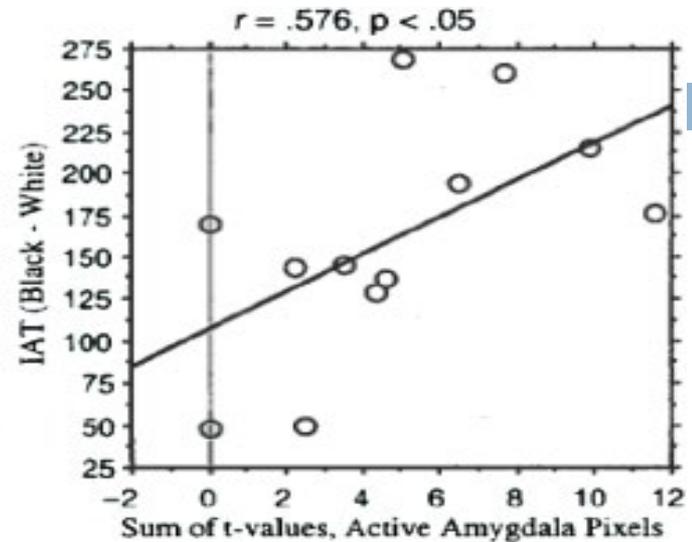
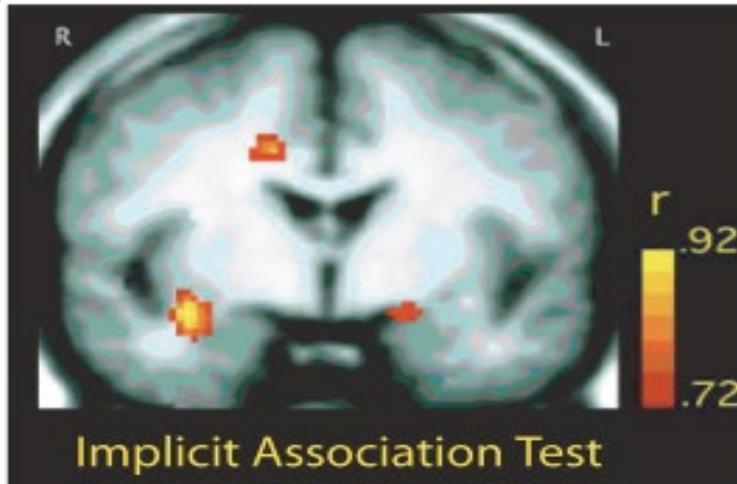


# Your Brain on an IAT

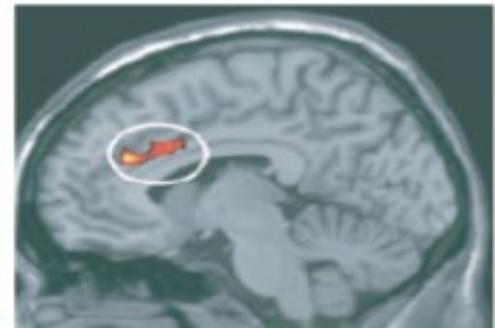
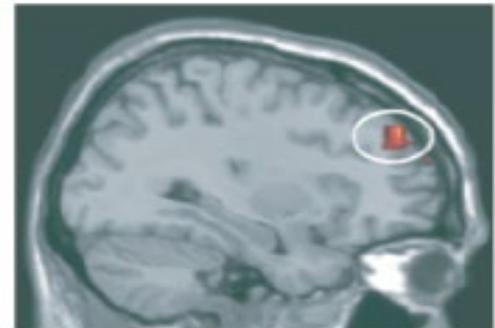
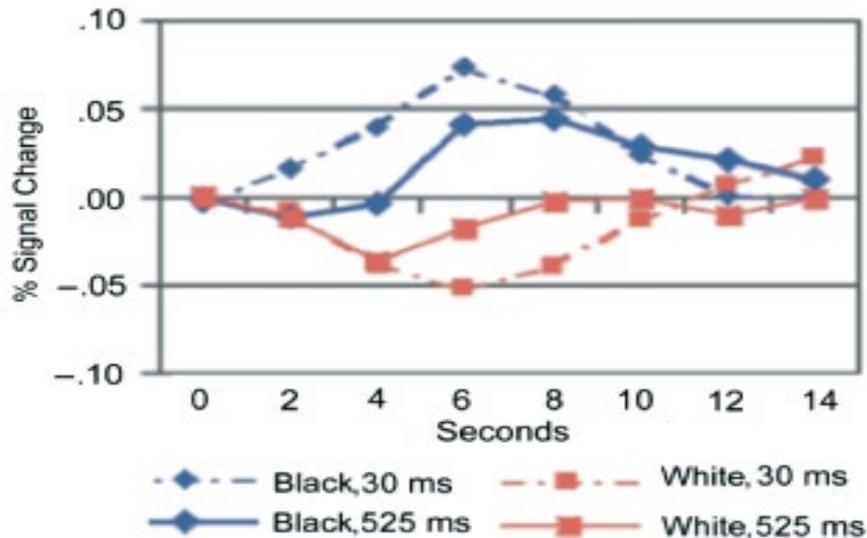


# “Neural Correlates of Race”

(a)



(b)



# What it Finds

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- Lots of Implicit Bias
- Reluctant to call this racism
- Some call it “aversive racism”

# Social Manifestations of Implicit Bias

- General behavior
  - ▣ Eye contact, proximity,
- Health Care Encounters
  - ▣ Diagnosis, pain medication
- Employment Settings
  - ▣ the right “vibe”
- Judicial Proceedings
  - ▣ Assessments of guilt or credibility
- Law Enforcement
  - ▣ Shooter tests

# How it is Used

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- Break the Impasse of Contemporary Equal Protection Law by Reconfiguring Understandings of “Intent”
- A sort of legal jiu jitsu

# Legal/Policy Implications

- Employment Discrimination
  - ▣ Progress under Disparate treatment (Krieger/Fisk)
- Affirmative Action
  - ▣ Debiasing as compelling interest (Jolls/Sunstein)
- Fair trial
- Racial Profiling in Law Enforcement
- Media Regulation and Stereotypes (Kang)
- Housing Discrimination

# Accepting the Conservative Frame

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- Time
- Colorblindness
- Diversity
- Intent

# Time

- Providing a “new temporal framing” that focuses on “discrimination in the here and now”
- Resonates with Powell’s characterization in *Bakke* of “past societal discrimination” as too “amorphous”
- Implies explicit racism is largely a thing of the past –both in form and in legacy.
  - ▣ If not “post-racial”, then post explicit racism

# Ideal of Color Blind Amygdala

- Norm of no difference in IAT responses
  - ▣ Implicit White Norm
  - ▣ Model of Music Auditions
- IAT Proposed as Measure of Affirmative Action Remedy
  - ▣ But – you could have perfect IAT scores and still have pervasive institutional racism
- Colorblindness and Transcending Race
  - ▣ Identify “true merit”
    - i.e. race is irrelevant to “merit”
  - ▣ Echoes of Scalia, Roberts and O’Connor
    - Transcend race
    - No Debtor or Creditor amygdalas

# Diversity

- Weakness of “Diversity” as Sole Compelling interest
  - Race as just one of many “factors”
- Similarly Grounded in Denial of History and Distinctiveness of race and Racism in U.S.

# Intent

- Focus on “Debiasing” as a compelling interest reinforces *Washington v. Davis* focus on *INTENT* of individual actors v. *IMPACT* on those affected
- Structure relevant primarily as a shaper of attitudes
  - ▣ Racism as (f)attitudes translated in behavior
- Psychological dispositions of individual actors privileged over historical and cultural practices and distributions of goods that have formed and given meaning to “bias” over time

# The Resulting IAT Frame

- Accepts Bakke and Washington v. Davis
  - ▣ Focus on Intent instead of Impact or Harm
- Weakness of “Diversity” as Sole Compelling interest
  - Race as just one of many “factors”
  - History Irrelevant
- Structure relevant primarily as a shaper of attitudes
  - ▣ Racism as (f)attitudes translated in behavior

# Dumbing Down Explicit Racism

- Reduces explicit racism to the Obvious and Easy examples of Cliven Bundy, Donald Sterling, David Duke
  - ▣ Allows us to ignore subtler more nuanced or conflicted manifestations of explicit or conscious racism
  - ▣ Nobody ever thinks they are racist
  - ▣ i.e. Identifying and Overcoming Racism is Hard Work
- Renders Racism as a static “thing” with one type of set and measurable manifestation, out of time and culture
- Leads to Roberts in *Shelby v. Holder* - “things have changed” – ERASING HISTORY

# Result: No Racism only “Bias”

- Racism is marginal, abnormal, unusual
  - ▣ Don't study “explicit” racists
- “It is a mistake to characterize modern America as racist” – *Blind Spot*

# Deracinating the Legal Subject

- The Unencumbered Brain
  - ▣ Erasing history and culture
  - ▣ Uncritical embrace of objective meritocracy
    - Unencumbered observer and observed
- Dilemma of Difference
  - ▣ Maybe Race *Should* make a difference
  - ▣ Problem of Intersectionality
    - Binary structure of IAT + fMRI

# Obscuring Power

- Submerged Anti-Racism
  - ▣ Casting bias as pervasive and invisible
  - ▣ Responses are similarly subliminal “nudges”
  
- Narcissism and Recreational Anti-Racism
  - ▣ Focus on “my” attitudes v. understanding experience of the subordinated group
  - ▣ Screen-saver justice
  - ▣ Catering to White fragility
  
- Thin Proceduralism
  - ▣ Possible to have everybody “pass” the IAT without disrupting substantive structures of power
  - ▣ Behavior/Measurement/Cause v. Meaning/Interpretation/Duty

# Distrusting the Citizen

- Nudges v. Engagement
  - Invisible interventions
  - Manipulate v. challenge
  - Progress without Conflict (1954-1974 v. 1974-present)
- Training for “Unconscious” Bias vs. Consciousness Raising
  - Training: centralized, expert, monologic, apolitical
  - Consciousness Raising: decentralized, democratic, dialogic, political

# Turn Implicit Bias Over to Experts

- Technologically
  - ▣ Defined
  - ▣ Identified
  - ▣ Interpreted
  - ▣ Remediated

# Seeking a Technical Fix

- “Law Should Follow the Science”
  - ▣ Subordinate Legal judgment to scientific authority
  - ▣ Metrico-philia – bias only exists if you can measure it
    - 30+ measures of implicit bias
- Racial Justice as an Algorithm
  - ▣ Strict scrutiny
  - ▣ ProPublica Study
- Contrast with Charles Black on *Brown*
  - Focus on history meaning and judgment v. “neutral principles”
    - false algorithms of justice

# Biologizing Racism

- IAT + FMRI = Biological Frame
  - ▣ Biologizing race .v biologizing racism
- Racism as (f) biological Measurement →  
Racism as susceptible to biological intervention
- **The Ultimate Technical Fix: Propranolol – Pills for Racism**
  - ▣ Saveluscu and “Moral Enhancement”
  - ▣ Brain Stimulation

