

Boxes, Survival and Our Better Angels

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What We Want



It's about "GOOD PEOPLE"



And its universal



From The NCCALJ Final Report:

"Ask citizens what they want from a court system and an immediate answer is likely to be "fairness." A system is fair when cases are decided based on the law as applied to the relevant facts. Bias arising from characteristics such as wealth, social class, ethnicity, race, religion, gender, and political affiliation have no place in a fair decision."

What People Are Saying or Thinking

For example, many of our anti-discrimination policies focus on finding the bad apples who are explicitly prejudiced. In fact, the serious discrimination is implicit, subtle and nearly universal. Both blacks and whites subtly try to get a white partner when asked to team up to do an intellectually difficult task. In computer shooting simulations, both black and white participants were more likely to think black figures were armed. In emergency rooms, whites are pervasively given stronger painkillers than blacks or Hispanics. Clearly, we should spend more effort rigging situations to reduce universal, unconscious racism.

David Brooks,
New York Times
January 11, 2013



"Maybe we now realize the way a racial bias can infect us even when we don't realize," he said. "So that we are guarding against not racial slurs but also going against the subtle impulse to call Johnny back for a job interview but not Jamal. Barack Obama, June 26, 2015



"Recognition of disparate-impact liability under the FHA also plays a role in uncovering discriminatory intent: It permits plaintiffs to counteract the *unconscious prejudices* and disguised animus that escape easy classification as disparate treatment."

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS V INCLUSIVE COMMUNITIES PROJECT, INC., ET AL, p. 17 July 27, 2015.

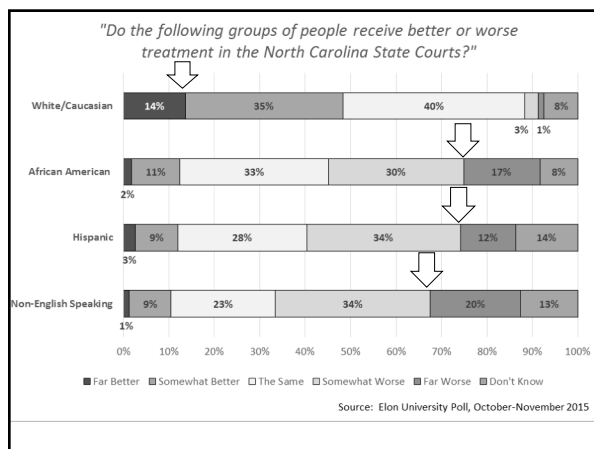
Perceptions of Fairness

- In a 2016 Gallup Survey 46% of whites believed that blacks are treated less fairly in a variety of community interactions. That was up from 37% who had that perception in 2004.
- In that same period the percentage of blacks who had that perception remained largely unchanged at 84%.

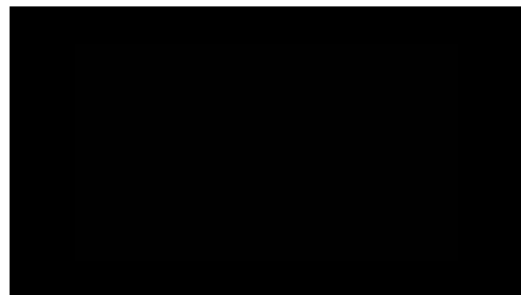
More Perceptions

- Percent who say white people benefit from advantages in society that black people don't get:
 - All respondents: 56% "a great deal" or "a fair amount"
 - Whites—46%; Blacks—92%; Hispanics—65%
 - Rep/Lean Rep—27%; Dem/Lean Dem—78%

Pew Research Center, Aug. 2017



What Would You Do?



Areas of Research Into Decision Making--Heuristics

- Anchoring
- Confirmation Bias
- Recency
- Availability
- Stereotypes and classification
 - Employment
 - Police shootings
 - Public defenders caseloads
 - Sentencing
 - Medical treatments

Questions For An Advocate

TRIAGE

Is the evidence favoring the client credible? (*weak case*)

Do I think a judge or jury will find them “worthy”?

Do any of my interactions discourage a client from trusting me? (*body language, facial expressions*)

Will I accept without strenuous argument a greater punishment for some clients? (*perceived dangerousness*)

Do I “go the mat” for this client?

Do I believe the client?

See Richardson and Goff, ‘*Implicit Bias in Public Defender Triage*’, 122 YALE L.J. 2626 (2013)

How We Think Matters



Vs.



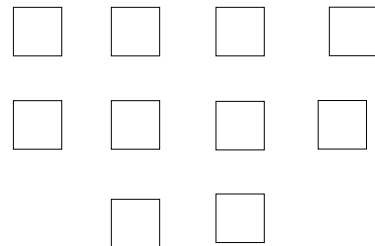
“The normal state of your mind is that you have intuitive feelings and opinions about almost everything that comes your way. You like or dislike people long before you know much about them; you trust or distrust strangers without knowing why. . .

Daniel Kahneman

Automatic Processing and Interference:
Read the **Word**

BLUE BLACK GREEN
YELLOW RED BLUE
RED BLACK GREEN

Say the Color of the Square



Automatic Processing and Interference:
Say the **Color** of the Word

BLACK BLACK GREEN
YELLOW BLUE RED
RED COLORS! BLUE

What You See Is Not All There Is



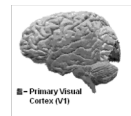
What You See Is Not All
There Is--Ever



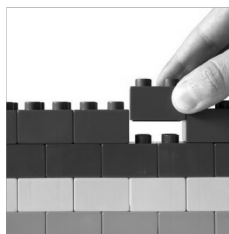
You Don't See With Your Eyes, Only



PLUS

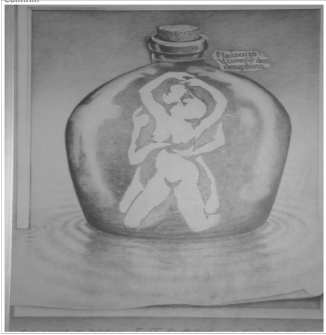


And You Always FILL IN THE GAPS

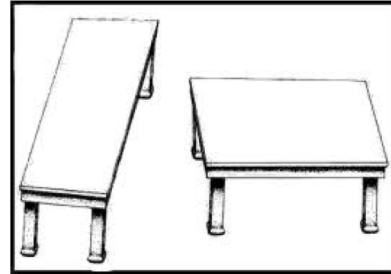


Who Are They?





Which Table is Longer?



Can You Read This?

- I cnnoat blveiee I aulaclyt uesdnatnrd waht I am rdanieg. Aoccdnrig to rscheearch at Cmabrigde Uinervtisy, it deosn't mttaeir in waht oreldr the ltteers in a wrod are, the olny iprmoatnt tihng is taht the frist and lsat ltteer be in the rghit pclae. The rset can be a taotl mses and you can sitll raed it wouthit a porbelm. Tihs is bcuseae the huamn mnid deos not raed ervey lteter by istlef, but the wrod as a wlohe.

Survival Is Job One, So Give Me Some Boxes



A Problem With Automatic Thinking

- Classification, association, and stereotype
- The quicker you decide, the more automatic it is
- So what we flavor our classification system with matters

The Dilemma

- We all have human brains, hard-wired to make rapid decisions making survival more likely . .



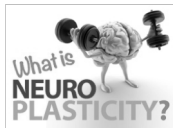
- . . . But fairness requires a brain more concerned with accuracy than survival.



You have no control over what your brain does first.

You have a choice about what happens next.

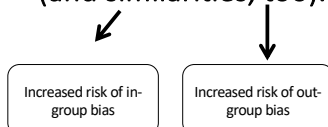
It's not Hopeless



Don't have a Dream



Consciously take note of differences (and similarities, too).



Us and Them

When faced with inconsistent information

- We sometimes revise our beliefs

-BUT-

- We are more likely to create a subgroup category (an "exception") thus leaving our belief intact



Specific Individual Strategies –

It's About the Individual

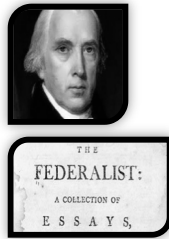
- Learn through education
- Don't have a dream
- Consciously think counter-stereotypically
- Take the IAT
- Slow down, breathe deeply when angry or tired
- Reverse parties
- Think about how you think
- Get honest feedback
- Keep learning

It's not really new

- (39) No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, **except by the lawful judgment of his equals or by the law of the land.**
- (40) To no one will we sell, to no one **deny or delay right or justice.**

Or Ever Finished

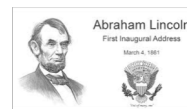
Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.



No. 51

May It Be So

'when again touched, as surely they will be, by the better angels of our nature.'



In other words, don't give



Specific Organizational Strategies –

I Would Like to Get it Wholesale

- Acknowledge the importance of minimizing bias as an institutional goal
- Educate
- Think about processes
- Structure decisions—e.g., sentencing, bonds
- Create checklists
- Promote an inclusive environment
- Ensure diversity in appointments, images, etc. on system projects

Specific Organizational Strategies*I Would Like to Get It Wholesale, continued*

- Provide officials the resources (ex. time) to minimize automatic processing decisions in important matters
- Promote personal and systemic accountability
- Learn from other disciplines—medical review panels, mortality reviews, etc.
- Promote mentorships to provide honest feedback
- Develop measures and collect the data