

The Procedural Republic and the Unencumbered Brain: Neuroscience and the Biologization of Racism in Law and Society

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Recent developments in cognitive psychology and neuroscience have illuminated new and complex aspects of bias and racism in society. Beginning in the 1990s with the development of the Implicit Association Test and related theories of aversive racism and implicit bias, cognitive psychology has provided new insights into diverse aspects of what have variously been termed implicit\automatic\subconscious processes of social cognition that shape attitudes and behaviors toward perceived outgroups – with particular attention to racial minorities in the United States. This research has demonstrated pervasive implicit bias against racial minorities throughout the U.S. population. Emerging in tandem with these developments since 2000, cognitive neuroscientists have been conducting studies of the brain itself, most often through the use of technologies such as functional magnetic resonance imaging (fMRI) to identify specific portions of the brain that demonstrate increased levels of activity in responses to racialized primes, usually presented to the test subject in the form of photographs and/or words. Taken together, such findings have broad legal and policy implications, including such areas as addressing health disparities, employment discrimination, affirmative action and criminal justice.

This presentation will take a highly interdisciplinary approach, drawing on literatures in neurolaw, science studies, cognitive psychology, critical race theory, and political philosophy, to illuminate some potential problems that may be emerging from the distinct confluence of psychological research on implicit bias with neuroscientific imaging technologies. My concern is that correlating psychological measures of implicit bias with neuroscientific measures of blood-oxygenation-level-dependent (BOLD) patterns in distinct regions of the brain provided by fMRI scans carries with it the distinct possibility of reducing racism itself to a function of mere biological responses in the brain. Much work has been done over the past several decades debunking the idea that race itself is biological, but little attention has been paid to this recent trend that threatens to biologize not race but racism.

The implications of this move toward biologizing racism are significant. Characterizing racism as a function of biological processes as revealed through brain scans promises to redirect intellectual, material and legal resources away from addressing the broader structural historical, social and economic dynamics of racism toward developing biomedical interventions administered at the individual level. This transforms racism from a political problem demanding democratic engagement to a technical problem identified, defined and addressed by expert interventions. We see this most trenchantly in recent studies purporting to show that the beta-blocking drug propranolol attenuates biased responses on the Implicit Association Test. By acting upon the affective conditions associated with implicit racial bias functioning at the non-conscious and pre-conscious levels, researchers have expressed excitement about the potential of propranolol and similar drugs to decrease implicit racial attitudes, and, thus, potentially decrease racism. An uncritical embrace of such results may reduce contemporary understanding of racism to a mere biological phenomenon – essentially a problem of mental health to

be addressed primarily through individualized biomedical interventions – rather than as a social problem for which the entire polity bears responsibility.

The implicit message of many who employ Implicit Association Testing and fMRI scans is that individuals' brains should *not* respond differently to individuals based on their race. This color-blind ideal is problematic on many levels, not least of which being that it is precisely a recognition and appreciation of these differences that allows us to give meaning and value to the historical legacy and on-going structural problems of racism in society. A brain “unencumbered” by distinct attitudes towards race, whether through drugs or training, may be less “racist” but it may also be less attuned to the on-going significance of race as a marker and component of identity and power in society. The cognitive approach thus tends to shift our focus from addressing substantive problems of racial injustice toward procedural biomedical interventions. The challenge, therefore, is not to abandon such neuropsychological approaches to racism but, bearing in mind such constructs as the “dilemma of difference,” to use them to lessen racism without diluting our appreciation of the historical and on-going meaning and significance of racial difference in society.

Finally, this model also has profound implication for concepts of democratic accountability in the judicial and political process. To the extent that the construction and recognition of impermissible bias becomes a function of measurable indicia from an fMRI or an Implicit Association Test, we, as a society, may be turning over our polity's responsibility for addressing racism to experts. In this model, racism only becomes “real” when validated by tests constructed, applied, and interpreted by unaccountable scientific experts. While such tests and expertise may, indeed, have a very important and constructing role to play in addressing social, political and legal problems of discrimination, we must work to insure that existing institutions of democratic governance and civic engagement maintain a voice and ensure accountability as these new technologies are integrated into our policy-making infrastructure.