

Unconscious bias in law



Outline



- ▶ Unconscious bias – what is it?
- ▶ Evidence of gender and race bias (in law)
- ▶ Strategies for addressing bias in philanthropic organisations

Culture filters the way you see the world



Black boys in hoodies





THE NEW YORK TIMES BESTSELLER

THINKING, FAST AND SLOW

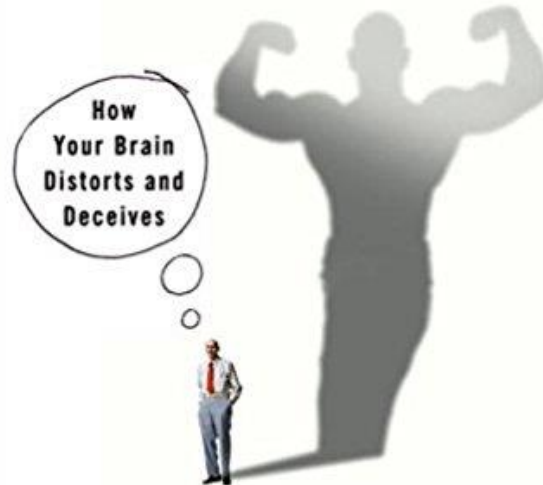


DANIEL
KAHNEMAN

WINNER OF THE NOBEL PRIZE IN ECONOMICS

"[A] masterpiece . . . This is one of the greatest and most engaging collections of insights into the human mind I have read." —WILLIAM EASTERLY, *Financial Times*

A MIND OF ITS OWN



CORDELIA FINE

"Remarkably entertaining." —Susan Salter Reynolds, *Los Angeles Times*

BLIND SPOT

HIDDEN BIASES
of
GOOD PEOPLE

MAHZARIN R. BANAJI
ANTHONY G. GREENWALD

Unconscious bias is demonstrated in:

- ▶ Call backs on résumés (Bertrand & Mullainathan 2003)
- ▶ Hiring men over women (Rudman & Glick 2001)
- ▶ Treatment of pain for African Americans (Sabin 2012)
- ▶ Treatment of heart attacks (Green et al 2007)
- ▶ Speed of shooting black player in video games (Glaser & Knowles 2008)
- ▶ Interruptions of Justices on the US Supreme Court (Jacobi and Dylan 2017)
- ▶ Gender pay gap NZ (Motu 2017)

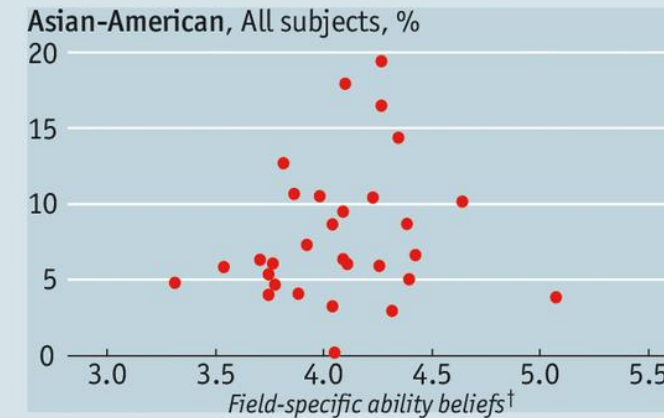
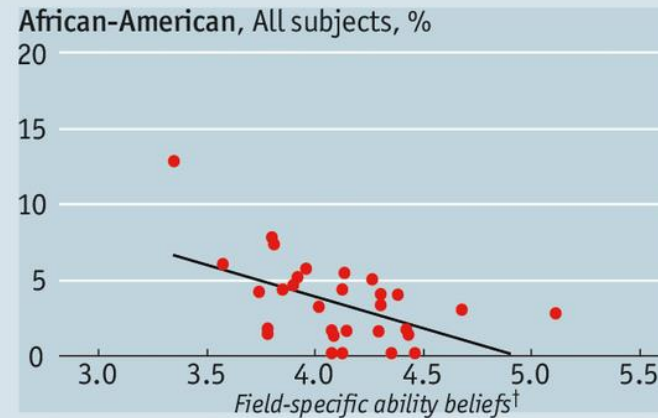
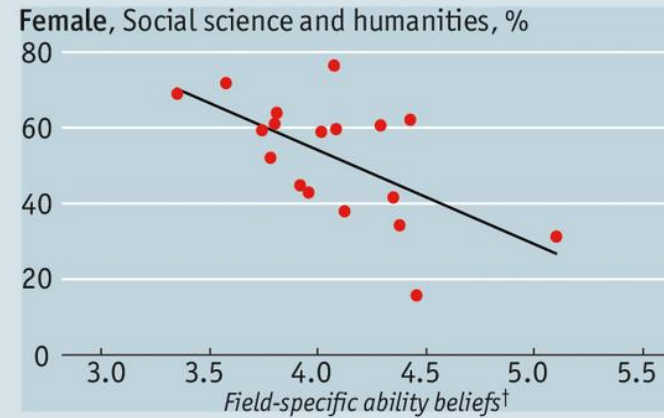
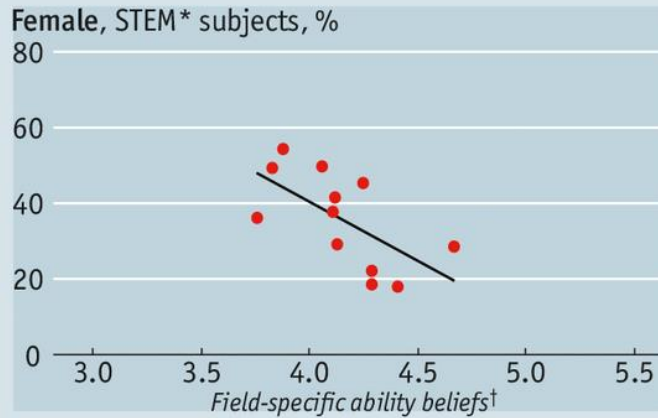
Merit

- ▶ There is no objective account of merit
 - Yale Police Chief Study
- ▶ Unconscious bias (race and gender) impacts on perceptions of:
 - Authority
 - Leadership
 - Competence
 - Potential
 - Genius/brilliance

Brilliance

A parable of the talents

American PhD students who are:



Source: *Science*

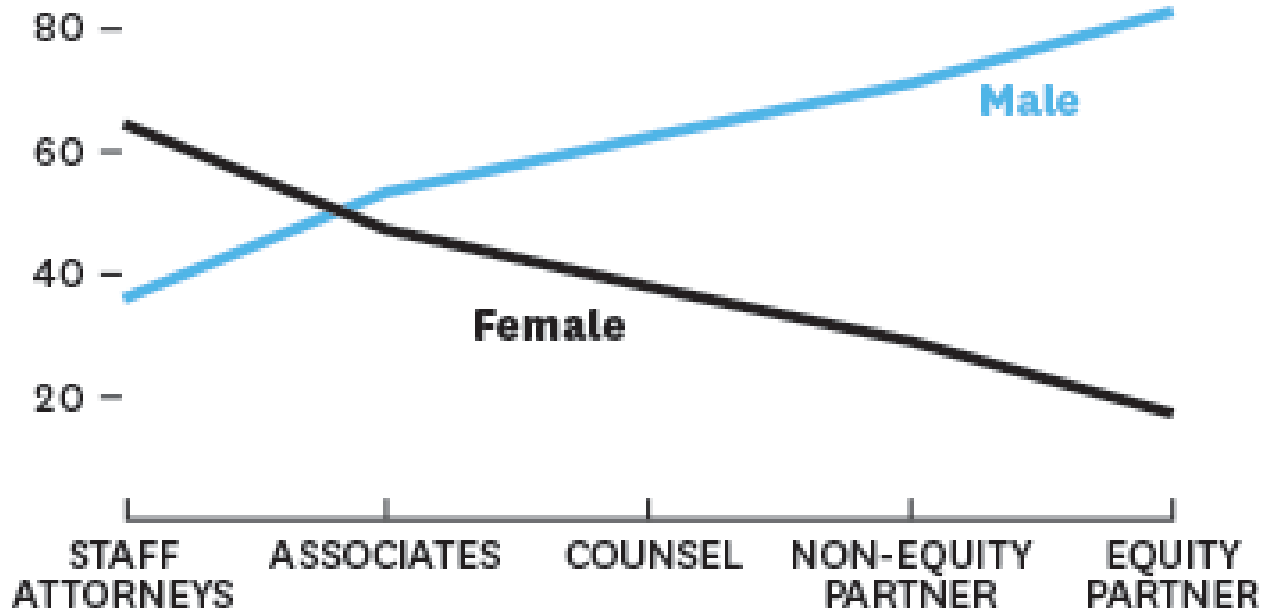
*Science, technology, engineering and maths

[†]Higher numbers indicate emphasis on innate talent

Women in law USA 2014

THE GREAT FEMALE BRAIN DRAIN AT THE TOP 200 U.S. LAW FIRMS

PERCENTAGE OF EMPLOYEES
100% -



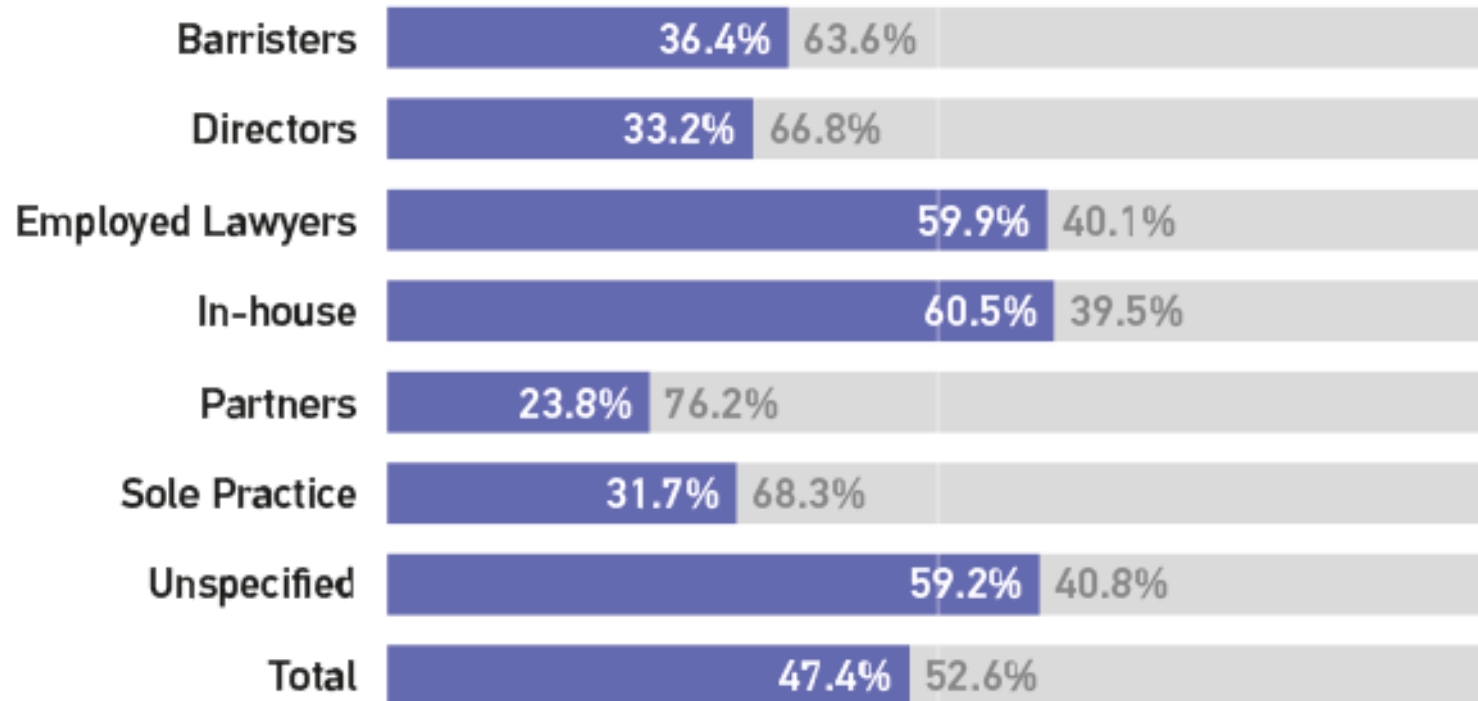
SOURCE NATIONAL ASSOCIATION OF WOMEN LAWYERS SURVEY, 2014

HBR.ORG

Women in law in NZ

NEW ZEALAND-BASED LAWYERS

1 JUNE 2015



Digging deeper

- ▶ Women (NZ)
 - family law (70%) and health law (63%)
- ▶ Men (NZ)
 - banking + finance law (70%) and civil litigation (65%)
- ▶ “...found that when women moved into occupations in large numbers, those jobs began paying less even after controlling for education, work experience, skills, race and geography.” (NYTimes England et al. 2016)

Flip side – toxic masculinity

- ▶ Are less likely to gain custody of kids (US 2011 - receive primary custody 8-14% of the time)
- ▶ 3X the rates of suicide (even though women have 20-40% higher rates of mental health disorder)
- ▶ Survey 127,545 American adults found that married men are healthier and live longer (than single, divorced, or widowed men) the longer a man stays married, the greater his survival advantage over his unmarried peers
- ▶ Lawyers have a higher rate of physical illness (heart disease) and psychological illnesses (depression, anxiety and substance abuse)



Barbara and Ben Barres (MIT)

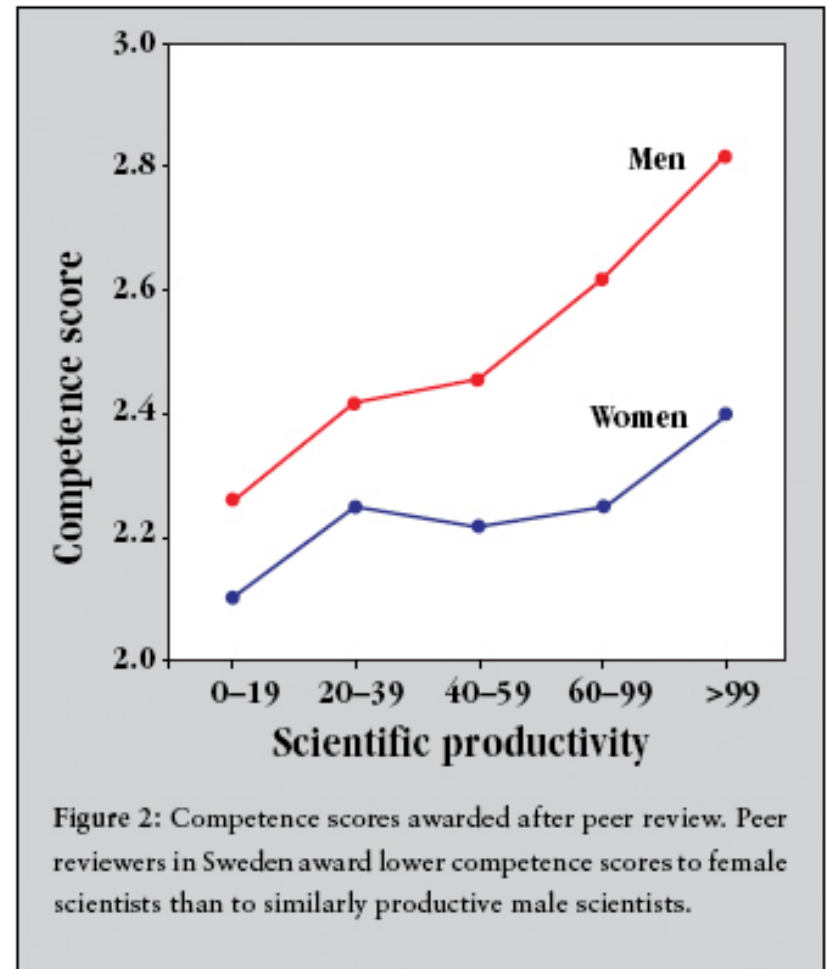


Evidence of bias in the philanthropic sector

- ▶ CIHR (2016) male candidates “significantly more likely to receive funding” than females (under 45 yr category)
- ▶ Less than 5% of the charitable donation from more than 72,000 US foundations are granted to communities of colour (Greenlining Institute 2012)
- ▶ Law Foundation NZ “International Research Fellows” 3 female v 12 male recipients

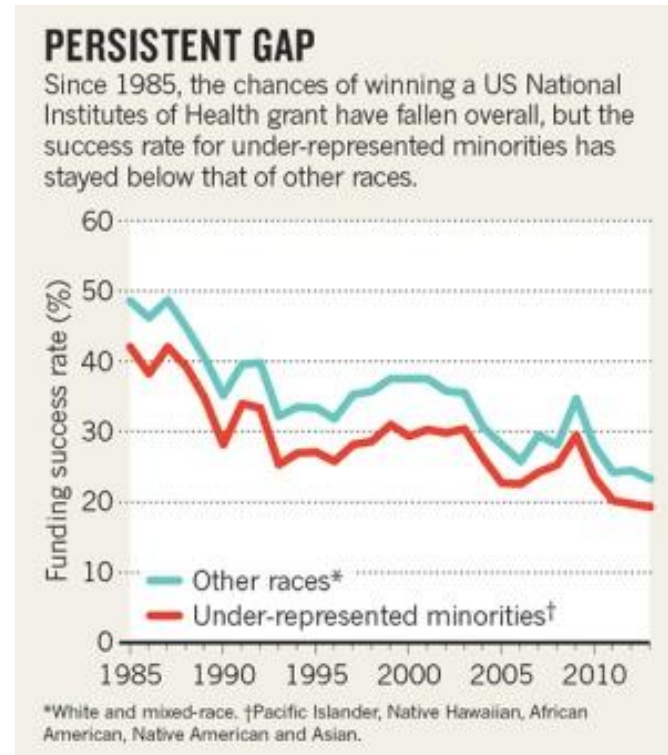
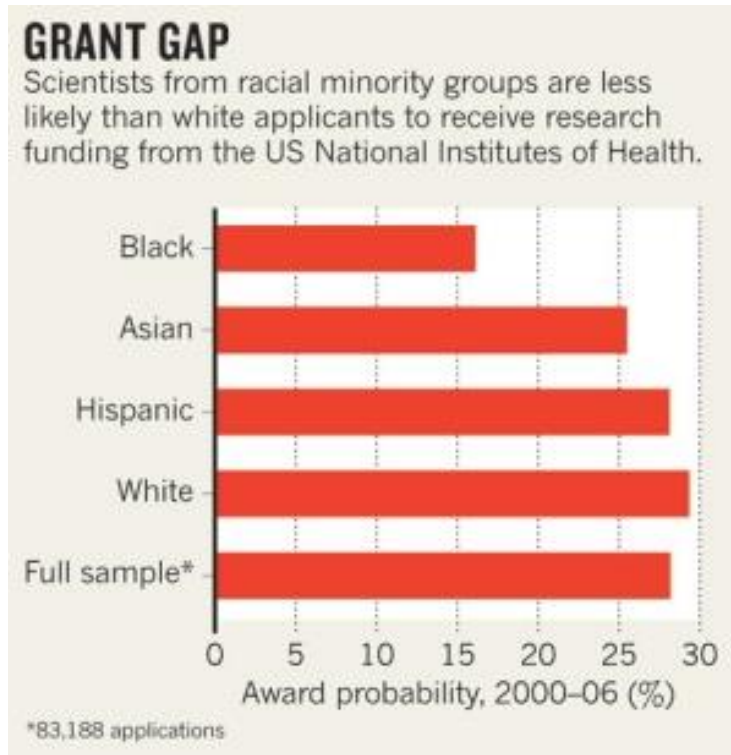
Evidence of bias in the philanthropic sector

- ▶ Female post-doc applicants have to be 2.5 times more productive than the average male applicant to receive the same competency score by peer-reviewers (*Nature* 1997)



Evidence of bias in the philanthropic sector

- ▶ National Institutes of Health (US) - African-American applicants are 10 % less likely than whites to be awarded NIH research funding. (*Nature* 2014, 2015), little change over 30yrs



Diversity within boards

- ▶ US Boards (1378 non-profit executives and 381 board chairs)
 - 27% no people of colour
 - 65% of executives and 41% of board chairs report that they are dissatisfied with their board’s racial and ethnic diversity (BoardSource report)
- ▶ Boards with more women out perform industry averages on return on equity and stock price growth (McKinsey study)
- ▶ “Magic number” = 30% women (150 German firms over 5 years)
- ▶ **Homogenous teams feel easier — but easy is bad for performance** (Harvard Business Review 2016)

Potential solutions for reducing bias

- ▶ Meta analysis of racial bias reduction interventions Lia et al (2014)
- ▶ Failed interventions = education on bias, teaching cross-cultural awareness, promoting egalitarian worldview.
- ▶ Successful interventions = redefining “in-group” and building alliances
 - Visualisation exercise where white American imagines being harmed by a white American and rescued by an African American

Potential Solutions for Philanthropic Organisations

- ▶ Be aware of your own perspective and the lens you bring (question objectivity)
- ▶ Diversity of decision makers
 - Increasing diversity on the panel/committee/board
 - Using area specific peer-reviewers
- ▶ Defining clear criteria for evaluation reduces bias
- ▶ Blind review where possible
- ▶ Collect data and monitor outcomes
- ▶ Transparency and accountability (changing the culture)
- ▶ Capacity building grants
- ▶ Simplify, consolidate, and streamline grant application processes

Take home messages

- ▶ We all have bias
- ▶ Bias matters – to how you see yourself and others
- ▶ Unconscious bias can undermine the equity goals your organisation is trying to achieve