

MIXED MOTIVES AND RACIAL BIAS

The Impact of Legitimate and Illegitimate Criteria on Decision Making

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Recent high-profile court rulings addressing the influence of illegitimate information—such as race—on decision making have highlighted the difficulty of establishing whether and when discrimination has occurred. One factor complicating such efforts is that decision makers are often simultaneously influenced by racial and nonracial information. The authors examined the psychological processes underlying such mixed-motive decision making, demonstrating how legitimate information can be manipulated to justify preferences based on illegitimate factors such as race. Study 1 showed that Black candidates were favored over White candidates in hypothetical college admissions decisions, although participants justified their decisions using nonracial information, and further showed that participants' levels of prejudice predicted both which candidate was chosen and how those choices were justified. Study 2 demonstrated that these justifications were not simply strategic and post hoc but also occurred as a natural part of the process of evaluating candidates. Discussion focuses on policy and legal implications for employment discrimination, affirmative action, and courtroom proceedings.

Keywords: discrimination, racism, bias, decision making, affirmative action

“We are pleased to have a woman as our president, but that was by no means a basis or the basis of the choice.” —James M. Champy, head of the committee that selected the first female president of the Massachusetts Institute of Technology (Bombardieri, 2004).

Despite recent landmark United States Supreme Court rulings regarding discrimination lawsuits and affirmative action, the debate over how social category information—such as race and gender—should be treated in contemporary society has not subsided. Regarding race in particular, one could argue that people have never been less certain about how to handle race in daily interactions. Although at one time it was socially appropriate to behave negatively toward members of minority groups, changing laws and emerging social norms—including norms of political correctness—have proscribed such behavior, leaving members of majority groups to attempt to sort out a new social landscape. Indeed, contemporary norms sometimes lead members of majority groups to favor members of minority groups, as with affirmative action initiatives. Gender, too, can be

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a controversial and complicated factor in decision making, as the quotation with which this article opens demonstrates. Because of social norms and legal prescription, decision makers are often left in the awkward position of celebrating an outcome that promotes diversity, all the while denying that diversity was a goal to begin with. The purpose of the present investigation was to examine the psychology underlying this difficult class of decisions using the domain of affirmative action in college admissions. In particular, we explore the impact of the illegitimate factor of race on decision making, showing that although the presence of racial information biased choices made between candidates for college admission, decision makers were quite adept at masking the impact of such factors, instead couching their decisions in more acceptable, legitimate terms.

That decision makers are both influenced by social information such as race and gender and simultaneously motivated to deny that influence is not a new hypothesis. Indeed, plaintiffs in employment discrimination lawsuits have long found it difficult to prove that their group membership was held against them precisely because defendants in such cases are quite skilled at offering acceptable justifications for decisions that appear to be influenced by race or gender. Title VII of the Civil Rights Act of 1964 outlawed purposeful employment discrimination on the basis of factors such as race or gender, but although the law was meant to be unambiguous, questions soon arose as to exactly what practices were forbidden. Clearly, decision making based solely on an employee's race or gender was prohibited (e.g., firing the only Black employee of a company because of his or her race), but what about cases in which other legitimate factors also played a role in the decision (e.g., firing the only Black employee, who also had a below-average performance evaluation)? The present investigation explored how people cope with decisions based on mixed motives, in which they are forced to weigh legitimate factors (such as a candidate's prior experience) along with more illegitimate factors (such as that person's race). Specifically, we focused on how mixed motives often cause legitimate information to be tainted by illegitimate information, leading to biased decisions. From a legal standpoint, are such decisions prohibited by Title VII? Moreover, is there any real way to prove that social category information has had a biasing effect in these individual cases?

The difficulties faced by employees seeking to challenge such mixed-motive decisions are illustrated by the Supreme Court's ruling in *Price Waterhouse v. Hopkins* (1989). In this case, the Court held that plaintiffs must prove by direct evidence that purposeful discrimination was the motivating factor in their employer's action. In essence, the ruling requires plaintiffs to produce a smoking gun of discriminatory practice. More recently, however, in *Desert Palace v. Costa* (2003), the Court reinterpreted Title VII to conclude that discrimination can occur whenever membership in a protected class is one of the motivating factors for an employment practice even when other, legitimate factors also influence the decision. Whereas *Price Waterhouse* required plaintiffs to prove that race or gender was the sole and direct cause of the employment decision, *Desert Palace* opened the door to discrimination claims based on much more ambiguous, circumstantial, and subjective evidence. Although most courts still require plaintiffs to prove that the discrimination against them was purposeful, they no are

longer required to uncover direct evidence that race or gender was the sole basis for their employer's job action.

This issue of mixed-motive decision making is also relevant to another recent, high-profile issue tackled by the Supreme Court, namely, the pair of rulings regarding affirmative action at the University of Michigan. College admissions officers routinely take into consideration information such as race and gender as well as other, less controversial qualifications and criteria (Guinier, 2003). In 2003, the Court attempted to clarify the ways in which race may be considered in admissions. In one case, the Court ruled against Barbara Grutter, who had challenged the University of Michigan Law School's efforts to create a critical mass of students from underrepresented racial groups. The Court held that the pursuit of diversity constituted a compelling state interest and that therefore the law school's policy was not unconstitutional (*Grutter v. Bollinger*, 2003). In the second case, Jennifer Gratz successfully challenged the same university's undergraduate admissions policy, in which Michigan automatically awarded 20 points (with 150 total points required for admission) to applicants from underrepresented minority groups. The Court ruled that this method was not a narrowly tailored enough plan to avoid violating the rights of all applicants (*Gratz v. Bollinger*, 2003). In short, these rulings upheld the right of schools to consider race as a plus factor in admissions but instructed them to avoid mechanized systems of automatic preference based on race.

So, how are admissions committees to consider race if they cannot use point systems or other metric-based decision processes? One could argue that these rulings exacerbate the mixed-motive dilemma, giving schools a green light to consider race but making them wary of admitting they are doing so. A cynic might take this argument even further, suggesting that the practical implication of the Michigan cases is that schools have been encouraged to be less honest about their treatment of race: Admissions officers may feel that they are permitted to consider race as long as they do so unofficially and can justify their decision using criteria that are ostensibly race neutral. On a similar note, the quotation with which we open this article makes clear that officials at MIT felt proscribed from acknowledging that the gender of their incoming president played any role in her hiring, despite the fact they were clearly pleased to have hired a woman and had previously stated a desire to increase representation of women on MIT's faculty (Campbell, 2000).

To summarize, recent rulings have recognized that job discrimination often manifests itself in terms of mixed motives, rendering it somewhat easier for plaintiffs to prove job discrimination, and have also highlighted the mixed-motive dilemma in the realm of college admissions. The purpose of the present investigation was to examine the psychology underlying these kinds of mixed-motive decisions. First, we considered the extent to which mixed motives emerge in college admissions decisions. Second, we examined the psychological processes underlying these decisions. That is, how exactly do decision makers react when there are multiple justifications available for their social category-related decisions? What steps do people take to mask the influence of social category information on their decision making? The Supreme Court has concluded that the effects of social categories on decision making are rarely clear-cut enough to leave a smoking gun, and it remains elusively difficult to identify the influence of

such information in any given instance. The present research offers psychological explanations as to why it is so challenging to identify the influence of illegitimate factors such as race in these decision-making settings. Finally, we assessed the policy implications of these findings with a particular focus on a wide range of legal decision-making processes, including jury verdicts, sentencing decisions, and the use of peremptory challenges in jury selection.

Motivated Decision Making Under Social Constraints

Clearly, there remains a great deal of ambiguity in American society as to when and how race can be taken into consideration by decision makers. Furthermore, it is often difficult to tell when race has been influential. We suggest that direct evidence of the effects of race in these cases is unlikely for two reasons: Social category information can bias decision making without the decision maker's awareness, and people are experts at masking questionable behavior or behavior that might be viewed negatively by others. Social category information—such as gender and race—is often the first and most salient information people notice when encountering others. In fact, research suggests that such category information is automatically attended to and encoded (e.g., Devine, 1989; Fiske & Neuberg, 1990). Such information can also have powerful effects on judgment and decisions (see Fiske, 1998, for a review). Therefore, expecting individuals to form impressions of others without taking this information into consideration—consciously or otherwise—may be unrealistic.

Although race and gender can influence people's impressions of others at an implicit level, it is also the case that decision makers may sometimes deliberately wish to favor someone on the basis of social group membership. Given that there are laws forbidding explicit and automatic favoritism—whether in favor of minorities, as in *Gratz v. Bollinger* (2003), or against them, as in *Desert Palace v. Costa* (2003)—decision makers face pressure to mask the reasons for such choices. Unfortunately for litigants seeking to prove bias in these decisions, people are quite good at masking their biased behavior by couching it in more acceptable terms, both to avoid the appearance of impropriety and as part of a more general effort to view themselves and their choices positively (e.g., Goethals, 1986; Kruglanski, 1989; Kunda, 1990; Pyszczynski & Greenberg, 1987). Complicating matters even further is the human tendency to offer compelling explanations for one's own behavior even when such explanations have little to do with the real reasons behind that behavior (e.g., Nisbett & Wilson, 1977; Shafir, Simonson, & Tversky, 1993). In these cases, one might see individuals as engaging in informal result-oriented jurisprudence (e.g., Greenberg & Litman, 1998); motivated to come to a desired conclusion, they restructure facts and situations to meet those needs. In sum, it is difficult to pin down the true reasons behind race-related judgments because people are often influenced by mixed motives, unaware of the bases for their behavior, and even dishonest about their true intentions.

Indeed, a large body of research has demonstrated a shift from overt to more subtle and easily masked forms of racism (see Dovidio & Gaertner, 1998; Gaertner & Dovidio, 1986) as people have become more motivated to avoid the negative social consequences of being labeled racist (Sommers & Norton, 2006a).

Previous research has demonstrated one way in which people accomplish the goals of appearing egalitarian and feeling good about themselves even when illegitimate information influences their decision making: through *casuistry*, or specious reasoning in the service of justifying questionable behavior (Norton, Vandello, & Darley, 2004). In a series of studies, Norton et al. (2004) created a simulated employment task in which male participants chose between male and female candidates for the stereotypically male job of managing a construction company—a situation likely to elicit discrimination against female applicants. In one version of this task, the male applicant had less relevant experience but more education than the female candidate; in another version, the male applicant had more relevant experience but less education. Although the majority of male participants selected the male applicant regardless of his qualifications, very few participants cited gender as playing any role in their decision; instead, when the male applicant was more educated, participants cited education as the basis for their choice, whereas when the male applicant had more experience, experience was cited as more important. Thus, participants in these studies managed to mask their biased decisions by justifying gender-based decisions in more acceptable, nongendered terms. The search for direct evidence of discrimination in any single decision by any given participant would be fruitless as participants had perfectly acceptable, plausible reasons for choosing the applicant they did: Only in the aggregate was there evidence of gender bias.

In the present research, we examined the influence of race on college admissions decisions, as well as the extent to which decision makers recruit race-neutral explanations to justify their choices. As in Norton et al. (2004), the studies presented here demonstrate the robust effects of casuistry, but they also make several novel contributions. In Study 1, participants playing the role of college admissions officers overwhelmingly selected Black candidates over White candidates and inflated the value of criteria from the Black candidates' résumés to justify decisions in nonracial terms. In addition, we explored for the first time the impact of participants' levels of racism, showing that although norms of political correctness caused both low- and high-prejudice participants to favor Black candidates, low-prejudice participants showed greater favoritism, whereas high-prejudice participants—who made less politically correct choices—were more careful to justify their decisions in nonracial terms. However, we also present evidence that this strategy of justifying decisions in nonracial terms may not be as strategic or Machiavellian as it appears at first blush: In Study 2, we showed that the inflation of criteria that favor Black candidates could occur before a choice between candidates was even made, after merely looking over résumés. That participants inflated the value of criteria favoring the Black candidate—and questioned the validity of criteria favoring the White candidate—prior to making a candidate selection demonstrates that these effects did not simply result from post hoc justification of choices but may have occurred as a natural part of the evaluation process. These results are considered with regard to implications for the domains of affirmative action, employment discrimination lawsuits, and legal decision making more generally. In this manner, the present investigation illuminates the psychological processes responsible for the conclusion that even in the wake of *Desert Palace* (2003), it remains very difficult to prove that race has influenced decision making in any individual case.

Study 1: Casuistry in College Admissions Decisions

We created a hypothetical selection task in which participants were asked to imagine themselves on a university admissions board charged with the responsibility of selecting one high school student for admission (see also Hodson, Dovidio, & Gaertner, 2002). The résumés were designed such that the two strongest candidates were very similar in quality, with neither candidate clearly superior to the other. Half of the participants were given information about the race of the candidates—one Black, one White—in the form of attached photographs. We predicted that participants, bound by norms of political correctness, would be drawn to select the Black candidate regardless of the specific content of his résumé. Conversely, in the absence of racial information, we expected no clear favorite to emerge. After making their selection, participants were asked to rank several criteria in order of how important they had been for determining admission to college. We expected participants to justify race-based decisions by citing the importance of the nonracial criteria favoring their preferred candidate.

We did not expect all participants to be equally likely to favor Black candidates, nor did we expect all participants to be equally likely to justify their decisions in nonracial terms. Specifically, we expected that although both low- and high-prejudice participants would be likely to favor Black candidates, low-prejudice participants would be relatively more likely to do so because they might have been influenced by both the desire to be politically correct and egalitarian ideals. Because our high-prejudice participants were thus relatively less likely to favor Black candidates—making a choice that many people would perceive as suspect or politically incorrect—we expected them to be even more careful than low-prejudice participants—who made the safer choice—in justifying their decisions in nonracial terms.

Method

Participants. Two hundred and twenty-one Princeton University undergraduates¹ were paid \$8 to complete a questionnaire as part of a mass testing session in groups of up to 20. Fifty-six percent were female, 43% were male, and 1% did not report gender; 63% were White, 16% were Asian, 10% were Black, 5% were Hispanic, 4% reported “other,” and 2% did not report ethnicity.²

Pretest. To select criteria that would be roughly equal in importance, we asked 31 undergraduates to rate a number of criteria on a 7-point scale in terms of how important they were for being admitted to college (from 1 = *not at all* to 7 = *very*). Grade point average (GPA) and difficulty of high school classes emerged as the highest ranked criteria ($M_s = 6.19$ and 5.81 , respectively) and, most important for the present investigation, were seen as roughly equally

¹ Standard disclaimers about using college-age populations rather than a more representative sample are clearly warranted for these studies (see Sears, 1986). We note, however, that our college-age participants were likely to be particularly interested in college admissions decisions (having recently gone through the process themselves) and thus were likely to be engaged by the task.

² Results in this study are similar when analyses are broken down by Whites versus non-Whites. For example, non-Whites in this study selected the Black candidate 75% of the time when this candidate had the higher GPA, but only 11% of the time when this candidate had more advanced placement classes, similar to results for the larger sample (78% and 22%, respectively). Results are comparable in Study 2, so we have not reported these analyses separately.

important. We therefore chose to use GPA and difficulty of high school classes, operationalized as number of advanced placement (AP) classes, as our primary criteria.

Procedure. Participants were instructed to imagine that they were on the admissions board at Princeton. To make political correctness norms salient, all participants read a paragraph stating, "Some admissions procedures are alleged to be biased, and activist groups are pressuring colleges all over the country to review and reevaluate their admissions criteria." They received hypothetical résumés from four male high school seniors and were instructed to review the résumés and rank the candidates from one to four. Each résumé included information about GPA, SAT scores, number of AP classes, letters of recommendation and essays received, and various extracurricular activities. The résumés were designed such that two candidates were clearly superior and as equally qualified as possible: They had equal cumulative SAT scores, had participated in the same number of extracurricular activities, and had the same number of academic awards. The only substantive difference was that one candidate had a superior GPA (4.0 vs. 3.6), whereas the other candidate had taken more AP classes (nine vs. six). In half the cases, the candidate on the left (Candidate A, or the White candidate) had the higher GPA, and in the other half, the candidate on the right (Candidate B, or the Black candidate) did. For half of the participants, photographs accompanied each of the four résumés, thereby indicating each candidate's race. In this condition, one of the top candidates was White, and one was Black.

After ranking candidates, participants were asked to rank eight criteria (letters of recommendation, GPA, student government, number of AP classes, SAT verbal, SAT math, athletic participation, and essays) in order of their importance for admission to college. The two criteria of interest were the relative rankings of GPA and number of AP classes.³

After completing a series of unrelated questionnaires for 30 to 40 minutes, participants completed six items from the Modern Racism Scale (MRS; McConahay, 1986); one item pertaining to school integration was deleted because pretesting indicated that participants were largely unfamiliar with this issue. Because of time constraints, 25 participants did not complete this measure; from the results of those who did complete the MRS, we created a composite measure of level of prejudice (Cronbach's $\alpha = .85$). MRS scores did not vary as a function of whether participants saw résumés with or without pictures ($t < 1$).

Results

Selection. As we expected, our two most qualified candidates were popular selections, as only 12 out of 221 participants ranked either of the weaker candidates first or second. Focusing our analyses on these two strongest candidates, A and B, a logistical regression indicated a significant interaction between the presence of photos and candidate qualification, Wald (1) = 13.86, $p < .001$. In other words, the influence of the candidates' qualifications depended on whether or not participants were aware of their race. Participants showed no preference for a candidate when they were not given racial information, as they selected the candidate with the higher GPA 53% of the time when Candidate A had the higher GPA and 45% of the time when Candidate B had the higher GPA ($p = .28$, *ns*, via one-tailed Fisher's exact test). With racial information provided, however, clear preferences developed: When the Black candidate had the higher GPA, participants selected him 78% of the time, whereas when the White candidate had the higher GPA, participants selected him just 22% of the time ($p <$

³ We did not include race as one of the attributes to be ranked because we felt it might artificially increase participants' attention to this variable. Other work using similar paradigms, however, has shown that people are very unlikely to cite race as a factor in decision making (e.g., Norton et al., 2004).

.001 via one-tailed Fisher's exact test; see Table 1). Thus, as predicted, although no clear preference emerged without racial information, adding this information caused participants to favor Black candidates regardless of those candidates' qualifications.

Criterion rankings. After making their selections, participants ranked criteria in terms of their importance for college admissions. We measured the relative importance assigned to GPA versus number of AP classes by coding which criterion was ranked higher. GPA tended to be ranked higher than AP classes in all conditions, mirroring its slightly higher ratings in our pretest. More important to note is that the relative importance of GPA varied across conditions. For this dependent measure, the interaction term did not reach statistical significance in the logistic regression model, Wald (1) = 1.70, *ns*. However, planned comparisons of the simple effects were consistent with a priori hypotheses. Specifically, in the absence of accompanying photos, there was no significant difference in rankings of criteria: GPA was ranked higher than AP classes 69% of the time when Candidate A was higher on AP classes and 68% of the time when Candidate B was higher on GPA ($p = .63$, *ns*, via one-tailed Fisher's exact test). When photos accompanied the résumés, however, 74% of participants ranked GPA as more important when the Black candidate had a higher GPA, a number that dropped to 56% when the White candidate had the higher GPA ($p < .04$ via one-tailed Fisher's exact test; see Table 1).

Individual differences in racism. We used participants' MRS scores to explore the relationship between individual differences in prejudice and participants' judgments. For ease of explication, we conducted a median split on these MRS scores, creating high- and low-prejudice groups. Because MRS scores were relevant only in the two conditions in which racial information was provided, we limited these analyses to participants who were given such information. As we expected, a one-tailed Fisher's exact test revealed that low-prejudice participants tended to be relatively more likely to favor Black candidates (85%) than high-prejudice participants (71%) were ($p = .07$). In addition, we explored whether high-prejudice participants, having made the more questionable choice, would therefore be more careful in justifying their decisions in nonracial terms. To test this hypothesis, we created a new measure that assessed whether participants ranked the criterion that favored the candidate they chose higher (e.g., if partic-

Table 1
Percentages of Participants Selecting the Candidate With a Higher GPA and Ranking GPA as More Important Than AP (Study 1)

Condition	% selecting candidate with higher GPA	% ranking GPA higher than AP
Control 1 (no race)	53	69
Control 2 (no race)	45	68
White candidate higher GPA	22	56
Black candidate higher GPA	78	74

Note. The two control conditions are a result of counterbalancing criteria. GPA = grade point average; AP = advanced placement classes.

ipants selected a candidate with a higher GPA, they received a 1 if they ranked GPA higher than AP and a 0 if they ranked AP higher than GPA). This measure thus assessed the extent to which participants inflated the value of the criterion that favored their choice. As we expected, high-prejudice participants—those who made more questionable decisions—were more likely to be consistent (78%) than low-prejudice participants (60%) were ($p < .04$ via one-tailed Fisher's exact test).

Discussion

This study examined how race influences merit-based decisions and how people try to mask this influence by adjusting the perceived importance of other information. When making a choice between two equally attractive college candidates—one White, one Black—participants overwhelmingly chose the Black candidate regardless of his qualifications. Participants justified this decision by inflating the importance of whichever criterion privileged the Black candidate. When the Black candidate had a higher GPA than the White candidate, participants inflated the importance of GPA. When the Black candidate had taken more AP classes than the White candidate, participants inflated the importance of AP classes. Thus, it is clear that participants were quite skilled at masking the reasons for their decision making when they made choices influenced by race. In contrast, participants chose nearly equally between the two candidates when racial identification was not provided. These findings also shed light on who is relatively more likely to favor Black candidates in these situations (low-prejudice individuals) and who is more likely to try to mask such decisions in nonracial terms (high-prejudice individuals). Unfortunately, this latter finding suggests that those individuals who are more likely to make biased decisions against members of stigmatized groups are also those individuals who may be more likely to mask their true reasons for making such decisions, instead offering up plausible alternative explanations.⁴

Study 2: Is Casuistry Always Post Hoc?

One possible explanation for the reweighting of criteria observed in Study 1 is a consistency explanation: Participants chose their preferred candidate, and to appear consistent, they then expressed a preference for whatever qualification favored that candidate. This account suggests that casuistry is post hoc: Having made a decision based on race, people then scramble to find reasons that support that case, particularly if that decision maker has made a potentially questionable decision such as the high-prejudice participants in Study 1 had. Luckily for the decision maker, the social world is often ambiguous enough to provide such reasons. Study 2 explored the possibility that casuistry not only emerges post hoc but can also occur as part of the decision-making process itself, rendering it an even more influential and pervasive psychological tendency. As outlined above,

⁴ It is important to note that our high-prejudice individuals were drawn from a college student sample that was more egalitarian than more representative samples. Although we would expect the relative preference for Black candidates to be attenuated or reversed among individuals more prejudiced than those in our sample, we would still expect the trend for high-prejudice participants to be more likely to justify their decisions in nonracial terms to hold true.

information such as race and gender can be automatically encoded, thereby influencing judgment without people's conscious awareness (e.g., Devine, 1989; Fiske & Neuberg, 1990), or, we suggest, even before people have made a decision. In Study 2, we attempted to demonstrate that race could have an impact on information processing before participants had committed to choosing a candidate. This was done by showing them résumés and asking them to rank criteria in order of importance before making a decision (and, in fact, even before informing them that they would be making a decision). We predicted that participants would inflate the value of criteria that favored Black candidates even before they had to commit to a choice.

In addition, we included measures designed to assess participants' views of the candidates' criteria in Study 2. We thought that participants not only would inflate the value of criteria that favored their preferred candidates but also would call into question the validity of other criteria, leading to continued bias against candidates whose strongest suit was one not favorable to the chosen candidate. In sum, this study attempted to explore more deeply the nature of casuistry resulting from decisions tinged by social category information. Where Study 1 showed that people mask the reasons behind their decisions, a strategy possibly intended for public consumption or the alleviation of inconsistency, Study 2 attempted to show that social category information can impact information processing even prior to making a final decision.

Method

Participants. One hundred and sixty-seven Princeton undergraduates were paid \$8 to complete a questionnaire as part of a mass testing session in groups of up to 20. The majority of the sample (56%) was female; 68% were White, 12% were Asian, 10% were Black, 5% were Hispanic, 3% reported "other," and 2% did not report ethnicity.

Procedure. We used the same résumés as in Study 1 but used different stimulus pictures to make the results generalizable to more than just the specific photographs used in Study 1 (e.g., Wells & Windschitl, 1999); in Study 2, however, all résumés included racial information. Thus, in one condition, the Black candidate had the higher GPA, whereas in the other, the White candidate had the higher GPA. To examine whether the inflation of criteria would occur even prior to choice, upon merely being exposed to résumés, participants were given no indication that they would be asked to choose between candidates. They were simply told that the purpose of the study was to examine the criteria most important to making admissions decisions, and they were given a few sample résumés to get a sense of potentially relevant criteria. On the page that followed, participants ranked various criteria in order of their importance in the admission decision process. Only after completing this task were participants asked to return to the sample résumés and select a candidate.

We added new measures designed to tap further into participants' interpretations of the two criteria of interest. We predicted that participants might call into question the very validity of criteria that did not favor their preferred candidate. To explore this hypothesis, participants used a 7-point scale (from 1 = *not at all* to 7 = *extremely*) to rate the extent to which they felt that candidate GPA and number of AP classes taken were largely dependent on the characteristics of particular high schools. Our logic was that if participants believed a criterion such as GPA was highly dependent on school characteristics, its validity in predicting the college success of any individual student would be more questionable.

Results

Attribute rankings. Participants showed a preference for GPA as a factor in admissions as 70% (115 out of 165) ranked GPA higher than AP classes across both conditions. As predicted, however, this preference for GPA was moderated by condition. In an attempt to replicate the results of Study 1, a one-tailed Fisher's exact test revealed that GPA was ranked higher than AP classes 77% of the time when the Black candidate had the higher GPA but that number dropped to 63% when the White candidate had the higher GPA ($p < .04$; see Table 2).

Selection. As before, the vast majority (76%, or 123 out of 161) of participants selected Black candidates over White candidates. It is important to note that this difference emerged regardless of qualifications: When the Black candidate had the higher GPA, participants selected him 72% of the time; when the White candidate had the higher GPA, participants selected him just 20% of the time ($p < .001$ via one-tailed Fisher's exact test; see Table 2). These findings once again demonstrate the primacy of race and the relative unimportance of the other criteria in participants' decisions.

Validity of criteria. We also tested whether participants would be motivated to disparage criteria that favored White candidates by calling into question their validity. When the Black candidate had taken more AP classes, participants thought that this criterion was less influenced by characteristics of individual high schools and, thus, a more credible indicator of future academic success ($M = 5.74$, $SD = 1.23$) than when the White candidate had taken more AP classes ($M = 6.10$, $SD = 1.03$), $t(164) = 2.04$, $p < .05$. Thus, participants disparaged the validity of the qualification that favored the White candidate. It is interesting to note that we did not find a similar effect for ratings of GPA; participants rated this attribute comparably whether the White candidate ($M = 5.83$, $SD = 1.02$) or the Black candidate ($M = 5.90$, $SD = 1.12$) had the higher GPA ($t < 1$, *ns*).

Discussion

Whereas Study 1 showed that people would alter their rankings of criteria subsequent to choice to justify that choice in nonracial terms, Study 2 showed that this reweighting of criteria could occur even before a choice was made. In other words, merely anticipating a choice, or merely being exposed to résumés, caused this factual information to be reinterpreted to fall in line with social norms and motivations. These results suggest not only that it is possible for people to reweight criteria deliberately to justify choices but also that decisions made under such social constraints can impact information processing even prior to making a

Table 2
Percentages of Participants Ranking GPA as More Important Than AP and Selecting the Candidate With a Higher GPA (Study 2)

Condition	% ranking GPA higher than AP	% selecting candidate with higher GPA
White candidate higher GPA	63	20
Black candidate higher GPA	77	72

Note. GPA = grade point average; AP = advanced placement classes.

choice. This suggests that the bias we observed is not simply post hoc and strategic but occurs as an organic part of making decisions when social category information is present.⁵ From a legal standpoint, these effects are important as well as troubling because they suggest that even though courts typically require a plaintiff to demonstrate that job discrimination was purposeful in nature, decision makers may not always be consciously aware of the biasing impact of race. That is, having reweighted criteria prior to choice, decision makers who favor someone on the basis of their race or gender may truly believe they are simply choosing based on criteria, never realizing that their rankings of these criteria have been altered.

General Discussion

Decision making frequently necessitates difficult, multifaceted choices—whom to hire, whom to admit to college, whom to select for a jury, and so on. Candidates usually vary on multiple dimensions, and choosing between them inevitably involves a series of trade-offs. Faced with these tasks and sometimes overwhelmed by the amount of relevant information that must be processed, decision makers frequently resort to using their intuition or gut-level reaction as to which candidate is better (see Highhouse, 1997). Although the effectiveness of such intuitive strategies is difficult to assess, relying on gut feelings can be particularly problematic in situations in which people have mixed motives—where decisions are based on some legitimate concerns and criteria but also colored by proscribed information such as a candidate's race. The present studies examined the effects that such illegitimate information can have on decision making, demonstrating empirically what many in the legal profession have suspected: People mask the true reasons for choices influenced by social category information and tend to recruit alternate justifications for these decisions. Our results suggest that those people most likely to make questionable decisions—such as favoring Whites over Blacks—are also likely to mask the influence of racial information by inflating the value of nonracial criteria that support their decisions (Study 1). Most disturbingly, our results suggest that this kind of reasoning can occur even prior to a decision being made, suggesting that the distortions observed may have been due not to strategic post hoc shifts in attribute weights but to more subtle biases in information processing (Study 2). Although it may be comforting to believe that decision making typically is based on neutral information and diagnostic criteria, the present findings demonstrate that individuals' explanations for their decisions frequently reflect a motivation to avoid the appearance of bias more than a consistent ability to do so.

⁵ It is possible that participants may have anticipated making a choice given the context; indeed, a growing body of research has explored how distortions in information can occur prior to, during, and after decision making (e.g., Brownstein, 2003; Russo, Medvec, & Meloy, 1996; Simon, Krawczyk, & Holyoak, 2004). Although we cannot rule out this possibility with our data, the fact that participants shifted weights prior to choice upon even suspecting that a choice might be imminent would simply lend further credence to our claim of the power of the desire to mask decisions made in this realm.

Implications for Employment Discrimination

In *Desert Palace* (2003), the Supreme Court made it substantially easier for employees to bring legal action based on mixed-motive decisions by allowing discrimination suits even when legitimate factors also contributed to an employment action. The present research suggests that this ruling was well advised as defendants who knowingly discriminate against an employee can almost always generate a post hoc explanation for their actions that does not involve race or gender. The present studies constitute an original empirical demonstration of one way in which defendants might do this: by exploiting the ambiguity inherent in hiring decisions. As with candidates for college admissions, job candidates vary on multiple dimensions, including not only race and gender but also experience, relevant skills, letters of recommendation, and so forth. It is relatively easy for a motivated decision maker to find reasonable justification for selecting whichever candidate he or she chooses. Given this obstacle to proving that a job action was discriminatory, any decision that gives plaintiffs a more reasonable chance of making the case for discrimination would seem to be a step in an encouraging direction.

However, the present research also indicates that people are frequently unaware that social category information has influenced their judgments, making it even less likely that they would leave clear evidence that race or gender influenced their decision. Thus, when defendants deny that race played a role in some employment decision, their self-reports are suspect on two levels: they may be well aware that race played a role yet successfully mask their use of this information or they may genuinely—but inaccurately—believe that race played no role in their decision. In this sense, one could argue that *Desert Palace* (2003) did not go far enough in leveling the playing field for discrimination suits as most courts still require that plaintiffs prove discrimination to be intentional and purposeful (for an exception, see *Thomas v. Eastman Kodak Company*, 1999). The present data suggest that illegitimate information such as race and gender frequently influences social judgment but that it can do so outside of conscious awareness and devoid of pernicious intent. In the absence of a more sweeping reconsideration of legal conceptualizations of employment discrimination to include less conscious forms of bias, many plaintiffs still face an uphill battle.

All the situations described above, of course, involved a single decision about a single case. One interesting facet of the paradigm used in this article—a one-shot decision that maps on to many real-world decisions—is that no particular participant can be singled out as exhibiting bias. In both studies, participants had a perfectly legitimate reason for selecting the candidate they did. Indeed, we specifically selected the decision criteria so that either candidate would be a reasonable choice. Although we might suspect that a participant who chose the Black candidate and then ranked criteria to be consistent with that choice was influenced by race, we cannot prove it in any single instance. Moreover, just as people have difficulty detecting discrimination in others on a case-by-case basis (Rutte, Diekmann, Polzer, Crosby, & Messick, 1994), so, too, might they have a difficult time detecting it in themselves. Only in the aggregate have we been able to demonstrate the systematic bias that is masked by casuistry. Class-action lawsuits, of course, do just this by demonstrating bias across many situations. In

such cases, defendants have much less wiggle room as they must find a nonracial reason that consistently justifies a series of decisions. Indeed, the U.S. Department of Labor's Office of Federal Contract Compliance Programs began to take advantage of such aggregate data in 2000 by proposing a revision to Executive Order 11246 that required organizations to complete Equal Opportunity Surveys. The end results of this process are flowcharts depicting the race and gender breakdown of work units, which are exactly the kind of aggregated data needed to demonstrate discrimination (see Crosby, 2004). The psychological processes examined in the present research are likely to be more problematic for proving claims of individual discrimination as opposed to systematic bias; nonetheless, because the influence of illegitimate information such as race can occur outside conscious awareness, even defendants who have clearly engaged in discriminatory hiring practices across many situations may be honestly unaware that they have done so, posing obstacles for allegations of systematic bias as well.

Implications for Affirmative Action

The present studies focused on racial preferences and college admissions, not race and employment discrimination, but the implications for the two domains are similar. These studies suggest that it is next to impossible to determine conclusively the influence of race or other illegitimate information on any one admissions decision. For any particular candidate, admissions officers may truly believe that race did not affect their judgment given the plethora of nonracial criteria available for use as justification. Even if a conscious choice were made to consider race, decision makers can easily cite legitimate nonracial explanations if doing so removes the decision from undue scrutiny.

So, what to make of the legacy of the Michigan cases, *Gratz* (2003) and *Grutter* (2003)? On the one hand, the Court upheld a school's right to consider race as a plus factor in its admissions process, but on the other, it prohibited the use of explicit rubrics in these decisions, continuing its tradition of ambiguous rulings on affirmative action (see Bybee, 2000). The present results suggest that in so doing, the Court may have made assessing the legality of affirmative action policies even more problematic. In many respects, for opponents of affirmative action, the *Gratz* ruling could prove to be a pyrrhic victory. Under the type of system struck down in *Gratz*, schools were able to mandate that race be considered in a specific way or assigned a specific value in the admissions equation. In such point-based systems, there was no real opportunity for the psychological processes of casuistry to come into play. In the wake of the Court rulings, however, admissions officers have been told that they can consider race, and they have been left to their own devices to determine how to do so. Schools can now consider race on a case-by-case basis using less formalized criteria that can be weighted subjectively and less transparently (see Guinier, 2003, for extended analysis). In this sense, *Gratz* (2003) has opened the door for the processes identified in this article to influence the college admissions process. The Michigan rulings, combined with the psychological tendencies described herein, suggest that it may now be harder than ever to pinpoint the influence of race in college admissions decisions.

Other Legal Implications

The present demonstration that race often influences decision makers in ways that are difficult to identify has more general implications for the legal system as well. Jurors, for instance, are asked to render decisions based on a variety of evidentiary factors, a list that excludes race. Nonetheless, numerous empirical studies have demonstrated that race does affect the decision making of jurors both in laboratory settings and in real trials (for a review, see Sommers & Ellsworth, 2003). Consistent with the present findings, previous research has suggested that this influence is difficult to identify in any particular case. Jurors are often unaware of the influence of race, and they typically cite nonracial bases for their judgments if asked to explain them. For example, Sommers and Ellsworth (2000) found that the race of a criminal defendant did influence mock jurors' verdict preferences but that it also predicted their ratings of the strength of the evidence in the case. More specifically, jurors tended to be more lenient toward same-race defendants, but they also rated the prosecution's case as weaker when the defendant was a member of their own racial group. These results imply that direct questions about how jurors reached their verdicts would have produced responses focusing on the nature of the evidence, not the defendant's race (see also Fein, Morgan, Norton, & Sommers, 1997; Sommers & Ellsworth, 2001). Furthermore, the present studies suggest that whether jurors' ratings of the trial evidence were made before or after they indicated a verdict preference would not have produced different results. In sum, research on casuistry is consistent with previous studies suggesting that the biasing influence of a defendant's race at trial (or even beforehand, in terms of prosecutorial charging decisions) is most easily identified in the aggregate, not in the context of a specific case. That the Supreme Court has at times dismissed such aggregate evidence as lacking in relevance to the particular case under review (e.g., *McCleskey v. Kemp*, 1987) demonstrates the practical importance of this conclusion. That is, the present conclusion that examination of an aggregate set of decisions is best equipped to reveal the role of race stands in contrast to the traditional jurisprudence of discrimination, which favors a more narrowly focused assessment of the individual decision under dispute.

Jury selection is another process in which casuistry is likely to operate. Evaluating a prospective juror is similar to other decisions discussed in this article as there is a wide range of criteria attorneys can use in this process. The peremptory challenge affords attorneys great leeway in a select few of these decisions as they may excuse jurors from the panel without demonstrating cause for their removal or justifying the decision. One restriction that has been placed on the use of peremptories, however, is that they may not be used to excuse jurors from a panel simply because they are members of a "cognizable racial group" (*Batson v. Kentucky*, 1986, p. 80). In instances in which suspicions are raised that an attorney's peremptories may be influenced by race, he or she must then be able to provide a legitimate, nonracial explanation for the decision. In light of the present findings, it is not surprising that attorneys are typically able to generate such a neutral justification quite easily and that judges often have no choice but to accept it (Raphael & Ungvarsky, 1993). Whether the use of race in peremptory challenge decisions is conscious and strategic or completely unintentional, there is little chance that attorneys will acknowledge it. The processes of casuistry

spelled out in the present research suggest that the idea of using *Batson* challenges to prevent race-based jury selection faces serious psychological obstacles (Somers & Norton, 2006b).

Certainly, we have only scratched the surface in detailing the legal implications of casuistry. In essence, for any legal decision-making process that (a) is based on multiple, subjective criteria and (b) affords a reasonable amount of discretion, decision makers may believe (or at least claim to believe) that they have been influenced by legitimate factors when, in reality, their judgments have been tainted by illegitimate information such as race. Could such processes help explain the disproportionate application of the death penalty to defendants accused of murdering White versus Black victims, in terms of decisions made by either district attorneys or sentencing juries (see Gross & Mauro, 1989)? Do judges fall victim to casuistry as well, believing that their sentencing decisions are based on a careful consideration of mitigating and aggravating factors, whereas they are actually influenced in subtle ways by race or socioeconomic status? Some critics have leveled a related charge, that judges too often engage in result-oriented jurisprudence by selectively interpreting case law to justify a desired ruling (see Scalia, 1997). Our results suggest that when decision makers are motivated to arrive at a particular outcome, they may not even be aware that they are reinterpreting information. Thus, result-oriented jurisprudence may not be as strategic as critics contend: This kind of reasoning may occur naturally, as part of the process of decision making, making it less Machiavellian but perhaps more insidious.

Policy Implications: Easy Questions, Difficult Answers

Research on casuistry makes a strong case for the conclusion that it is difficult to pinpoint the influence of race or other illegitimate information on any particular decision. The present studies have illustrated the psychological processes underlying this observation, and we have discussed the potential implications of these results across a range of legal decision-making processes. This investigation was designed to raise questions about the role of casuistry in various legal decisions, but the larger question remains, What can be done about it? One straightforward way to address these issues is through policy changes that eliminate the subjectivity of the decision-making processes in question. In legal circles, however, there seems to be growing discomfort with such strategies. For one, in *Gratz* (2003), the Court struck down the University of Michigan's point-based system as too mechanized a process for considering race. In terms of jury selection, circuit courts have ruled against policies that require oversampling of particular racial groups in an effort to create more representative jury pools (Cohn & Sherwood, 1999). The recent decision in *Blakely v. Washington* (2004) may mark a similar end to federal sentencing guidelines that were originally implemented to remove subjectivity from judges' sentencing decisions.

Other, more psychological responses to these findings might include a reconceptualization of the way people think about racial bias. The Supreme Court made a welcome move in this direction in *Desert Palace* (2003). Psychological research suggests not only that the smoking gun of discrimination is often not as common as it once was but also that people's self-reports regarding the influence of race on

their decisions are so unreliable as to be meaningless in most cases. Denials that race was influential and insistence that neutral, legitimate criteria were behind a decision are factors that make it more difficult to evaluate the true effects of race. Even if there were a way to verify that decision makers genuinely believe that their decision has not been influenced by race and has been formed because of other factors, the true effects of race might not be clear. The present results suggest that behavior speaks much louder than words, and only through aggregating data across decisions and across decision makers can most conclusions about the effects of race be offered with any degree of confidence. Yet one must wonder whether *Desert Palace* went far enough in reshaping the legal system's ideas about racial discrimination. Given the converging psychological evidence that information such as race and gender often affects decision makers even when they are not aware of it, the continuing requirement of most courts that claims of discrimination include evidence of purposefulness is difficult to endorse. Some examples of bias are certainly intentional, others are less purposeful, and yet others are wholly unconscious. To date, however, legal recourse typically is available only to victims in the first instance. In the criminal context, the Supreme Court has acknowledged that contemporary discrimination can manifest itself in the form of "subtle, less consciously held racial attitudes" (*Turner v. Murray*, 1986, p. 35; see Pollak, 2005, for a review of Supreme Court decisions on race). Findings such as the present ones suggest that this is a well-supported conclusion with ramifications for rulings in noncriminal cases as well.

Conclusion

Finally, it is important to note that the bias we observed in the studies reported in this article—in which predominantly White participants favored Black candidates over equally qualified White candidates—is a unique kind of bias in two ways. First, the candidates here were equally qualified. We might be more worried about such biases were we to find that individuals were willing to favor much less qualified candidates over much more qualified candidates solely on the basis of their gender or race; indeed, were we to observe this, we could show that an individual decision maker was biased in a way that we can show only in the aggregate in these studies. Second, the bias that we observed in the present investigation is one of affirmative action, in which our participants were motivated to favor members of a traditionally stigmatized group, which differs from more standard forms of discrimination, in which members of stigmatized groups are treated unfavorably. These two kinds of bias are clearly distinguished in legal practice as the contemporary Supreme Court has ruled in favor of affirmative action but has often tried to end practices that discriminate against members of stigmatized groups even though both sets of rulings often reference the same strict-scrutiny standard. Thus, although the psychological processes underlying these two kinds of favoritism ironically may be quite similar, the motivations underlying the two are clearly quite different, and this must be taken into account. For example, although some research has demonstrated the benefits of affirmative action policies for individuals and communities (see Crosby, Iyer, Clayton, & Downing, 2003, for a review), such as the positive impact of diversity on groups and group decision making (e.g., Sommers, in press), we are unaware of any

research demonstrating a corresponding positive impact of discriminatory policies. Accordingly and in agreement with the Supreme Court, we certainly do not argue that similar legal standards should apply to both forms of category-based preference.

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