When bias is implicit, how might we think about repairing harm?

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A recent Supreme Court decision — *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* — creates an opening to consider models for repairing the effects of unintended harm. We mention some results from the science of unconscious bias, consider the nature of n-to-n harm, cite recent philosophical arguments about responsibility for carrying implicit bias, and note the legal status of *intent* versus *impact* in civil rights law. Based on the opportunity presented by *Inclusive Communities*, we present three options for repairing unintended harm, placing emphasis on litigation-minimizing solutions, especially insurance.

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On June 25, 2015, the United States Supreme Court held that the Fair Housing Act of 1968 [1] requires remedies to organizational practices that have disparate impact on social groups covered by the statute. In *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, the Court held that the disparate impact a policy or practice produces is sufficient to merit remedy. In other words, the Court held that even if no intent to discriminate can be discerned, potential harm as revealed by disparate impact can be challenged [2].

Inclusive Communities is important in at least two ways. First, for most of the Court's recent history, in the area of civil rights, the idea that assessment of harm hinges on clear and demonstrable intent has been held with dogged persistence. *Inclusive Communities* is important because it reverses that direction. Second, in *Inclusive Communities*, Justice Kennedy, writing for the majority, made explicit reference to a particular psychological state of mind,

stating that disparate impact is sufficient basis for a challenge because 'unconscious prejudice and disguised animus' can mask discrimination.[1]

The science

Unconscious forms of bias pose a problem for legal theory and practice because law's guiding model of human behavior assumes that sane, ordinary, adult behavior is the result of conscious and intentional decision-making. Yet a rich and robust body of research in experimental social psychology — the field from which the concept of 'implicit bias' has emerged — challenges that assumption. We know that human minds evolved unique and specialized ways of processing information, some of which are capable of producing self-reflective, deliberate, conscious thought in accordance with moral codes and intentions, while other mental computaations are achieved in a more automatic, unconscious, and implicit manner [3•,4].

In 1995, Greenwald and Banaji [5] proposed that the study of *implicit social cognition* deserved new attention to understand core aspects of the mind: attitudes, stereotypes, and self-based cognition. Alongside, they issued a demand for the development of new methods that could robustly access implicit social cognition. The demand for new methods was partly fulfilled with the invention of the Implicit Association Test (IAT; [6]) and it has come to be, among other methods, a viable way to reveal the presence of implicit bias.[2] A signature result from research using the IAT is that people who have no intention to discriminate may still do so in their behavior toward others who vary in age, gender, class, race/ethnicity, sexuality, religion, and nationality among other social groupings (see [3•] for review).

The amount of published and replicated evidence showing the presence of differential treatment in the domains of employment, housing, financial lending and healthcare as a function of group membership is staggering. Even a focus on just one protected category, race, reveals an overwhelming amount of evidence from every social science [8–12]. The unique contribution of modern psychological research has been to show that such differences may emanate less from animus and more from implicit, less conscious, mental processes. For example, anti-Hispanic IAT bias predicted attitudes toward illegal

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[1] p. 13 Slip opinion, decided June 25, 2015 [2].
[2] We leave aside discussion of whether the biases revealed by the IAT are completely unconscious or relatively unconscious. For discussion, see [7].

and legal immigration [13]; ER and resident physicians with stronger anti-Black IAT bias were less likely to prescribe a particular medical procedure to Black patients [14]; stronger anti-Black IAT bias among physicians led to more negative experiences with Black patients [15]; stronger anti-Arab IAT bias predicted hiring decisions [16]; anti-obese IAT bias was related to less likelihood of interviewing obese candidates [17]; associations of 'mentally ill' with 'dangerous,' were correlated with stronger endorsements of sociatal control mechanisms [18]; at the level of countries, an IAT gender-science measure predicted gender differences in performance on math achievement tests [19]; anti-Black IAT biased influenced (correctable) bias in trial judges [20]; voters with stronger anti-Obama IAT scores were more likely to oppose his policies — but not when the same policies were attributed to President Clinton [21].

None of these results would be as surprising if the measures of attitudes and stereotypes were obtained via self-report. We would conclude that those who bear animus toward a group or idea are acting rationally on that preference or belief, hence the correlation. Data on implicit or unconscious bias are surprising and even troubling because individuals and even professionals, whose conscious values reveal no intent to harm, nevertheless show systematic and selective patterns of decision-making that result in differential treatment.

For research on implicit bias to have direct relevance for considerations of intent *vs.* impact arguments in the policy decisions, it is perhaps of use to view the range of conclusions that can be drawn from the empirical evidence that has gathered over the past thirty years (see [22]). The most significant of them for the discussion at hand is the idea that implicit bias (a) is pervasive, (b) is dissociated from conscious intent and values, (c) reflects preferences for one's own group or dominant groups in society, and (d) influences behavior. It is these reasons more than any others that provide the foundation for an understanding of human behavior that can directly motivate looking deeper as Justice Kennedy argues, when disparate impact is observed. See Table 1 for a more complete list of established results about implicit bias.

Harm: individual-to-individual *vs.* n-to-n

The question of responsibility is a thorny one when unintended harm occurs. Fortunately, moral philosophers have recently engaged this question in the context of implicit bias. Two volumes titled *Implicit Bias and Philosophy* [23,24•] include several viewpoints on exactly this question. It is surprising that every chapter dealing with the topic of responsibility takes the position that even though harm due to implicit bias may be unintended, responsibility for remedying the harm lies firmly with the agent [25–29]. The arguments to support this position

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Table 1

Significant conclusions from research on implicit bias (IB) showing attitudes and stereotypes by group membership (age, gender, sexuality, race, ethnicity, religion, nationality, physical characteristics) as well as the involvement of self-identity.

• IB is universal; it is a byproduct of fundamental features of thinking
• IB varies by individual and by group
• IB reveals ingroup preference
• IB reveals dominant group preference
• IB is dissociated from conscious intent/values
• IB is also associated to conscious intent/values
• IB is present in children; at times, to the same extent as adults
• IB also varies developmentally
• IB in behavior has been linked to neural activation
• IB predicts behavior, including behavior in natural settings
• IB is temporarily malleable; it is responsive to particular interventions

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range from comparisons to other situations of negligence, the distinction between guilt (not necessary) and reparations (necessary), to the conjecture that as evidence of implicit bias has become both scientifically clear and easily available in the public domain, it is one's responsibility to be aware of it and act on it.

Important as these arguments are, they are restricted to cases of individual-to-individual actions. Indeed, in support of the philosophers' positions, there is evidence to suggest that implicit social cognition is knowable and malleable. In fact, some methods of intervention, such as positive forms of contact, can change even unconscious bias [30]. This is a worthy path to develop as it can lead to changes in an individual's behavior.

In this paper, however, we focus on a different level of harm-doing. We recognize that organizationally mediated disparate impact, that is, policies and practices in areas such as housing, education, medical care, and financial lending, have unique characteristics that deserve exploration of alternative methods for determining responsibility. In such cases, the actions may be termed n-to-n. That is, the sources of unintended harm are many, and the effects are experienced by many. In n-to-n actions, the central challenge is not in determining who is 'guilty' (as philosophers have keenly noted) but rather crafting the best mechanics of repair.

Intent *vs.* impact

Ordinary humans believe that it is important to separate acts of intentional harm from acts of unintentional harm. For example, if A intentionally plans to kill a girl and B accidentally kills a girl, the intentional harm-doer is obviously more morally compromised. But consequences also matter, so that if two individuals get equally drunk and drive, with one subsequently hitting a tree and the other hitting a girl, the extent of the harm done (rather than intent) matters for determining punishment [31,32•].

Legal outcomes often mirror the explicit values of individuals. The *intent* requirement is present in the most ancient moral codes and in Anglo-American common law. In fact, the simplest test of responsibility for harm is indeed intent, which is regarded as sufficient, ceteris paribus, for establishing responsibility. Once intent is established, no further defense is possible, the defendant is found to be the tortfeasor, becomes morally responsible for the harm, and is subject to appropriate punishment — social scorn, civil damages, or criminal penalties. Likewise, the *impact* effect as seen in Cushman's [31] data on ordinary human decisions is also the way law works. In the law, attention to impact is visible in a familiar distinction between stealing $100 versus $10,000 — one is a misdemeanor, the other a felony.

It is therefore perplexing that in one domain, the Supreme Court has been willing to ignore all evidence about impact (but see *Griggs v. Duke Power Co.* which recognized the need to remedy non-specific disparate impact [33]). In *Washington v. Davis* [34], African Americans challenged Washington DC's admission test for hiring police officers. Mentioning Griggs almost *en passant*, the Court held that 'a law or other official act, without regard to whether it reflects a racially discriminatory purpose, [is not] unconstitutional solely because it has a racially disproportionate impact.' A decade later, *Davis* was further strengthened when the Supreme Court held that the racially disproportionate impact of even the death penalty did not establish remediable jeopardy for African-Americans, the group specifically protected under the stautes. In *McKlesky v. Kemp* [35], the Supreme Court was unmoved by disproportionate levels of death sentences handed down to African-Americans, leading eventually to the Civil Rights Restoration Act of 1991. Since then, in a series of successive decisions, the Supreme Court has had to address the issue of racial harm through disparate impact in employment law, housing, and lending [36].

The decision in *Inclusive Communities* reflects a quite different attitude in the Supreme Court. *Inclusive Communities* carefully and systematically justifies a particular thesis: when all conceivable analytical causes for disparate impact are removed, and there is still some non-insignificant remainder, then a remedy may be merited. Justice Kennedy postulates that 'unconscious prejudice and disguised animus' *may* account for some of this remainder. The opinion does not declare that unconscious bias is *a* cause for disparate impact, let alone *the* cause. Instead it implicitly recognizes the existence of a careful four-step process: Firstly, statistically demonstrate that a group has been harmed; secondly, demonstrate that the group is protected under the FHA statutes of 1968; thirdly, demonstrate that the organizational requirements that lead to disparate impact do not contain prejudice, animus, or bias; fourthly, demonstrate that disparate impact remains even after the organization seeks alternative procedures.

When these four steps have been executed, a fifth step may become appropriate. In Inclusive Communities, the Court essentially suggests this fifth step by inviting an answer to the following unstated question: *If unconscious bias is an accepted cause for harm, how much of the harmful disparate impact can be attributed to culpable unconscious bias, and how much of the disparate impact must be attributed to unconscious bias that must be excused (perhaps because unconscious bias can only be reduced, not eliminated)?*

We know what *explicit* harm looks like. In a hypothetical housing case, let us say that the intentional aim of the *Harlem Housing Board* (HHB) was to keep White Americans out of Harlem. We have nothing to say here because the law holds that such cases of explicit, intentional discrimination are actionable. The kind of harm with which we are concerned probably occurs in the shadows of interpersonal interactions between representatives of the HHB and homebuyers. Let us assume that the HHB intends to be equally welcoming to all who are able to afford a fair price for Harlem homes. However, upon examining the behavior of representatives of HHB, let us say, we find that White Americans feel uncomfortable when visiting the real estate agencies offices and over time fewer of them seek housing in Harlem. When measured, the data reveal that real estate agents, most of whom are Black, do not make eye contact with White buyers and speak fewer words to them. Let us say we find that Black real-estate agents provide cursory information to White buyers but detailed reports to Black buyers; they offer White buyers fewer options of homes and visitation times, but make special arrangements to suit the work schedules of Black buyers; on average they provide Black buyers with the inside scoop on the circumstances of the seller, but are not forthcoming with such information to White buyers.

It is in such situations — where favorable social interactions experienced by Black buyers are unknown to disfavored White buyers, where the Harlem Housing Board is unaware of bias, and is actually seeking to diversify Harlem — that the psychological evidence on implicit bias becomes relevant by providing evidence of its ubiquitous presence. *Inclusive Communities* allows forging ahead to consider what might be done in such cases.

Models for responsibility and repair

To understand the need to separate culpability from repair, let us review the following conditions that are interwoven with implicit or unconscious bias as the cause of disparate impact. First, implicit bias may be caused by multiple organizations that lie upstream of the actual policy decision. In *Inclusive Communities*, the Texas Department of Housing and Community Affairs may be using procedures mandated by other state law, which are supported by common practices in other arms of local government, and are put into practice by invisible decision-makers

whose decisions are in turn influenced by their experience in previous jobs, past educational opportunities, and so on.

Second, harms caused by implicit biases may be of different quantity and quality compared with other harms. In mortgage lending, one potential borrower may have to pay a higher rate of interest, an easily measurable harm; but another potential borrower may have to move to a different neighborhood with poorer schools and street safety leading to additional costs that are extremely difficult to measure; an aging resident in the area may be deprived of her entire social-care network because of a complex series of decisions by a lender, and more.

Third, it may not be simple to identify *who* is harmed, because it is not easy to define what harm is. For example, what is the harm that results from fewer words being spoken to the homebuyer or not being offered the same housing options? Fourth, the most visible harming agent may not have the economic or social means for repair. Fifth, the organization may inflict extraordinary harm, but the harm may be uncertainly spread over a long period with the harming organization unable to commit to protections far into the future. In the background of this, of course, is the deadly certainty that the resources needed for repair will be swallowed up in bitter and endless litigation.

In the face of such challenges, it may be futile to seek administrative, legislative, or judicial remedies. Instead, we propose exploring market-based remedies. This is fortunate, because the world's (and the USA's) social and political repertoire includes at least *three* mechanisms that have proven efficacious in dealing with situations where (a) uncertain amounts of temporally distributed harm is caused; (b) an uncertain number of unspecified and perhaps even unidentified agents are responsible; and (c) even victims may be difficult to specify and identify. Three mechanisms are identified with special emphasis placed on the third.

Superfund

Congress created a fund that was designed to pay for cleaning up toxic dumps and toxic damage created by chemical manufacturers and users of toxic chemicals. The superfund was originally funded by a tax on polluters, but since 1995, when Congress refused to support the tax, the fund has relied on cost recoveries from the original creators of the toxic site. The harming agent can often be identified, but the Superfund's administrator, the Environmental Protection Agency, relies on programs to identify 'potentially responsible partners' who help pay for cleanup costs and related harm. In cases of unconscious bias, the equivalent would be a system that identifies large-scale perpetrators of discriminatory outcomes to focus on repair, and treat guilt for specific

instances of harm as secondary concerns, that need not precede repair.

Emissions trading

A second mechanism that requires even less administration by the government is the system of emissions trading and pollution tax credits. The system involves clear recognition that different industries emit greenhouse gases to different extents. Given a fixed allocation of emissions for each industry/organization, a trading system creates a market. A firm commits to reducing emissions, but recognizes the difficulty of doing so immediately. It purchases the right to continue excess greenhouse gas emissions by paying a firm that has a higher permitted greenhouse gas emission than it uses. In cases of implicit bias, such a system would require an analogous mechanism for allocating the funds from the sale of such credits to those who have been harmed. Like many tax-credit systems within the Internal Revenue Code, this system can be administered efficiently without litigation or injustice.

Both mechanisms are applicable and useful, and both recognize the difficulties of measurement and allocation. Both employ the advantages of a market-based society to remedy a significant social injustice. Yet both these mechanisms require identification of super perpetrators, as well as deep administrative, judicial and political resources in setting initial conditions, such as the amounts of unconscious bias to be permitted in, for example, a police department compared to a sanitation department compared to a private airline. A third mechanism avoids these difficulties.

Insurance

Insurance has many advantages: it can be applied to a great many activities and it is based on stable expectations with which institutions are deeply familiar. Insurance systems recognize that both accidents and willful negligence occur and that the costs of the two may be different. In automobile insurance, for example, the process recognizes that a careful driver may be harmed by a careless driver, but also that a careless driver may be harmed by a careful driver. The insurance premium that a particular driver pays involves both possibilities, but it is calibrated by differing estimates of relative likelihood.

Classically, automobile insurance applies to individual drivers and car-owners, but insurance schemes exist in many areas of business activity that capture both sides of a transaction. In the case of unconscious bias, organizations may seek protection from the kind of liability that is imposed by the likely successors to *Inclusive Communities*. The cost of insurance, the premiums, may drive them to a variety of measurement and management efforts to reduce, so to speak, their emissions of unconscious bias. These might include incentives for safe driving (i.e., unbiased behavior) and the installation of safety

features in organizational spaces (e.g., diverse teams that share goals). Moreover, insurance mechanisms permit a very wide range of business models, and an entire international industry has the know-how to develop those models.

Although implicit bias operates in individual minds it begins and ends in the social world. Its influence spreads from the mind, subtle and hidden through thoughts and feelings to words and actions that create socially wounding disparate impact, reminding us that psychological events have ethical and moral consequences. In Plato's *Republic* Socrates says of ethics and morality 'We are discussing no small matter, but how we ought to live' [37]. This meeting place — of scientific evidence about mental states, their moral status in shaping the outcomes of large groups of people, and the solutions that may be offered to repairing harm — is a hard but worthy place at which to be. In proposing solutions we do not believe that we have found the right one, but we do hope that as we develop the notion of insurance as a model for reparing the effects of disparate impact that our work will receive strong competition from other proposals — because we are discussing no small matter.

Acknowledgements

References and recommended reading

Papers of particular interest, published within the period of review, have been highlighted as:

- of special interest
- of outstanding interest

1. Fair Housing Act, 1968, 42 USC 3601 *et. seq*.

2. Texas Department of Housing and Community Affairs v. Inclusive
• Communities Project, Inc., Slip Opinion dated June 25, 2015. A decision of the Supreme Court of the United States of America. Considered a ''blockbuster opinion'' by Kenji Yoshino (*Slate*; URL: www.slate.com/articles/new_and_politics/the_breakfast_table/ features/2015/scotus_roundup/supreme_court_2015_the_court_ acknowledges_unconscious_prejudice.html), the case allows a less restrictive view of disparate impact to be a potential cause for action under the Fair Housing Act. The Slip Opinion mentions, on p. 17, that a reason to pay attention to disparate impact is that intent to discriminate is hard to pin-point but may still exist given ''unconscious prejudice and disguised animus''.

3. Banaji MR, Greenwald, AG: *Blindspot: Hidden biases of good
• people.* Random House; 2013. A book written for the general reader, *Blindspot* explores hidden biases that we all carry based on our evolutionary history, from the cultures we live in, from personal history of experiences with social groups — age, gender, race, ethnicity, religion, social class, sexuality, disability status, nationality, etc. Blindspot reveals hidden biases through hands-on experiences with a method that has changed the way we think about ourselves as ''good people'' given the disparity between actual behavior and good intentions.

4. Kahneman D: *Thinking fast and slow*. Farrar, Strauss & Giroux; 2011.

5. Greenwald AG, Banaji MR: **Implicit social cognition: attitudes, self-esteem, and stereotypes**. *Psychol Rev* 1995, **102**:4-27.

6. Greenwald AG, McGhee D, Schwartz J: **Measuring individual differences in implicit cognition: the implicit association test**. *J Pers Soc Psychol* 1998, **74**:1464-1480.

7. Gawronski B, Hofmann W, Wilbur CJ: **Are 'implicit' attitudes unconscious?** *Conscious Cogn* 2006, **15**:485-499.

8. Bayer P, Ferreira F, Ross SL: *Race, ethnicity, and high cost mortgage lending*. National Bureau of Economic Research; 2014:. Working Paper No. 20762.

9. Gaddis SM: **An audit study of race and college selectivity in the labor market**. *Soc Forces* 2015, **93**:1451-1479.

10. Pager D, Shepherd H: **The sociology of discrimination: racial discrimination in employment, housing, credit, and consumer markets**. *Annu Rev Sociol* 2008, **34**:181-209.

11. Smedley BD: **The lived experience of race and its health consequences**. *Am J Public Health* 2012, **102**:933-935.

12. Turner MA, Santos R, Levy DK, Wissoker D, Aranda C, Pitingolo R: **Housing di scrimination against racial and ethnic minorities 2012**. *U.S. Department of Housing and Urban Development*. Policy Development and Research; 2013.

13. Pérez EO: **Explicit evidence on the import of implicit attitudes: the IAT and immigration policy judgments**. *Polit Behav* 2010, **32**:517-545.

14. Green AR, Carney DR, Pallin DJ, Ngo LH, Raymond KL, Iezzoni LI, Banaji MR: **Implicit bias among physicians and its prediction of thrombolysis decisions for black and white patients**. *J Gen Intern Med* 2007, **22**:1231-1238.

15. Penner LA, Dovidio JF, West TV, Gaertner SL, Albrecht TL, Dailey RK, Markova T: **Aversive racism and medical interactions with Black patients: a field study**. *J Exp Soc Psychol* 2010, **46**:436-440.

16. Rooth DO: **Automatic associations and discrimination in hiring: real world evidence**. *Labour Econ* 2010, **17**:523-534.

17. Agerström J, Rooth DO: **The role of automatic obesity stereotypes in real hiring discrimination**. *J Appl Psychol* 2011, **96**:790-805.

18. Stull LG, McGrew JH, Salyers MP, Ashburn-Nardo L: **Implicit and explicit stigma of mental illness: attitudes in an evidence-based practice**. *J Nerv Ment Disord* 2013, **12**:1072-1079.

19. Nosek BA, Smyth FL, Sriram N, Lindner NM, Devos T, Ayala A, Bar-Anan Y, Bergh R, Cai H, Gonsalkorale K *et al.*: **National differences in gender-science stereotypes predict national sex differences in science and math achievement**. *Proc Natl Acad Sci* 2009, **106**:10593-10597.

20. Rachlinski JJ, Johnson SL, Wistrich AJ, Guthrie C: **Does unconscious racial bias affect trial judges?** *Notre Dame Law Rev* 2009, **84**:1195-1246.

21. Knowles ED, Lowery BS, Schaumberg RL: **Racial prejudice predicts opposition to Obama and his health care reform plan**. *J Exp Soc Psychol* 2010, **46**:420-423.

22. Nosek BA, Riskind RG: **Policy implications of implicit social cognition**. *Soc Issues Policy Rev* 2012, **6**:113-147.

23. Brownstein M, Saul J (Eds): *Implicit bias and philosophy: volume 1 metaphysics and epistemology*. Oxford University Press; 2016.

24. Brownstein M, Saul J (Eds): *Implicit bias and philosophy: volume 2,
• moral responsibility structural injustice, and ethics*. Oxford University Press; 2016.
A collection of philosophical essays on the ethics of implicit bias, divided into three sections, the first focusing on the nature of moral responsibility for implicit bias, the second on the connections between the implicit biases held by individuals and the structural injustices of the societies in which they are situated, and the third on strategies for implicit attitude change.

25. Faucher L: **Revisionism and moral responsibility**. In *Implicit bias and philosophy: volume 2, moral responsibility, structural injustice, and ethics.* Edited by Brownstein M, Saul J. Oxford University Press; 2016.

26. Glasgow J: **Alienation and responsibility**. In *In Implicit bias and philosophy: volume 2, moral responsibility, structural injustice and ethics.* Edited by Brownstein M, Saul J. Oxford University Press; 2016.

27. Sie M, van Voorst Vader-Bours N: **Stereotypes and prejudice: whose responsibility? Indirect personal responsibility for implicit bias**. In *Implicit bias and philosophy: volume 2, moral responsibility, structural injustice, and ethics.* Edited by Brownstein M, Saul J. Oxford University Press; 2016.

28. Washington N, Kelly D: **Who's responsible for this? Moral responsibility, externalism, and knowledge about implicit bias**. In *Implicit bias and philosophy: volume 2, moral responsibility, structural injustice and ethics.* Edited by Brownstein M, Saul J. Oxford University Press; 2016.

29. Zheng R: **Attributability, accountability, and implicit attitudes**. In *In Implicit bias and philosophy: volume 2, moral responsibility, structural injustice and ethics.* Edited by Brownstein M, Saul J. Oxford University Press; 2016.

30. Vezzali L, Hewstone M, Capozza D, Giovannini D, Wölfer R: **Improving intergroup relations with extended and vicarious forms of indirect contact**. *Eur Rev Soc Psychol* 2014, **25**:314-389.

31. Cushman F: **Crime and punishment: distinguishing the roles of causal and intentional analyses in moral judgment**. *Cognition* 2008, **108**:353-380.

32. Cushman F: **Deconstructing intent to reconstruct morality**. *Curr Opin Psychol* 2015, **6**:97-103.
   •
A review of recent empirical literature demonstrating that folk practices of moral judgment are not sensitive to intentions alone. Instead, moral judgments commonly show patterns of sensitivity to intentions, actions, and the consequences of those actions.

33. Griggs v. Duke Power Co., 401 U.S. 424 (1971).

34. Washington v. Davis, 426 U.S. 229 (1976).

35. McKlesky v. Kemp, 481 U.S. 279 (1987).

36. Seichshnaydre SE: **Is disparate impact having an impact? An appellate analysis of forty years of disparate impact claims under the Fiar Housing Act**. *Am Univ Law Rev* 2014, **63**:357-437.

37. Rachels J: *The elements of moral philosophy*. 4th edn.. McGraw-Hill; 2003.