“Your views as a social scientist are foreign to 95 percent of the lawyers with whom I work.”

Thomas Newkirk, an Iowa-based attorney who specializes in antidiscrimination cases, was speaking to Mahzarin Banaji, a distinguished experimental psychologist, on the second morning of a two-day seminar on “Implicit Social Cognition and the Law.” The gathering was one of a slate of six Exploratory and Advanced Seminars sponsored by the Radcliffe Institute last spring, and Newkirk’s candid observation was indicative of the program’s potential for creating new connections across intellectual boundaries.

Katherine S. Newman, dean of social science at the Radcliffe Institute, presented opening remarks at the late-May session. Emphasizing the pathbreaking nature of the seminars, she noted, “One of the most difficult aspects of academic research is to assemble the right people in one room just to brainstorm about an idea. You are not here because you’ve already done the research project and written the fifty-page grant proposal. You’re here to see whether an idea has merit and whether there are opportunities to pursue it, possibly in collaboration with some of the people here today.”

The concept that Banaji, who organized and led the seminar, set out to investigate centered on recent research on the science of prejudice and its relevance to the teaching and practice of law. Banaji joined the Harvard faculty in 2002 and serves as the Carol K. Pforzheimer Professor at the Radcliffe Institute and the Richard Clark Cabot Professor of Social Ethics in Harvard’s psychology department. During a lengthy tenure at Yale, she previously led influential research on the social consequences of unintended thoughts and feelings, especially those related to race/ethnicity, gender, and class. “In the course of my work at Yale,” she explained at the outset of the seminar, “I spoke with legal scholars who saw a connection between the implications of my research and issues that are
central to the law. I knew that was a topic I wanted to pursue when I came to Harvard.”

Banaji invited to the seminar a distinguished panel of nineteen social scientists, lawyers, legal scholars, and teachers from Harvard and other institutions. Chosen for their expertise in either psychology or the law—and what Banaji termed “their ability to stretch”—the participants were asked not to deliver prepared remarks. Instead, they were urged to let their diverse perspectives set in motion a series of lively, point-counterpoint discussions of topics that included: the state of the science of implicit bias; implicit bias and points of application to legal questions; anti-discrimination law and the question of intent; profiling and the question of intent; and implicit bias and legal education.

Unconscious Prejudice
A touchstone of the seminar was data collected from tests that register respondents’ unconscious responses to subliminal images of representatives of racial, ethnic, gender, and age groups. Created by seminar participant Anthony Greenwald, a University of Washington psychologist who studies the unconscious roots and levels of prejudice, along with Banaji and Brian Nosek of the University of Virginia, the Implicit Association Tests (IAT) have been available on-line since September 1998 (www.tolerance.org). More than 2.5 million people have taken the test, and the unsettling results reveal widespread unconscious prejudice, even among those who consciously hold egalitarian beliefs.

“The respondents are not lying when they say they aren’t prejudiced,” emphasized Greenwald during the discussion of current psychological research. “But the test helps people to confront their own internal stereotypes. It measures automatic associations that operate outside normal awareness.”

Banaji and others have done research that suggests unconscious reactions in such tests can be altered when respondents are given more time to process the images in a conscious way. Nilanjana Dasgupta, an assistant professor at the University of Massachusetts, shared research she had conducted with Tony Greenwald that indicates it is possible to undermine implicit stereotypes. In that study, test subjects responded with considerably less bias to subliminal images of minorities when they were pre-exposed to photos of famous, admired African Americans and to photos of infamous white Americans, such as famous criminals.

“The difference between explicit and implicit thought processes and the apparent malleability of unconscious thought have important implications,” Banaji observed, “especially when you think about police officers, judges, and others who make critical daily decisions in our society.”

Bridging Theory and Practice
Many of the legal experts at the conference, including Harvard Law School professors Martha Minow and Lani Guinier ’71, scrutinized the intersection of social science research and the law with a cautious eye. In one session, Minow, who has served on the Law School faculty since 1981 and written widely on domestic and international human rights issues, commented, “To the degree that cognitive psychology is coming into the law, it has not yet been constructive.” Suggesting possibilities for further inquiry, she noted, “One application of this research would be to bring about greater self-awareness among those in the legal system. Could it also be brought into play to monitor the use of preemptory challenges in jury selection to eliminate racial bias? Maybe. But we need to be aware that it may be used negatively by those who do not have egalitarian ideals.”

Pushing fellow participants to think more creatively about the manifestations of bias in the legal system, Guinier argued, “Just articulating biases and trying to decrease them is not enough.” In addition to her work at Harvard, Guinier is also the cofounder, with Columbia Law School professor Susan Sturm (another participant in the seminar), of Racetalks Initiatives, an interdisciplinary project that seeks to develop new paradigms for linking racial and gender justice to the project of building more inclusive institutions. “Bias is a collaborative process,” noted Guinier, whose suggestions for future study touched on ways to acknowledge the inevitability of bias and to structure rules and procedures that would enable lawyers, judges, police officers, educators, and employers to confront it more openly.
To Be Continued
The two days of discussions included small break-out sessions, open-ended debates that spilled over into lunch and dinner breaks, and a fair amount of translation of theories unfamiliar to one group of participants or another. Looking back on the event, Banaji observed, “We actually went beyond what I thought we would accomplish.” Particularly fruitful, she thought, were discussions of how the law currently regards the concept of intention—especially in contexts such as discrimination in the workplace—and the relevance of research on unconscious bias to legal policies that are emerging in the area of racial profiling.

For Banaji, the seminar was a first step in a multi-year project that she hopes will culminate in “something of a public nature, perhaps a conference, that will bring attention to these issues as they apply to a variety of fields, including the law, business, and academia.” She sees the concept of an exploratory seminar as critical for helping scholars from disparate backgrounds find common intellectual ground. “Even so, it wasn’t necessarily simple,” she said. “People were talking past each other on occasion, but we did manage to reach some consensus in identifying the interesting and important issues.”

“We didn’t always agree,” added Banaji, “but everyone was very enthusiastic. If we could have met for another whole week, it wouldn’t have been too much.”

Deborah Blagg is a freelance writer and editor.