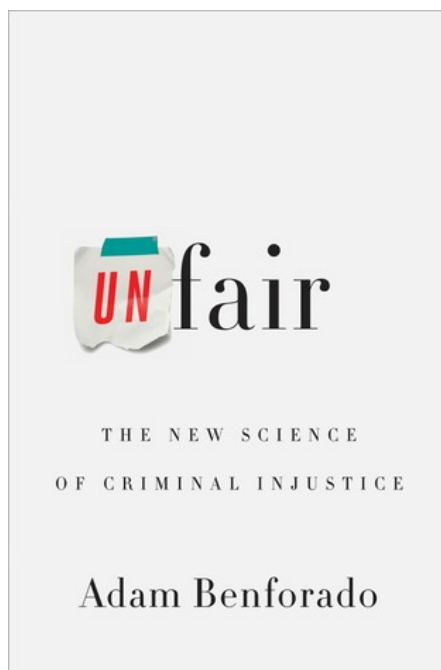




Unfair: The New Science of Criminal Injustice

Adam Benforado

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"A law professor sounds an explosive alarm on the hidden unfairness of our legal system." —*Kirkus Reviews*, starred

A child is gunned down by a police officer; an investigator ignores critical clues in a case; an innocent man confesses to a crime he did not commit; a jury acquits a killer. The evidence is all around us: Our system of justice is fundamentally broken.

But it's not for the reasons we tend to think, as law professor Adam Benforado argues in this eye-opening, galvanizing book. Even if the system operated exactly as it was designed to, we would still end up with wrongful convictions, trampled rights, and unequal treatment. This is because the roots of injustice lie not inside the dark hearts of racist police officers or dishonest prosecutors, but within the minds of each and every one of us.

This is difficult to accept. Our nation is founded on the idea that the law is impartial, that legal cases are won or lost on the basis of evidence, careful reasoning and nuanced argument. But they may, in fact, turn on the camera angle of a defendant's taped confession, the number of photos in a mug shot book, or a simple word choice during a cross-examination. In *Unfair*, Benforado shines a light on this troubling new field of research, showing, for example, that people with certain facial features receive longer sentences and that judges are far more likely to grant parole first thing in the morning.

Over the last two decades, psychologists and neuroscientists have uncovered many cognitive forces that operate beyond our conscious awareness. Until we address these hidden biases head-on, Benforado argues, the social inequality we see now will only widen, as powerful players and institutions find ways to exploit the weaknesses of our legal system.

Weaving together historical examples, scientific studies, and compelling court cases—from the border collie put on trial in Kentucky to the five teenagers who falsely confessed in the Central Park Jogger case—Benforado shows how our judicial processes fail to uphold our values and protect society's weakest members. With clarity and passion, he lays out the scope of the legal system's dysfunction and proposes a wealth of practical reforms that could prevent injustice and help us achieve true fairness and equality before the law.

Unfair: The New Science of Criminal Injustice Details

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From Reader Review Unfair: The New Science of Criminal Injustice for online ebook

Bridgit Morgan says

Unfair by Adam Benforado tackles a difficult subject: the ironic injustice of our criminal justice system in the United States. He argues that our legal system has a wide array of flaws with no easy solution to eradicate them; Benforado suggests that psychological biases come into play in every aspect of prosecution.

The way Benforado sets up his argument (not going to go into a lot of detail; the book is short... read it!), it reminded me a lot of the equal pay issue in America and much of the world. We can't find one simple fix, as it is a multifaceted issue, but talking about the problem could be one step. Similarly, discussing our ever-prevalent biases would be beneficial in creating a more, well, just criminal justice process.

Benforado does a good job in delving into biases we might not even be aware of, including perception bias and the often error-saturated witness memory tests. Although I didn't necessarily agree with all of his solutions, I was still eager to read more. He crafted the book in such a way that it was fast-paced and easy to digest, but still left you with much to think over. As I slowly prepare for the LSAT in a few months (and for law school in about a year!), Unfair has given me a lot to think about in regards to my future career.

Ellie says

Unfair: The New Science of Criminal Injustice by Adam Benforado is a law professor's look at the American justice system-a system that turns out to be, in his view, more of an *injustice* system. Benforado compares today's system with examples from the middle ages and other periods of the past and examines the differences as well as the similarities between the two. He asks, how far have we really come? The answer would appear to be, under huge surface differences, maybe not as far as we think.

Justice is unevenly applied, prisons are expensive and create more problems than they solve, and none of this seems to be truly connected to the prevalence of crime. Benforado looks at the many ways the justice system fails, despite the often well-meaning efforts of everyone in it. And it seems to be getting worse. The vast majority of cases are resolved by plea bargains which the accused often accept even if innocent since the alternatives are gambles with high stakes, the poor, the mentally ill, and people belonging to minority groups are way over-represented, and (as we all know) the rich often walk from even serious crimes because of unequal resources.

Benforado suggests many ways to solve specific problems but his ultimate answer is a radical one: treat criminals as human beings with problems and give help, not punishment. He looks to Europe for examples of how this can be done and how it results in far lower recidivism rates. He also looks at ways in which similar changes are being done on a small scale in the United States. One interesting idea is the use of virtual trials to increase access to the system, save money, and increase objectivity of the lawyers and judges as well as (for reasons detailed in the book) witness accuracy.

I had my own difficulties following Benforado into such alien territory, particularly when he talked about how victims can be helped to forgive the perpetrator of their pain. And I am not sure how these changes would be carried out in a system as large as our is.

On the other hand, Benforado presents a powerful indictment of our current system which seems to be an

expensive failure that creates more pain and suffering than an effective response to crime.

Every American should read the analysis of our current system with its powerful examples of how the current system doesn't work, how, in fact, it fails miserably. And everyone should begin to grapple with ideas of how it can be changed, whether or not they agree with Benforado's suggestions.

I was torn between giving this book 3 or 4 stars. I would have like to give it 3.5 but in the absence of that choice and the powerful analysis of the justice system, I went with 4 stars. I read this book at one sitting, which speaks to the accessibility of the writing and the power of the presentation of an important subject.

I hope this book opens the door for more discussion of our current systems and ways in which it can be changed for the better.

In the interests of transparency, I would like to share that I won this book through LibraryThing's Early Reviewers program in exchange for an honest review. The thoughts and opinions presented here are my own honest reactions.

Chris says

As depressing as you would expect from the title. But this is not just another book about structural racism or corruption, much of it is dedicated to exploring how profoundly incapable we are of living up to the fantasy of our justice system. He references countless studies showing that not just jurors and eyewitnesses, but police, lawyers and judges exhibit shockingly irrational behavior. I read a fair number of topical "the world is going to hell if we don't fix X now" books, and much of this book is completely under society's radar, meaning that comprehensive reform to address these psychological faults is likely on the other side of a long battle that hasn't even started yet.

My biggest complaint about the book is the lack of endnotes. The bibliography is substantial, but Benforado will introduce the shocking results of a study with "research shows blah", with no hint to where in the 30 pages of bibliography for that chapter I should turn. He promises full endnotes on his website, but that is still not available, although a pdf for an earlier draft is available. Perhaps he saved 20 pages by not having endnotes, but it cuts his message off at the knees.

Christine says

It's not too often I use the word "brilliant" in writing a book review, but in the case of "Unfair" I have to say that it is nothing short of that description ... brilliant. There are any numbers of books available on the subjects of false confessions, wrongful convictions and the flaws in both police practices and the court system. I have read several and, in my opinion, "Unfair" is the cream of the crop. If you read only one book on the subject this should be the book you choose.

In the introduction Professor Benforado takes the reader back to the year 1114 to the trial of Clement and Evrard, two peasants accused of heresy. When they got to trial their accusers failed to make an appearance so acting judge Abbot Guibert faced the dilemma that still occurs in all systems of justice – "a strong suspicion of guilt without solid evidence". In the 12th century this was easily solved with a vat of water – the sink or swim decision-making process – "*Murders, adulterers, and heretics would float; innocents would be enveloped*". Obvious to readers living in the 21st century, there is no justice in this system, but is our current

system of justice any more foolproof? One of the most powerful statements Professor Benforado makes in his introduction is “... ***even if our system operated exactly as it was designed to, we would still end up with wrongful convictions, biased proceedings, trampled rights, and unequal treatment***”. He backs this statement up with “*psychology and neuroscience to expose the hidden dynamics undermining our criminal justice system*”. He discusses police procedure, the flaw in administering the Miranda warning, the Reid technique of interrogation, how personal experience cannot help but prejudice judges and juries, the errors allowed in the jury selection process and even the use of “experts for hire” in the courtroom.

Yes, he also cites cases as examples, including the West Memphis Three, The Central Park Jogger, Rodney King and more recently the Trayvon Martin case, but he does not dwell on individual errors made but rather discusses the reforms that could be made to the criminal justice system to prevent errors and misjudgment in the future.

While this book is very well researched and fact filled, using his personal experiments and research as well as explaining the research of others, it is an extremely readable book. Not “text book” like in the least, with some interesting comparisons of our judicial system to that of the role of umpires and referees in professional sports. He also included an unexpected section about the unusual practice, in ages past, of putting animals on trial using it to explain how we are influenced in regard to placing blame for the commission of a crime. As humans, we have a need to punish evil deeds. As Professor Benforado points out this need is so strong that, “*Occasionally we even feel the urge to punish inanimate objects. Be honest: Have you ever wanted to get back at your computer for losing a file or freezing up at a key moment? Have you kicked the chair that stubbed your toe?*”

Another segment I found eye opening was his discussion on body language. Surprisingly everything I have ever heard or learned about reading body language to determine a lie versus the truth is wrong and in the shifty eye/agitated movement department – quite the opposite holds true. And, if for some reason you need information on how to beat a lie detector test that’s in this book as well. Even with the use of real time film becoming more and more commonplace, no system of determining fact from falsehood is foolproof.

Aside from all the points I’ve mentioned above (as well as so much more included in this book) what makes this book so different from all the others out there on the same subject? Professor Benforado actually offers some concrete solutions to some of the problems afflicting our current system of justice. Some, yes, are common sense but his theory on “virtual trials” involving avatars to eliminate prejudice based on race, names and the attractiveness (or not) of both witnesses and lawyers as well as the accused is quite radical.

Professor Benforado has written an important book and I have no hesitation at all in giving it 5 stars.

**I received this ebook at no charge from Crown Publishing via Netgalley in exchange for an honest review **

Darcia Helle says

I can sum up my thoughts in three easy words: Read this book. No, don't even hesitate long enough to read this review. Just buy the book.

For those of you still with me, I'll do my best to offer some specifics. While the author gives us lots of facts to ponder, the content never feels dry or overly academic. Benforado writes in a conversational style, engaging his readers as if he's sitting with friends.

I read a lot on this topic, and this book is one of the best out there. We look at psychological studies and indisputable facts, proving our 'justice' system is anything but fair. We explore topics such as jury selection, which allows and even encourages lawyers to seek jurors with the most prejudicial tendencies in their favor. The side with the most money to spend on consultants for jury selection has an enormous head start in the trial.

Some of the most startling information, for me, came in the section on plea bargaining. I was aware that this often allowed violent criminals to plea down to lesser crimes for lesser time, but I wasn't aware how often it worked in reverse, forcing people who are not necessarily guilty of anything aside from being in the wrong place at the wrong time into plea bargains. This is particularly true with our poor and uneducated class of people, who cannot afford private lawyers and whose court-appointed attorneys are too overworked and underfunded to be of any real value. These people are bullied, scared into believing they will do hard time if they opt for a jury trial. Sadly, this scare tactic works. Less than 10-percent of cases ever go to trial. Our court system has instead become a plea bargaining system.

The psychological information Benforada provides is both fascinating and upsetting. All of us, whether we realize it or not, make quick assumptions based on little fact. I was startled to learn that even something as simple as having a lot of trees in a given neighborhood leads many of us to believe the neighborhood is safer than a similar city neighborhood with few trees. Once we've made an assumption, we look for data backing us up, while ignoring conflicting information. This isn't done maliciously. We aren't even necessarily aware of doing it, which makes it all the more challenging to conquer.

Benforado closes with some intriguing ideas for fixing our broken system. Whether you agree with his ideas or not, his insight opens a dialogue we desperately need to be having nationwide.

Have I convinced you? I hope so. Buy the book. Read it. Give it to friends. Then talk about it. Maybe then we'll finally start working toward change.

I was provided with a free copy by the publisher, via NetGalley, in exchange for my honest review.

Book says

Unfair: The New Science of Criminal Injustice by Adam Benforado

"Unfair" is a fantastic, well-researched look at what is at the heart of our unfair criminal system. Law professor Adam Benforado has provided the public with an eye-opening gem grounded on the best current science, historical court cases and insightful research. He explores the nature of the criminal mind, eyewitness memory, jury deliberations, police procedures, and intuitions about punishment. This enlightening 402-page book includes twelve chapters broken out into the following four parts: I. Investigation, II. Adjudication, III. Punishment, and IV. Reform.

Positives:

1. A well written, well-researched book that is grounded on sound logic and good science.
2. A fascinating topic, the new science of our unfair criminal system.
3. Mastery of a complex topic and innate ability to educate and enlighten at an accessible level.
4. I love the tone and pace of this book. Benforado is very careful not to oversell the benefits of science while at the same time clearly showing what good research has uncovered and the shortcomings of our

system. Kudos!

5. A clearly defined theme, “Injustice is built into our legal structures and influences outcomes every minute of every day. And its origins lie not inside the dark heart of a bigoted police officer or a scheming D.A. but within the mind of each and every one of us.” Intriguing.
6. Provides many interesting cases and immerses sound logic and science into each one. David Rosenbaum’s story illustrates an unacceptable chain of mistakes. “The physical disgust they felt may have generated an explanation for David’s condition that involved lack of discipline and poor character—drunkenness—rather than another potential cause: a stroke, seizure, diabetes, head injury, or drug interaction. And once the ETOH label was attached, David was in trouble.”
7. Confirmation bias and its impact to our criminal system. “Once David was labeled a drunk, the responders and medical professionals appeared to focus on finding evidence that supported that description.”
8. A fascinating look at false confessions and what leads to them. “False confessions and incriminating statements are the leading contributors to wrongful homicide convictions, present in over 60 percent of the known DNA murder-exoneration cases in the United States. More broadly, they appear to have been a factor in about 25 percent of all post-conviction exonerations.”
9. Great use of neuroscience. “Some scientists have claimed that roughly half of the variability in antisocial traits across the population comes down to the genes that people are born with. All things being equal, if you have a Y chromosome, you are several times more likely to engage in violent criminal behavior. And psychopaths and pedophiles are both disproportionately men. But it can be hard to separate out the impact of genes from social factors: after all, men and women are subjected to very different arrays of experiences and expectations.”
10. A look at how lawyers break the rules and what can be done about it. “We should worry, then, about the enormous control that prosecutors have over the state’s evidence and witnesses: they are the ones who decide if and when the defendant’s team will receive the ballistics report or the DNA report or a copy of the witness statement or the initial police write-up.” “Research suggests that the more prosecutors are focused on winning, rather than on achieving justice, the more likely they will be to act dishonestly.”
11. The role of juries. “Of course, the faith we have in our own perceptions and our cynical discrediting of those with whom we disagree can create trouble even when a jury does get to consider the case. As jurors, we are often oblivious to how our own preexisting commitments, beliefs, and biases shape our impressions, but we quickly and easily spot them influencing others.”
12. Surprising findings and tidbits used throughout the book. “Recent research suggests that a person’s weight can influence juror assessments, with male jurors more likely to reach a guilty verdict when the accused is an overweight woman than when she is thin.”
13. So how reliable is our memory? “There is, for instance, compelling evidence that eyewitness identifications are frequently inaccurate. When the actual perpetrator appears in a lineup along with several innocent fillers, witnesses fail to pick anyone out about a third of the time.”
14. The impact of race. “Research suggests that people are 50 percent more likely to make an error in identifying a person from another race, although individuals who have a lot of contact with the other race tend to be more accurate.”
15. Great stuff on separating truth from untruth. “Overall, it turns out that we are quite bad at ferreting out deception. In a recent analysis of more than two hundred studies, participants were able to identify lies and truths correctly just 54 percent of the time, only marginally better than chance.”
16. An excellent chapter on judging. “Although she was forced to retreat from her statements about how gender and ethnicity influence judging, Justice Sotomayor was right: identities and personal experiences do “affect the facts that judges choose to see.”
17. So what drives us to punish? “Indeed, there is a growing scientific consensus that it is a desire for retribution—not deterrence or incapacitation—that has the strongest influence on why we punish.”
18. A look at prison life. Ugly facts. “A country that abolished slavery 150 years ago now has a greater number of black men in the correctional system than there were slaves in 1850 and a greater percentage of its black population in jail than was imprisoned in apartheid South Africa. Black, male, and no high school diploma? It’s more likely than not that you will spend time in prison during your life.”
19. Compelling arguments on what we can do to improve our society. “The starting point of any reform

comes in understanding and accepting this reality. We all need to look at the criminal justice system through new eyes. So, raising awareness about psychology and neuroscience research is critical.”

20. Notes and a formal bibliography included.

Negatives:

1. I have one main negative, the lack of links to notes. A real shame since I’m one of those readers who loves to dig deeper into the references. That being said, I’ve read and reviewed a number of books that makes references to such research and Benforado is on point.
2. Charts and diagrams would have complemented this excellent narrative.

In summary, I absolutely loved this book! It has two of my favorite subjects fused into one, where science meets our criminal system and all that it implies. Benforado won me over with his mastery of this fascinating topic, great pacing, and excellent insights and dare I say judicial use of the best of our current science. It’s been a while since I’ve read a book this good, kudos. I can’t recommend this book enough.

Further recommendations: “The New Jim Crow” by Michelle Alexander, “Uncertain Justice” by Laurence Tribe, “Thinking Fast and Slow” by Daniel Kahneman, “The Nine” By Jeffrey Toobin, “The Roberts Court” by Marcia Coyle, “Braintrust” by Patricia Churchland, “The Blank Slate” and “Better Angels of Our Nature” by Steven Pinker, “The Believing Brain” by Michael Shermer, “Subliminal” by Leonard Mlodinow, “We Are Our Brains” by D.F. Swaab, and “Are You Sure?” by Ginger Campbell.

Judy N says

This is a crucially important book: the author applies social theory and psychology to the justice system, evaluating the process of police interrogations, eyewitness identification, jury selection, the huge number of people incarcerated and the use of solitary confinement--essentially a review of the entire justice system, viewed through the lens of social science and history. Although I work with people who are mentally ill and frequently incarcerated, my understanding of the justice system comes largely from television shows, and this book was illuminating. It contained a tremendous amount of information. My criticisms are that at times it was slow going and not engaging, and that the ultimate solutions proposed were primarily to utilize virtual reality to remove bias. I think this book should be required reading, and as someone who is shocked when John Oliver exposes the use of bail to incarcerate poor, non-violent offenders and the fact that prisons are virtual poor houses, and who first hand experiences that prisons have become de facto mental health facilities, I just wish the book had been more engaging, because the information is so vitally important.

Emma Deplores Goodreads Censorship says

3.5 stars

This is a thought-provoking critique of the American criminal justice system based on psychological research. It is more of an overview than a deep dive: in 286 pages of text (excluding the bibliography), the author discusses everything from snap judgments in investigations, to false confessions and erroneous eyewitness identifications, to the reasons some lawyers behave unethically, to misleading expert testimony, to judicial bias, to the workability of prisons. These are all important issues and the author, a law professor, has many interesting proposals to improve on the problems. Unfortunately, he undermines his message by failing to source his facts, leaving readers with no authority for his arguments; any lawyer should know

better.

There is a lot of interesting material here: the studies showing how common interrogation techniques, such as offering leniency for a confession, induce students to falsely confess to cheating; the correlation between more stereotypically African features and longer sentences; the tendency of the public to view third parties as biased against their side (Republicans and Democrats both believe the Supreme Court leans to the other side, by approximately equal margins); the way the point-of-view of a camera can affect viewers' opinion of events (when interrogations are taped, viewers are more likely to see them as coercive when the camera is above the suspect, and as non-coercive when it's above the officer).

The author discusses a number of psychological shortcuts that can lead to ugly results in the justice system: for instance, "narrow bracketing," in which if your experience is that, say, two-thirds of the claims of a particular type are valid, and you just granted two, you are more inclined to deny the next one to keep the numbers balanced. And there's a good discussion of how people identify dishonesty: you really can't tell through body language – at best you can tell someone is nervous, but in a high-pressure situation like a courtroom, this likely has more to do with the person's comfort in that setting and ability to project confidence than their honesty.

The book also discusses the reasons for criminal behavior, which often have less to do with deliberate moral choice than one might imagine. There's a fascinating story of a man who suddenly becomes obsessed with sex, collecting porn, molesting a young girl, and propositioning everyone – until a tumor is discovered on his brain and removed; then he's fine until the tumor returns, at which point he starts up all over again. Brain damage may be a less isolated cause of criminality than one might imagine; apparently, while less than 9% of the general population has suffered a traumatic brain injury, around 60% of incarcerated people have. Less dramatically, physical environment also influences one's actions: wearing a mask makes people more aggressive, while holding a gun biases people to perceive images as more threatening.

Rather than simply detailing problems, Benforado does have plenty of suggestions for change. Some of these are relatively small and seem like excellent ideas. For instance, officers should be trained in cognitive interviewing (asking few open-ended and non-suggestive questions) of witnesses of crime to avoid tainting their memories, while witnesses about to view a lineup should be told that the suspect may or may not be included (to prevent their simply choosing the one who looks most like the perpetrator). In fact, having lineups administered by a computer may be even better, to prevent officers' unconsciously influencing a witness's memory through their approval or body language.

Some of the suggestions are much more global, and I give Benforado credit for thinking big and outside the box. One intriguing idea is virtual trials: record the trial in advance and give jurors just the information, presented through avatars. This would eliminate biases based on physical appearance and performance, and allow a trial to be shown to multiple juries at little additional cost.

Meanwhile, the author shows discomfort with many aspects of the adversarial system, though his alternative proposal isn't quite clear. He correctly points out that the procedural safeguards we build into the system in an attempt to prevent error often become ends in themselves, frustrating their original purpose. Take Miranda warnings for instance: if an officer fails to give them, a perpetrator's confession can be excluded and therefore a criminal may go free, while on the other hand, judges rarely entertain the idea that a confession might be coerced once an officer has recited those lines – even if we're talking about a highly suggestible suspect who was questioned for many hours, falsely told that the police had evidence against him, and promised leniency in exchange for a confession. And there's simply not time, based on the many procedural safeguards built into our system of trials, for more than a tiny percentage of cases to be fully heard; the vast majority plead guilty, in a system the author sees as highly suspect. But what could we do instead? – it's difficult to decipher Benforado's ideas on this point, aside from idealistic notions of truth-seeking and vague references to Germany's having a different system.

But the book does have its drawbacks. Rather than endnotes to which one can refer for specific facts and studies, the author simply includes a bibliography for each chapter, with no indication as to which of the dozens of works cited include which information. This shows off the author's reading while offering no help to his readers. This is particularly unfortunate on the topics for which he provides only vague information: for instance, he tells us that solitary confinement alters the brain in observable ways, but not what part of the brain is affected, what this part does, and what changes are seen once prisoners are freed. Ultimately, the book leaves readers with the choice between taking the author's word for his claims or doing their own research, starting more or less from scratch. This is an incredibly poor decision for someone who wants to profoundly change entrenched parts of officialdom.

Less damaging but also unfortunate is the fact that, while Benforado presents information in a clear and readable style, his storytelling is less than stellar. He begins each chapter with a few pages of introductory fluff, which is a great opportunity to tell compelling human-interest stories related to the topic at hand – but more often than not he squanders it. For instance, the chapter dealing with physiognomy begins with rambling about how people are fascinated by mugshots. Okay.

Finally, while the book's portrayal of the justice system as almost medieval – snap decisions are based on incomplete information and the gut feelings of those making them, without scientific basis and generally without oversight – is fairly accurate, in some ways the book does present an overly gloomy picture. I suspect some readers might be unduly horrified, not realizing that most criminal cases aren't based on eyewitness identification by strangers or police pushing for a confession from whatever black or Hispanic man happened to be near the crime scene. Most people plead guilty because they are, and the evidence against them is good. This in no way excuses the miscarriages of justice that go on every day, but I hope readers don't come away with the idea that courts and police produce utterly random results.

Overall, I'm glad I read this book: much of the information it contains is fascinating, and it's presented in a clear and concise way. These are issues people should be thinking about. However, the lack of sourcing is a serious limitation; I can only hope it will be corrected in future editions.

Charlene says

This book is EXCELLENT! Put it on the top of your to read list if you are interested in the Justice system. This is the book I have been waiting to read. I taught criminology and criminal justice to undergrads and am now wishing Adam Benforado had written a textbook. I truly hope he turns this incredible popular science book about crime, decision-making, and justice into a textbook for the next generation of students who are interested in taking a job in some aspect of our criminal justice system. Whether students want to be lawyers, judges, police officers, or whether they will simply be jurors or vote for any judge or policy associated with crime in America, they need this information as a prerequisite. In fact every American citizen should fully understand the various aspects of the justice system, since our tax dollars fund in and we play a part in determining what ideas and societal norms become laws.

What this book is not:

This book is not solely about race and the justice system. Until I read this book, I would have said the most important book to read about our justice system was Michelle Alexander's *The New Jim Crow*. I still think it is a seminal work on mass incarceration that should be on everyone's reading list. No matter if someone is tough on crime or so soft they want to help every offender instead of punish them, they should fully understand the material in Alexander's book so they become familiar with how our justice system is particularly unjust when it comes to race-- even if the individual people in the justice system have a genuine

desire to be fair. I would recommend reading Alexander's book along with this. This book includes race but it is not the primary focus.

What this book is:

This book is an impressive compilation of stories related to criminal justice that presents *extremely* fascinating, but often little known, facts about how judges, prosecutors, jurors, and even criminals make the choices they do. It's about the accuracy of the human brain. Benforado provides the most important and robust science that the field of criminology has to offer. Too often I have read books which choose to sensationalize various crimes or jump to conclusions about neuroscientific evidence instead of employing a skeptical approach that results in information that is both accurate and fair. Unlike so many authors in his field who write for the lay-public, Benforado didn't use fear mongering, subpar studies with subpar methods *, or dramatic statements aimed at shocking his audience. He didn't need to. The truth is better than fiction. There is no need to embellish when you take the time to gather all the intrinsically shocking information available and present it in such an organized, exciting, relatable, and extremely logical* manner.

[*There was a very small section where he seemed to overreach when talking about the motivations of prosecutors.]

At its core, this book is a discussion about how just our justice system is, and what we can do to try to ensure optimal justice. We are one of the wealthiest nations in the world. We pride ourselves on our freedom and our ability to govern fairly, and yet, we are human. Adding to that, we are a group of humans with opposing viewpoints. How can each person, no matter their political leanings, build a system that is fair to all people? How well do we know our own brains? If we were a judge, a prosecutor, a police officer, a juror, how well would we do in dispensing fair justice? If you are like the typical, and often well meaning, judge, lawyer, juror, etc, the answer is, "Not very well."

Benforado examines the heuristically driven thinking process that governs how humans go about punishing, including who we punish, how severely we punish, and how often we punish. What are our motives for these practices? How have humans in America come to build a justice system that is so overloaded, it literally cannot handle the number of people we arrest? How have we created a system that forces a very large number of innocent people to plead guilty? How easy is it to scare another human being into signing a piece of paper, saying they committed a crime they did not commit? How often does this happen? How easy is it to convince a teenager, a suggestible person, or someone with a low IQ that they committed a crime? How often does that happen? At the end of the day, do we really want to *do* something about crime or do we want to *feel* like we are doing something about crime? Are other countries doing better or worse than the U.S.A.?

Benforado's discussion of how crime statistics are bullshit was a highlight. I think he could have and should have gone a bit deeper with this topic but was extremely happy to see it covered at all. The truth is that in the U.S., we have a perception that black people commit most of the crime. It is simply not true. A black person who engages in the *same exact* behavior as a white person is arrested, charged, found guilty, and locked in a cage significantly more often and for significantly longer periods of time than white people engaging the same behaviors. Police go into poor black neighborhoods and stop and frisk black people far more often. Since they are targeted in this way, they make it into the crime statistics as "guilt of a crime," whereas white people doing the same behaviors are let go more often. We don't have an accurate view of who commits more crime; and yet, we act as if we know. This is a huge problem and one that deserves attention.

Benforado does not discuss the drug war and mass incarceration in depth the way Michelle Alexander does. For this reason, I highly recommend reading The New Jim Crow after you are done with this book.

Taryn says

Unfair: The New Science of Criminal Injustice is an enlightening and well-structured book about the ways in which the current US criminal justice system fails us. Adam Benforado, an associate professor law and a former attorney, focuses on how our hidden biases affect the justice system. He explains the problems in each part of the legal process and offers possible solutions.

In fact, we are not such cool and deliberate detectives; rather, we are masters at jumping to conclusions based on an extremely limited amount of evidence. The automatic processes in our brain (commonly referred to as System 1) quickly take in the scene and then reach a conclusion about the victim based on what is right in front of us, without considering what we might be missing. Ambiguity and doubt are pushed to the side.

In certain circumstances, our deliberative and effortful mental processes (System 2) can override those initial impressions--and raise the specter of uncertainty--but often, they do not. The less we know, the easier it is for us to produce a coherent story, and it is the consistency of the narrative that predicts how much confidence we will have in our assessment. The unfortunate result is that we may become overconfident precisely when we have limited or weak evidence.

The book opens with an example of medieval justice. Benforado suggests that just as we laugh at the irrationality of our ancestor's legal methods, our descendants will be shocked at the naiveté behind our modern day legal processes. The author walks the reader through each part of the legal process, explains the current problems, and suggests solutions. Some of the solutions are surprisingly simple to implement, e.g. data collection on judicial decisions to show hidden biases. The book is extremely well-organized. Here is the table of contents:

Part 1: Investigation

1. The Labels We Live By - The Victim
2. Dangerous Confessions - The Detective
3. The Criminal Mind - The Suspect

Part II: Adjudication

4. Breaking the Rules - The Lawyer
5. The Eye of the Beholder - The Jury
6. The Corruption of Memory - The Eyewitness
7. How to Tell a Lie - The Eyewitness
8. Umpires or Activists? - The Judge

Part III: Punishment

9. An Eye for an Eye - The Public
10. Throwing Away the Key - The Prisoners

Part IV: Reform

11. What We Must Overcome - The Challenge
12. What We Can Do - The Future

Bibliography. Endnotes are available at the author's website.

The cases and experiments mentioned were fascinating. Some aspects this book reminded me of *Predictably Irrational* and *Freakonomics* series, but *Unfair* is deeper, more focused and more academic. Some of the interesting topics discussed: how disgust makes people's moral judgments significantly more severe, how

women labeled as virgins or married are viewed as more responsible for sexual assault than when labeled as a divorcée, how we are all still closet physiognomists, how the act of holding a gun biases the gun holder's assessment of threat, how camera position during arrests and interrogations can sway the verdict, the impact of race on the severity of punishment, the impact of facial features on the severity of punishment ("in cases where the victim is white, the more stereotypically black a defendant's facial features, the more likely he is to receive the death penalty"), how a terrorist attack can impact unrelated cases, how the time of day can affect punishment, how a video of brutality shown in slow-motion can alter juror perception of an event, and how judges aren't quite as objective as they would like to believe.

Research suggests that once we have summed someone up, we search for data confining that identity and disregard or minimize evidence conflicting with it. Of course, it doesn't feel that way. It feels as though we are just dispassionately sorting through the details. But really our minds are bending the facts, sawing off inconvenient corners, and tossing away contradictory information so that everything can be fit into our ready-made boxes.

Some of my key takeaways from this book:

- (1) We all have hidden biases that we are not consciously aware of; police officers, judges and lawyers are not immune to these hidden biases. Most people aren't actively trying to be unfair.
- (2) It is surprisingly easy to rationalize unethical behavior.
- (3) We tend to see our motivations as purer than they actually are (seeking justice vs. seeking vengeance).
- (4) Some aspects of punishment are counterintuitive to the results expected, e.g excessively long solitary confinements.

This is not a quick and easy read, but it is really interesting and enlightening. I would recommend this to book to everyone, especially voters in the United States and people who are interested in the intricacies of the human mind and its inherent biases. There is a bit of a liberal bent in parts of the book which might deter some from reading it, but I don't think you have to be comfortable with 100% of Benforado's proposed solutions in order to find value in this book. In addition to this book, I would also recommend *Nonsense: The Power of Not Knowing* because of overlapping themes (blind certainty and cognitive dissonance).

Doubt isn't the enemy of blind justice--blind certainty is.

I received this book from the LibraryThing Early Reviewers program, in exchange for an honest review.

Rachel says

I was a winner of a Goodreads Giveaway for this book.

Unfair's intro talks a big game, promising to cover a range of issues and delve into the biases and many barriers to justice in our country faced by law enforcement, victims, defendants, lawyers, judges, and jurors (and everyone in between). I was so thrilled that this book delivered on all it's potential.

Benforado is an incredibly impassioned and unflinching writer who addresses the history of our issues as well as practical approaches to remedy them. I do think perhaps this book needs a trigger warning as the author often uses specific cases (sometimes of a violent/sexual nature) as examples of instances in which certain biases came into play and justice was not served, describing the crimes in very straightforward but graphic detail. However, I think this serves to remind us of what is at stake and who suffers when justice is miscarried.

The only thing that bothered me about this book was the way that research results were explained. While the author did caveat in his intro that correlation does not equal causation, he would often present study findings in a way that could easily be misconstrued as causal and did not discuss any important potential third variables. I don't think it's enough to say "correlation isn't causation" in one paragraph and just move on; you need to reinforce this idea throughout, especially when presenting sensitive findings about different groups and characteristics contributing to criminality.

One of the biggest victories of this book is that it humanizes many of the people that society often demonizes, and who have been the most disenfranchised by a failing justice system. It reminds us of the power of the situation and the danger of snap judgements. It reminds us that to err is human, but perhaps justice shouldn't be human. I was very moved by different passages in this book and was especially grateful to have read it shortly before receiving a jury summons; I think this book should be standard reading for high school seniors on the cusp of entering society as potential jurors.

This book is important. I plan to apply and share these lessons and I hope that others who read this book are similarly motivated. Maybe then, we will have a justice system that truly provides justice for all.

Ann Rufo says

A lot of times I'll hear interviews with authors on NPR and I'll feel compelled to read the book they're discussing. I think this is because there is something magical in the specific tenor NPR hosts use - slow, with exacting pauses, and raises in excitement of voice, and something overly smooth in general that convinces me I must trust them and read what they suggest. That I also work in criminal defense made me pick up Benforado's book, just as the interview was ending.

Read this book. If you work in the criminal justice system, if you think you might be called for jury duty, if you have opinions about crime, criminals, trials and the courts, if you watch bad court tv dramas and think you therefore understand it all, for the love of god, read this book. First of all, it's an incredibly compelling read - well written with a great combination of science and real life experiences. Essentially, Benforado ties in research and findings in neuroscience to explain/discuss situations and outcomes in the criminal courts - from when a jury is more likely to acquit, to when police are less likely to respond appropriately, or vice versa. The same kind of hidden assumptions, biases and persuasions that lead me to trust NPR show up as apparent in every individual affecting how they interact with the criminal justice system.

Though I don't quite agree with his suggested plan of actions for finding fairness, they're interesting ideas and worth exploring. I bought this book for my entire office I love it so much and felt it was so important. Surely you can manage to get one for just little ol' you.

Brooke says

Man I am just not made for non-fiction reads.

First off I'll say I got this book because my former law school professor wrote it. Benforado was a funny teacher and his classes enjoyable. I listened to the audiobook version of this and was disappointed he did not actually narrate the book himself (I wasn't expecting him to but it would have been nice) I enjoyed the first part of this book, which had case studies, a lot more than I did the later parts, which offer possible solutions.

No doubt our legal system is incredibly unfair and so much needs to be changed. That being said I have to credit Benforado himself for teaching me how to disagree with some of this book.

I feel like I should get CLE (continuing legal education) credits after finishing this. Not bad overall, I would even recommend to others who already have an open mind about our criminal legal system. But personally I think some of the solutions offered at the end would not help our already brittle system.

Graeme Roberts says

The criminal justice systems of the United States work very badly. Adam Benforado, a law professor at Drexel University, demonstrates their deficiencies under the broad headings of investigation, adjudication, punishment, and reform. He is very fair in pointing out the progress that has been made, both here and in other countries, and creative in suggesting and supporting possible solutions. This is the first book that I have ever read that looks to science, data, and intelligence, both human and machine, for better ways. It felt like stepping out of the dark ages, looking back down into a stinking cesspit of crime, punishment, corruption, deprivation, poverty, mental illness, stupidity, and race.

I have the prejudice that academics are verbose, even in writing for general audiences, and I wished that Mr. Benforado would just get on with it. The depth and fairness of his narrative kept me on board, however.

This may seem trivial, but when I read wordy books I look to chapters as milestones. This book (and a minority of others) follows the unfortunate practice of having the runners at the top of the pages show the author's name on the verso (left-hand) pages (in addition to the page number). The practice of showing the chapter titles is so much better, because we can use them to flip through and quickly find the next chapter.

Nathaniel says

This was an interesting book that made a few good points that were ultimately swamped by some very poor judgment. I like where he's coming from. The basic idea is to take the popularized research of Kahneman and Traversky and others (e.g. Thinking, Fast and Slow) and apply it to criminal justice. Since I've already read most of those books, the examples in this book were almost all familiar to me already, but for the most part Benforado is making solid, relevant points. For example: we tend to drastically overestimate our capacity to observe and remember, and this is clearly relevant to the amount of weight we put on things like identifying people in lineups or eye-witness testimony. The book is strongest when it keeps things simple and uses real-world examples of how these tendencies can lead to horrible outcomes. I also really liked some of the suggestions along these lines. Benforado points out that physical evidence is now protected by elaborate policies and laws, but that we have no such safeguards in place for psychological evidence. Something like a resident, in-house psychologist (or at least some upgraded policies) to try and minimize mental contamination of memory the way we strive to avoid physical contamination of evidence makes a lot of sense. He also argues that crime labs should become more impartial (rather than tools of the prosecution) and should release their results to prosecution and defense simultaneously. Even though I can imagine all kinds of problems with the execution, this also makes sense.

And, while I'm at it, here is one of Benforado's most interesting arguments:

And as we've heard, innocent parties can be compelled to plead guilty if they perceive the risk of going to trial as too high. When that happens, not only do we send an innocent person to

prison, but we also close the case, which means that the police stop looking for the guilty party. The plea bargain, then, is best likened not to a short cut, but to a short circuit of our constitutional guarantees of due process. This presents a profound irony. While the adversarial system was introduced to protect defendants, the overwhelming resource requirements of that system have helped to drive a shift to plea bargaining, which has far fewer safe guards than a non-adversarial trial. In light of this reality, we need to abandon the widely-held belief that the truth is best revealed through a vigorous clash of zealous partisans armed with an opposing arsenal of technical legal rights, rules, and procedures. The resulting battles are dramatic, but they do not lead inevitably to justice, particularly given that their costly nature has forced us to resort to ugly, backroom deal making.

So, adversarial trials are the best (when they're fully funded), but the failure mode of adversarial trials is plea bargains, and those are *worse* than non-adversarial trials. Ergo, Benforado says, we should abandon the entire principle of adversarial criminal trials and go to a European model where the judge takes a more active role and the emphasis is less on prosecution vs. defense and more on adjudication.

There's some validity to that, although I'd argue that a better approach would be to drastically reduce the number of non-violent prosecutions and maybe upgrade the budget for public defenders so that we can wean the system off of plea bargains without abandoning the principle of adversarial trials.

Still: at least here Benforado is making a lot of sense. In several other places, however, he seems to abandon that sense entirely. For example, he argues in multiple places that modern interrogation techniques (and we're talking legal interrogations, not rogue cops breaking law and policy) are morally equivalent to medieval torture. E.g.

We have been lulled into thinking that discarding the rack and the back-room brute was enough. But all we have done is change the form of our coercion. The wounds and scars are now hidden, which leaves us in a far more precarious position. How do we spot a coerced confession when there are no bruises or welts? How do we know to sound the alarm bell when no one wears the torturer's cowl or beats out a confessions, innocence be damned?

Again: what he's talking about here are things like marathon, 24-hour interrogations or lying to suspects, techniques that are harsh but have been deemed legal. Now, I agree that maybe we need to further reform our laws and/or policies here, but to say that we're literally at the same level as using state-sanctioned torture to coerce confessions is just insane.

He also seems to be going a little far afield (to put it mildly) when he starts talking about how criminal law will change in the coming *centuries* and then talks about the advantages of having trials in virtual courtrooms. Think: Second Life. OK, this is actually quasi-interesting, but it's just tacked on at the end and comes across as weirder than it really has to.

But the biggest problems I had with the book weren't just about exaggeration, but were rather philosophical in nature.

1. He frequently talks about science that suggests criminals are acting under diminished capacity without admitting that most of that line of research also strongly suggests we don't have free will *at all*. So, for one thing, it's sloppy to talk about how criminals might not have free will in this case or that case without taking

a comprehensive look at what you mean by "free will" and who has it, and for another, he is really playing with fire when he talks about sidelining retribution in favor of reform. Which takes us to:

2. He flat out states that the ultimate objective of a criminal justice system should be to reform criminals and never really defends that position. And it's a position that needs defense. To see why, I would highly recommend a C. S. Lewis essay: The Humanitarian Theory of Punishment. In the essay, Lewis argues persuasively that if we view crime in terms of sickness and criminal justice in terms of healthcare / rehabilitation then we are actually dehumanizing criminals. For one, we no longer tie punishment to severity. In a retributive system (which is what we currently have) then once you do the time you get out. Period. But in a rehabilitative system, then there's no reason why you could not be held in the system indefinitely until you're cured, regardless of the severity of the initial offense. That might sound preposterous, but it's what rehabilitation *means*. A hospital doesn't release you until you're well, period. So a prison dedicated to reforming people would have no reason but to operate under the same standard. There's also the fact that there's something fundamentally anti-humane about treating people as though they cannot be responsible for their own actions. In other words, I'm fundamentally opposed to Benforado's core guiding principle, but he never substantively engages on it.

So, here's one more quote I think gives a good flavor of how I viewed the book:

We treat the frameworks they [the Founding Fathers] developed as optimal, incapable of improvement, and we therefore deny the very possibility of reform. But if they were alive today, the visionaries of yesteryear would have quite different visions. And our laws and legal practices are just as likely to benefit from the centuries of progress--and, yes, science--as building design, medicine, and transportation. To think that Henry Ford would build the same Model T today is absurd, and yet we convince ourselves that James Madison would deliver an identical copy of the Bill of Rights--and that other modernizers of the criminal justice system would choose to disregard the latest research on human behavior if they were our contemporaries. But why? Why should law be different?

Parts of this I strongly agree with. For example: "if they were alive today, the visionaries of yesteryear would have quite different visions." To this I say: amen. The Founding Fathers were revolutionaries, after all. That was sort of the whole point. We do not do their legacy justice if we take their revolution and make it a new, unchangeable dogma.

On the other hand, Henry Ford and the Model-T are a *terrible* example of why this is the case. The Founders were revolutionaries, yes, but they believed they were enacting timeless principles. The change from 18th century to 21st century is not--as it is with gadgets and gizmos--about a complete overhaul, but rather about understanding how to reconceptualize timeless ideals--like the innate dignity of every human being--into new contexts. What does this have to do with technological progress? Not a thing, as far as I can tell.
