

Memory in Legal Principle and Process

Legal Studies 190.10 – Fall 2024

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Human memory plays a key role in legal thought, institutions, and procedures. In a wide range of circumstances – evaluating the reliability of testimony, appreciating challenges to judges and jurors in learning and retaining information presented during a trial, assessing intent and culpability for plagiarism, or considering the admissibility of a plaintiff's repressed memories – assumptions about the nature of memory play a vital role. This course will explore recent progress in the understanding of the nature and brain substrates of human memory. For each topic, the relevant basic cognitive psychology and neuroscience information will be introduced in non-specialist terms. We will then consider the implications of those insights for philosophical attitudes, legal processes, and societal institutions.

Although the core topics of the course are related to memory, we will also consider several other issues at the nexus of psychology and the law: mental status and responsibility, approaches to punishment, and rationality in legal thinking.

Learning objectives:

- A. To become acquainted with the fundamental processes of human memory and their brain substrates, as relevant to real-life memory challenges.
- B. To be able to identify instances of social policy and legal process in which memory veracity is crucial, and to choose appropriate procedural approaches in such circumstances.
- C. To appreciate the promises and perils of memory-related physiological detection of deception in principle and practice.
- D. To understand the memory bases of individual and collective psychological trauma, and to be aware of their implications for disability, tort circumstances, rehabilitation, and reconciliation.
- E. To explore additional key points of contact between psychology and the law, such as estimation of responsibility and decisions about punishment.

Course requirements:

- Reading and advance commentary (for 10 of the 11 posted sessions; one of these is the autobiographical memory exercise of week two, which must be done by all students; aside from that, you may take one week off) - 20% of the course grade.
- Attendance and active participation in discussions - 20% of the course grade. 2% will be deducted for each of more than 2 absences.
- In-class oral presentation of one of the course topics - 30% of the course grade.
- Comprehensive written analysis or position paper on a relevant topic of individual choice. That paper may be on the same topic as the classroom presentation, or any other relevant topic, with instructor approval - 30% of total course grade.
- Assignment guides for all required submissions will be posted on the course website.

Advance commentary: In advance of class meetings, you are required to contribute to an on-line forum regarding the assigned reading (in the Discussion section of the bCourses site). This will take the form of brief responses to specific cue questions and thought challenges that will be provided by the instructor. These commentaries are due each week in advance of the seminar meeting. You are expected to read through all of the contributions before each meeting. The assignment is designed to help you reflect on the assigned reading and kick-start our seminar conversation. (You are allowed one “absence” from the bCourses forum; late submissions will receive half credit.)

Class presentation: Each participant will be in charge of presenting an enrichment topic listed in the syllabus below (generally following up on the theme of the previous week’s class). Presentations may be up to 30 minutes (it sounds like a long time, but it’s easier to give longer presentations than shorter ones...). The instructor will be available (live or Zoom, by appointment) to advise and assist in the preparation of the presentation. You may suggest an alternative relevant topic to those listed in the syllabus, subject to instructor approval. After the presentation, the presenter will co-moderate the class discussion of the topic (with the assistance of the instructor).

Academic integrity

Please review Berkeley’s Academic Integrity Policy: <http://sa.berkeley.edu/conduct/integrity>. University rules require that you comply with this policy. If you have questions as to what it requires, please contact me.

Accommodation

Students who require accommodation for a disability should refer to policies here: <https://dsp.berkeley.edu/students>. As the instructor, I must receive an official accommodation notice from DSP as soon as possible.

Course topics (Note: read the articles in the order listed)

9 September – Psychology and the Law; Introduction to the Science of Memory

Interfaces between psychology, neuroscience, and the law

Reading: Spellman and Weaver (2022) (*can be read after class*)

The mechanisms of memory

Reading: Squire & Wixted, 2015; Schacter, 1999, 2022 (*all optional*).

16 September – Memory of repressed trauma and false memory creation I

Please submit the autobiographical memory exercise (in Assignments section of the bCourses site) by 13 September, 11 pm.

Infantile amnesia, the interpretation of dreams, and unconscious repression: The ghost of Freud in the courtroom

Reading: Kihlstrom, 2006; Bauer, 2004; Gammon, 2016.

23 September – Memory of repressed trauma and false memory creation II

Student presentation – Trauma tort law

Repressed-recovered memories of sexual, physical, and emotional abuse

Reading: Howe et al., 2017, ch. 2; Otgaar et al., 2019.

Memory reconsolidation and the effects of misleading post-event information

Reading: Braun et al., 2002 (*optional*).

30 September – Reliability of eyewitness testimony I

Student presentation – Hypnosis and memory

Signal detection approach to suspect identification

Reading: Gronlund & Benjamin, 2018. *Optional*: Gronlund et al., 2014; Wells et al., 2020; Wixted & Wells, 2017 (pp. 1-20 and 49-55).

Efficacy of memory reconstruction enhancement methods

Reading: Fisher et al., 2011.

7 October – Reliability of eyewitness testimony II; Failures of memory

Student presentation – Juror memory biases and limitations

Student presentation – Neuroscience prediction of future recidivism

Lifespan differences in memory reliability: Recent and remote memories

Reading: Fitzgerald & Price, 2015 (*just read introduction and discussion*).

Cryptomnesia: Honest lying

Reading: Gingerich & Sullivan, 2013.

14 October – The echoes of trauma

Student presentation – Children as witnesses

The neurophysiology (extinction, reconsolidation interference) of memory erasure

Reading: Haig, 2007; Kolber, 2011; Treanor et al., 2017.

[May be included if time allows: Post-traumatic stress disorder (PTSD) and acquired phobias:

Understanding the memory systems bases of the conditions, their treatment challenges, and their disability costs. Readings: Ross et al., 2017; Yehuda et al., 2015.]

21 October – The evolutionary psychology of punishment

Student presentation – Eternal Sunshine of the Spotless Mind? Ethics of traumatic memory erasure

Student presentation – Cryptomnesia and Plagiarism

Theories of punishment and psychobiological factors

Viewing: https://www.youtube.com/watch?v=Lnhm_GPy8Ao

Reading: Levy, 2022.

28 October – Memory and mind reading; Rationality in judicial decision-making

Student presentation – Admissibility of polygraph evidence

Memory-based physiological lie-detection methods

Readings: Farah et al., 2014; Mameli et al., 2017; Ofen et al., 2017.

Student presentation – Rationality in judicial decision-making

4 November – Responsibility and legal competence

Responsibility – age, intellectual capacity, mental illness, psychopathy

Readings: Cohen & Casey, 2014; Reardon, 2014; Fox et al., 2011.

Guest lecture: Dr. Josh Weiss, clinical psychologist, expert on harm assessment: Is psychopathy real?

11 November – Veterans Day; no class.

18 November – Prospective memory

Student presentation – Psychopathy in legal context

Responsibility to remember

Reading: Einstein & McDaniel, 2005.

Student presentation – Responsibility to remember

25 November – Collective memory I

Student presentation – Psychiatric responsibility and preventative detention / Insanity defense

Memory and restorative justice – individual and societal

Readings: Bolitho, 2017. Optional: Blustein, 2014 (selections).

2 December – Collective memory II

Student presentation – Dissociative Identity Disorders

Monumental deconstruction, collective memory, and social justice

Reading: Gallant & Rhea, 2010; Klein, 2021, Liu & Szpunar, 2023 (Roediger, 2021)

9 December – RRR week (no class; finish your papers, due 13 December...)

Bibliography

Readings will be accessible on the bCourses site for the class, or through campus library access using the links provided below.

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