***In Search of Lost Time: Memory in Legal Principle and Process***

*Legal Studies 190.8 – Fall 2023*

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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.

*Learning objectives:*

1. To become acquainted with the fundamental processes of human memory and their brain substrates, as relevant to real-life memory challenges.
2. 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.
3. 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.
4. To appreciate the promises and perils of memory-related physiological detection of deception in principle and practice.

*Course requirements:*

* Reading and advance commentary (for 10 of the 12 posted sessions; you may take two weeks 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 two “absences” 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 (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)*

**28 August** *– No class was held.*

**11 September – Unit 1: Introduction to Memory**

The mechanisms of memory

 Reading: Squire & Wixted, 2015; Schacter, 1999, 2022.

**18 September – Unit 2: Memory of repressed trauma and false memory creation I**

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

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

**25 September – Unit 2: Memory of repressed trauma and false memory creation II**

*Student presentation – Hypnosis and memory*

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

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

2.3 Memory reconsolidation and the effects of misleading post-event information

 Reading: Braun et al., 2002.

**2 October – Unit 3: Reliability of eyewitness testimony I**

*Student presentation – Flashbulb memories*

3.1 Signal detection approach to suspect identification

Reading: Gronlund et al., 2014; Wells et al., 2020; Wixted & Wells, 2017.

3.2 Efficacy of memory reconstruction enhancement methods

 Reading: Fisher et al., 2011.

**9 October – Unit 3: Reliability of eyewitness testimony II; Unit 4: Failures of memory**

*Student presentation – Juror memory biases and limitations*

3.3 Lifespan differences in memory reliability: recent and remote memories

 Reading: Fitzgerald & Price, 2015.

4.1Cryptomnesia: Honest lying

 Reading: Gingerich & Sullivan, 2013; Spellman & Weaver, 2022.

**16 October – Unit 5: The echoes of trauma I**

*Student presentation – Children as witnesses*

5.1 The neurophysiology (extinction, reconsolidation interference) of memory erasure

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

**23 October – Unit 5: The echoes of trauma II**

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

5.2 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.

**30 October – Unit 6: Memory and mind reading**

*Student presentation – Trauma tort law*

6.1 Memory-based physiological lie-detection methods

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

**6 November – Unit 7a: Responsibility**

*Student presentation – Admissibility of polygraph evidence*

7.1 Responsibility – age, intellectual capacity, mental illness, psychopathy

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

**13 November – Unit 7b: Memory and identity**

*Student presentation – Psychopathy in legal context*

7.2 Legal, biological, philosophical and psychological personhood

Reading: Shoemaker & Tobia, 2022

**20 November – Unit 8: Collective memory I**

*Student presentation – Psychiatric responsibility and preventative detention / Insanity defense*

8.1 Memory and restorative justice

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

**27 November – Unit 8: Collective memory II**

*Student presentation – Dissociative Identity Disorders*

8.2 Monumental deconstruction, collective memory, and social justice

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

**4 December – RRR week (no class; finish your papers, due 15 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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