

Syllabus
May-June 2018

The Mind & the Law

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No textbook is required. The reading materials will be made available online, on the "Materialienseite".

The Rationale for this Course

Developments in neuroscience and the psychological study of cognition and emotion are transforming our understanding of the mind. These developments have large implications for law and lawyering. They challenge some of lawyers', judges', and regulators' central premises - about people's rationality, free choice, and consistency over time. This course will examine some of these challenges, and it will weigh the law's possible responses. Topics to be explored will include regulation of health, environmental, and financial risk; intent and culpability; and the roles of revenge, regret, and other motives in civil and criminal justice. Other themes, relevant to lawyering and to the management of conflict, will include negotiation, the psychology of persuasion, and the roles of trust and social norms. The course will also consider the causes and control of violence and extremism, as well as the use of psychology and the brain sciences for national security purposes.

This course is neither a review of developments in the brain sciences nor a comprehensive study of these developments' implications for law. Nor is it a course in "Law & Psychiatry" or "Law & Mental Health," though it will touch upon some of the issues that such courses take up. Rather, this course is selective in its focus. It will consider only *some* of the many recent advances in our understanding of mind and brain, and it will look at only a small subset of the potential implications for law and lawyering.

Course Outline

I. Introduction: Mind, Brain, Society, & Law (*Hours 1 to 3*) (*May 24, 9 to 10:30 & 10:45 to 11:30*)

Kristoff, *When our Brains Short-Circuit*

Wilson, *Consilience* (excerpt)

Cohen, *The Vulcanization of the Human Brain*

Camerer & Loewenstein, *Behavioral Economics: Past, Present, Future*

II. The Composite Self & the Case of Obesity (*Hours 4 to 6*) (*May 24, 13 to 14:30 & 14:45 to 15:30*)

Bloche, *Obesity & the Struggle within Ourselves*

Elster, *The Multiple Self: Introduction*

Gusnard, *Being a Self: Considerations from Functional Imaging*

Kandel, *In Search of Memory: The Emergence of a New Science of Mind* (excerpt #1)

III. Risk & Reason (*Hours 7 to 9*) (*May 25, 9 to 10:30 & 10:45 to 11:30*)

Elster, *When Rationality Fails* (excerpt)

Slovic, *The Construction of Preference*

Elster, *Rationality & the Emotions*

Kahneman, *A Perspective on Judgment & Choice: Mapping Bounded Rationality*

Kandel, *In Search of Memory* (excerpt #2)

Sunstein, *Laws of Fear* (excerpt #1)

IV. The Neurobiology of Morals & Persuasion (*Hours 10 to 12*) (*May 25, 11:45 to 13:15 & 14:15 to 15*)

Greene, *The Secret Joke of Kant's Soul*

Haidt, *The Emotional Dog & Its Rational Tail: A Social Intuitionist Approach to Moral Judgment*

Hauser, *Moral Minds How Nature Designed Our Universal Sense of Right & Wrong*

V. Panics & Bubbles (*Hours 13 to 15*) (*May 25, 15:15 to 16:45 & 17 to 1745*)

Lehrer, *Can We Prevent the Next Bubble?*

Shiller, *Irrational Exuberance* (excerpt)

Shleifer, *Inefficient Markets: An Introduction to Behavior Finance* (excerpts)

Sunstein, *Laws of Fear* (excerpt #2)

VI. Extremism & Violence (*Hours 16 to 18*) (*May 28, 9:15 to 10:45 & 11-11:45*)

Remarks by Convicted Killer Jim Kopp at His Sentencing Hearing

ISIS, *The Punishing of Shu'aytat for Treachery* (excerpt)

Lorenz, *On Aggression* (excerpts)

Pinker, *The Blank Slate: The Modern Denial of Human Nature* (chapter 17)

Sunstein, *Going to Extremes: How Like Minds Unite & Divide* (chapter 2)

VII. Negotiation & the Psychology of Conflict (Hours 19 to 21) (May 28, 13:15 to 14:45 & 15 to 15:45)

Gilbert, *He Who Cast the First Stone Probably Didn't*

Babcock & Loewenstein, *Explaining Bargaining Impasse: The Role of Self-Serving Biases*

Freshman, *Identity, Beliefs, Emotion, and Negotiation Success*

Shapiro, *Enemies, Allies, and Emotions: The Power of Positive Emotions in Negotiation*

American Bar Association Section of Dispute Resolution, *Exercise: "Ducks in Pond" Dispute*
[Additional, confidential background information for each party to this negotiation will be distributed separately.]

VIII. Personal Responsibility & Causal Explanations of Behavior (Hours 22 to 24) (June 1, 9 to 10:30 & 10:45 to 11:30)

Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (excerpt)

Durham v. United States

Moore, *Law & Psychiatry: Rethinking the Relationship* (excerpts)

Exercise: The Heads Case

IX. Toward a Science of Torture? (Hours 25 to 27) (June 1, 11:45 to 13:15 & 14:15 to 15)

Biderman, *Communist Attempts to Elicit False Confessions from Air Force Prisoners of War*

Bloche, *Toward a Science of Torture?*

Hubbard, *Psychologists & Interrogations*

Behnke & Koocher, *Commentary on "Psychologists and the Use of Torture in Interrogations"*

Zimbardo, *Thoughts on Psychologists, Ethics, and the Use of Torture in Interrogations: Don't Ignore Varying Roles and Complexities*

X. Racial Bias & Bigotry (Hours 28 to 30) (June 1, 15:15 to 16:45 & 17 to 17:45)

Levinson et al., *Implicit Racial Bias Across the Law*

Green et al., *Implicit Bias Among Physicians*

Sommers & Ellsworth, *White Juror Bias: An Investigation of Prejudice Against Black Defendants*

Video Link: *Tamir Rice: Police Release Video of 12-Year-Old's Fatal Shooting*

<https://www.theguardian.com/us-news/video/2014/nov/26/cleveland-video-tamir-rice-shooting-police>

Link to *Project Implicit*: <https://implicit.harvard.edu/implicit/takeatest.html> (Please read the preliminary information and disclaimers on this page. Then, if you are willing, click “I wish to proceed,” then take the Implicit Association Tests for “Race” and/or “Arab-Muslim” (linked to this next page). You are welcome, of course, to keep your results confidential. (You’re welcome, as well, to take any of the other Implicit Association Tests on this site, but please consider these optional.)

Course Format & Student Responsibilities

The success of this course will depend in large part on your curiosity and engagement. Although I will, from time to time, give short lectures, class discussion will play a central role, and there will be several exercises and simulations. Each student is expected to attend every class, complete the assigned readings with a critical eye, and participate actively. Effective participation will make the course more rewarding for everyone. Effective participation is not necessarily constant or lengthy participation. Your insights, penetrating questions, and cogent challenges to conventional wisdom will count for more. Although I will look mostly to volunteers during class discussion, I will make “cold calls” (calling on students who have not volunteered) from time to time.

The course readings are broadly interdisciplinary – cutting across psychology, the neurosciences, behavioral economics, and philosophy, as well as law. Few of the readings are *explicitly* about law or lawyering. But all have been chosen because of their relevance to assumptions embedded in the law, to questions of regulatory policy, or to activities that lawyers engage in (including persuasion, institutional design, and anticipation and management of conflict). All have also been chosen because of their accessibility, though I’m sure you will find some more accessible (and better-written) than others.

Student Evaluation

There will be an optional essay examination for a certificate with a grade. Students who participate in all classes but do not write an essay examination will receive an attendance certificate.

Additional Matters

1. *Syllabus*. The syllabus is subject to adjustments during the course. I will alert students in class of any changes to the syllabus.
2. *CVs/Resumes*. I would appreciate it if you would provide me with your CV or Resume in order to help me to get to know you professionally. Please bring a paper copy to class during the 1st or 2nd week.
3. *Seating Chart*. Please ensure that you have signed the seating chart by the end of our 2nd day of classes. If you subsequently move to a different seat, please update the seating chart accordingly (to do so, ask me for the seating chart at the beginning or end of class).