Presentation Summary

Prof. Kolber’s presentation focused on the legal and ethical issues raised by memory-dampening drugs. He began by discussing Propranolol, a drug approved by the FDA for hypertension. According to some researchers, Propranolol, when taken within 6 hours after a traumatic experience, can dull emotion pain associated with the memory of that trauma. Evidence suggests that a person taking Propranolol will have worse recall of the facts associated with emotionally arousing circumstances than those given a placebo. Pilot studies in the U.S. and France also indicate that Propranolol may be helpful in treating Post Traumatic Stress Disorder (PTSD).

Kolber next examined a number of legal and ethical issues raised by the use of memory dampening drugs, e.g., the role of memory in legal fact finding and in personal identity. He reviewed, in particular, the largely negative critique of memory dampening issued by the President’s Council on Bioethics in Oct. 2003. The central argument of the presentation was that the Council’s concerns are largely overstated and needlessly “alarmist in tone.” Kolber proposed that while aspects of memory dampening might require regulation, the kinds of concerns raised by the Council do not justify a general prohibition on memory dampening. Kolber concluded that if a general prohibition is unwarranted, then it follows that we have some limited right to dampen our memories, e.g., in response to PTSD that erodes our ability to function.

The formal presentation ended with Prof. Kolber suggesting that indeed memory dampening may be only a small part of a broader set of rights that he terms “freedom of memory.” In light of developing technologies, might there, he queried, be circumstances in which we have a right enhance memory or memory retention-skills, to keep our memories private, to be free of certain invasions of our memories like forced enhancement or dampening?

Group Discussion Summary

1. Safety. We can assume that memory dampening drugs won’t work perfectly, certainly not initially. So clearly there are grounds for concern. Yes, but the more interesting question is how we calculate risk/benefit, assuming the drugs themselves have minimal side effects. Indeed, the Council itself wasn’t concerned about side effects, but about larger social questions such as losing the redeeming effects of surmounting past trauma.
Let’s assume the side effects are bad, might there not be cases where it’s still worth it? We can make the reasonable assumption that if the PTSD is really bad, it’s worth it.

2. Criminal sentencing considerations. In law, punishment is generally proportional to harm, but not always. What might be the implications of memory dampering drugs? The use of such drugs might reduce the harm to victims and so should arguably reduce a defendant’s sentence, too.

3. Other legal implications. Might a criminal not intentionally take such a drug to avoid punishment?

Say someone murders someone, and then takes a memory-dampening drug prior to capture. Now they really have no memory of their action. Can you convict or punish? Locke suggests that we shouldn’t punish a person for a crime they don’t remember. His idea is that that person is a “different person” than the one who committed the crime. The law has not bought this argument. We do sometimes declare someone legally incompetent to stand trial. Competence requires 1) reasonable understanding of the process (what a judge is, what a trial is, etc) and 2) the ability to assist counsel in the trial. So one argument is that if you had no memory of the crime of which you were accused, you wouldn’t meet condition 2 and hence would be incompetent to stand trial. In short, a person who has amnesia about the crime can’t assist counsel.

4. Medical insurance implication. How might the availability of effective memory dampering drugs affect the willingness of health insurance carriers or the VA to treat PTSD or other trauma induced illness? If the drug is available, then do I have an obligation to take it and not ask for health care? One suggestion is that if such treatment comes at a cost to personal identity, regulations could require that patients unwilling to go the drug route be offered traditional treatment. Financial pressures might work against such an option.

Military use of memory dampering. Giving to military could lead to very effective killers. Should such drugs be “off limits” for the military. How would a restriction to civilians work? Would it be enforceable?

Philosophical issues. What about the great things that have come out of trauma? Elie Wiesel’s life and work, for example. Painful events can be transformative. Some trauma victims may even acknowledge they were better off afterwards. They became a better person. What then should our attitude be towards that initial experience? Duality of the situation. Bad experience perhaps even though it led to something good.

Privacy concerns. Why not let people handle the decision whether to take such drugs themselves or with their doctors? Rather than have government interfere.
Informed consent. Existing memory dampening drugs have a small window (about 6 hours). Question about informed consent. Don’t know what effects this trauma will have. 30% of victims go on to develop PTSD and the rest do not. One response is that informed consent here is no different than in most emergency room situations where decisions must be made in conditions of uncertainty. In the future we may have a better profile of who is likely to develop post-traumatic symptoms and who is not.

5. What about the decisions of minors? Legally, parents get to make the call when parent and child disagree. One concern is the possibility of masking child abuse, of giving to the child so s/he can’t testify.

6. Social pressures. Can imagine increasing social pressure to take such drugs. Learn less about the mistakes of our lives. On the other hand, there seems something morally odious about saying to someone returning from war or recovering from the kidnapping of a child that they must sign up for living with this memory. That current memory modulation has to be done so rapidly is a major difficulty.

7. What about the memory altering we drugs we already use? In the ER, after rape, during surgery?

8. Concern that Propranolol doesn’t do that much. Newer, more effective, drugs will raise these issues more acutely.

9. Off-label use permissible under current system. We regularly use Propranolol for on-label use with only modest side effects.

10. Is there potential for abuse? Alcohol is a drug used to forget, at least temporarily. Is there potential for the government to use memory dampening or enhancing drugs in ways that will be harmful to its citizens? Individuals too could abuse the possibilities, e.g., identity suicide. Destroy the past.

11. Regulation of off label drugs use is decentralized. However, legal bans, fear of malpractice, or social opposition offer some control.

12. Psychological pain. Isn’t psychological pain similar to physical pain? Physical pain is treated acutely. Here the aim is to trying to prevent debilitating psychological pain. If you can no longer function, you aren’t doing something redeeming (starting a movement against drunk drivers) or undergoing a character building transformation. You aren’t functioning. Why should psychological pain be treated differently? Victim told to “muster through”?

13. President’s Council on Bioethics Report. The general tone of the report is negative, expressing general skepticism about any form of “fake happiness.” One question was how
this response differs from arguments made against anti-depressant use. The claim that drug use is “unnatural” ignores the way in which conceptions of the natural change over time. We now consider it part of the standard of care to vaccinate children, provide insulin for diabetics, take blood pressure medication for high blood pressure, etc. If the idea is that human suffering is natural (or ordained), and hence not be interfered with, then any form of medicine is precluded.

14. Question of paternalism. When does the government get to decide what kinds of life we’re going to lead? Gambling, cocaine. How much paternalism do we want?