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Authors

Shaw, Emily V

Loftus, Elizabeth F

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Commentary

Punishing the Crime of Forgetting



Emily V. Shaw* and Elizabeth F. Loftus

University of California, Irvine, United States

Although many people think that forgetting is a problem in life, and it often is, they would do well to appreciate the benefits of forgetting. [Fawcett and Hulbert \(2020\)](#) have marshaled a powerful argument for the adaptive value of forgetting, highlighting the many ways that forgetting is both a common and essential feature of cognition. Their arguments have implications for memory as it plays out in real life, but here we focus on implications in the legal realm. We make two major points. First, within the legal system, forgetting on the part of criminal defendants can transcend mere embarrassment or inconvenience, and can actually implicate defendants in criminal acts. Second, forgetting in relation to trauma and victimhood can be complicated and controversial, with some victims preferring to retain their painful memories, even at a personal cost.

Defendant Alibis: When Forgetting is a Crime

[Fawcett and Hulbert \(2020\)](#) aptly rebuke the notion of forgetting as nothing more than a cognitive “sin,” but the notion of forgetting as bad or blameworthy thrives in the legal system. The courts frequently rely on the sworn testimony of witnesses, who pledge to relay information accurately—“the truth, the whole truth, and nothing but the truth.” In this domain, accurate memory can be the difference between compensation or liability, freedom or captivity, and even life or death.

One particularly challenging memory-related task within the legal system is providing an alibi. When people are considered potential suspects in a crime, they may be asked to account for their whereabouts at the time of the crime. For innocent suspects, this task may require them to recall mundane details from an earlier time—sometimes days, weeks, or months prior. Inaccuracies that are later discovered have been used against suspects, with suggestions that they were deliberately lying.

It is hard to overstate how challenging the task of providing a flawless alibi can be for the average person. Multiple research studies have examined memory in this setting and found that innocent people struggle to give accurate, consistent alibis. In one study, participants were asked to describe their location and activities during a specific afternoon three weeks prior ([Strange, Dysart, & Loftus, 2015](#)). Participants were then asked to come back a week later, repeat their “alibi,” and provide supporting evidence for their account. Nearly half were inconsistent between their first and second account; many were completely unable to provide any supporting evidence at all. Another study of alibi accuracy found that, when given two days to check their own alibi, 36% of participants had to amend their initial accounts, changing factual details or adjusting the supporting evidence ([Olson & Charman, 2012](#)). These studies show that on-the-spot recollections about one’s whereabouts at a specific time in the past—in other words, providing an accurate alibi—can be riddled with error.

But why is it hard for many people to provide accurate alibis the first time? [Fawcett and Hulbert \(2020\)](#) provide a helpful explanation through their discussion of the “Clarity” virtue of forgetting. The argument goes like this: When an activity is rather ordinary, like biking to work each day, it is not particularly useful to remember in detail. Unless something occurs to prompt memory retention, it may be most efficient for the memory to be effectively erased ([Davis & Zhong, 2017](#), cited within [Fawcett & Hulbert, 2020](#)). In the context of alibi recollection, if the activity that a person is called to account for is ordinary, it may be more likely to be forgotten and subsequently misreported. Moreover, the task of alibi reporting is made even more difficult by the nature of the prompt that produces the alibi (e.g., [Leins & Charman, 2016](#)). Many memories are not stored in ways specific to a particular date or time, but this is often what investigators are seeking an account of when they request an alibi.

Author Note.

Emily V. Shaw and Elizabeth F. Loftus, University of California, Irvine, United States.

* Correspondence concerning this article should be addressed to Emily Shaw, University of California, Irvine, United States. Contact: evshaw@uci.edu.

Unfortunately, the tendency for people to incorrectly recount their own past activities, while harmless in ordinary life, can be disastrous for suspects who need to provide alibis. A famous example of the devastating impact of an inconsistent alibi comes in the case of Ronald Cotton. In 1984, Mr. Cotton was accused of breaking into the home of Jennifer Thompson and raping her. When asked by investigators to provide an alibi, Mr. Cotton first claimed he had been with friends at the time of the crime, but later changed his story after realizing that he had mixed up his weekends and had actually been with his mother (Thompson-Cannino, Cotton, & Torneo, 2009). Investigators were suspicious of this inconsistency and ultimately charged Mr. Cotton with rape. He was convicted in 1985 and served 10 years in prison before he was exonerated through DNA evidence.

An inconsistent alibi is often a red flag to investigators, who are trained to see such inconsistencies as evidence of lying or guilt (see Inbau, Reid, Buckley, & Jayne, 2013). This perception of deception may lead to confirmation bias or “tunnel vision” in which investigators focus primarily on gathering incriminating evidence on one particular suspect and fail to adequately investigate or consider other disconfirming evidence (see Crozier, Strange, & Loftus, 2017), with the potential to lead to a criminal charge of an innocent defendant.

If defendants with inconsistent alibis plead not guilty, they face conviction from a jury, as jurors themselves are also likely to be suspicious of inconsistencies. Studies have found that people often (incorrectly) believe that motivation increases memory accuracy—such that a person in a high-stakes situation is less likely to forget important details (e.g., Kassam, Gilbert, Swencionis, & Wilson, 2009). People also tend to believe that accurate alibis are consistent over time (Burke, Turtle, & Olson, 2007) and are distrusting of alibis that change, even when the change includes details that would logically strengthen the alibi (Culhane & Hosch, 2012). Inconsistencies in an alibi can lead jurors to infer that the defendant is lying. For example, in one study, more than 88% of participants agreed that a defendant who changes his or her story following a police interview is “probably lying” (Culhane, Hosch, & Kehn, 2008). This distrust in inconsistent alibis, and tendency to see malicious intent rather than simple forgetting, can pose a risk to defendants who are unable to consistently account for their whereabouts at the time of a crime due to simple forgetting.

Obviously, there are times when a suspect who claims to have forgotten a detail is lying and times when an alibi is inconsistent because it was manufactured to cover a crime. However, when investigators and jurors presume that this is always or often the case, they underestimate the ease of forgetting and can put factually innocent defendants at risk.

Victim Accounts: Choosing (Not) to Forget

Another context within the legal system where memory is crucial is in the recollections of victims. Victims of crimes are often called to testify in cases that go to trial and asked to recount their memories of being harmed. In criminal cases,

these memories can be traumatic and painful, both to remember and to present in public for cross-examination and judgment.

In some cases, victims may be healthier and happier if they were able to forget their trauma (as Fawcett & Hulbert, 2020, illustrate), especially if seeking justice is not at issue (i.e., already achieved or impossible to obtain). However, people can be resistant to the notion of forgetting traumatic memories. There are several ways in which people prioritize retrieving or preserving memories of traumatic events (real or imagined) over the suffering that having such memories may create.

Forgetting Versus Repression

Fawcett and Hulbert (2020) explains how one benefit of forgetting is the ability to recover from negative experiences. Forgetting can serve a “Guardian” role, mercifully allowing us distance from unpleasant memories of our past and providing relief from re-experiencing pain. The authors describe the case of Jill Price, a woman with exceptional autobiographical memory (Parker, Cahill, & McGaugh, 2006, cited by Fawcett & Hulbert, 2020) who is unable to forget her negative emotional experiences. Ms. Price is forever at the mercy of the retrieval cues in her environment, always living with the possibility that a passing cue will trigger a vivid memory she may wish to avoid.

What would become of people like Ms. Price if something horrific happened to them—if they were the victim of a violent crime as adults or children? Are there any processes in human memory—beyond ordinary forgetting—that can help one move past a traumatic event? This question goes to the heart of a decades-old debate in the field of memory research: Is it possible for memories of trauma to be “repressed” (i.e., stored without conscious awareness and unreachable through typical retrieval cues), but then effortfully retrieved at a later date?

Whether or not traumatic memories can genuinely be repressed and later recovered has been a hotly contested subject in the field of memory research, especially since the 1990s (Patihis, Ho, Tingen, Lilienfeld, & Loftus, 2014). Some clinicians in direct contact with patients have long insisted that repression of traumatic memories is possible (e.g., Blume, 1990), especially in cases of severe physical or sexual abuse experienced in childhood. In this understanding, “repression” goes beyond ordinary forgetting or distraction from a painful past experience. The repressed experience is stored in memory, but is challenging to access and resistant to obvious retrieval cues (e.g., “Were you ever physically harmed by a parent?” Answer: “No.”). According to the repression notion, despite being inaccessible to the patient, the memory or the knowledge it reveals can poison the patient’s daily life, and recovering this toxic memory is an option that may help the patient heal.

However, academic memory researchers argue that this concept of repression is devoid of credible scientific support. Clearly traumatic memories can be forgotten with time, and of course an adult reflecting on childhood memories may be able to recognize

past experiences as abusive and wrong in a way they could not as a child. But academics argue that massive repression in the clinical sense is unsupported by empirical studies, and the collection of studies that claim to demonstrate repression (e.g., Briere & Conte, 1993; Herman & Schatzow, 1987; Schefflin & Brown, 1996) have serious errors or limitations (see Piper, 1997; Pope & Hudson, 1995).

Instead, many researchers say that the memories of trauma that are “recovered” through suggestive psychotherapy can be entirely new creations or fabrications. Evidence for this claim comes from a variety of research studies in which researchers were able to implant false memories in participants, even for stressful childhood events. In one of the most famous examples, researchers led participants to falsely believe that as a child, they were lost in a shopping mall (Loftus & Pickrell, 1995). Other upsetting false memories implanted by researchers include committing a crime as a young person (Shaw & Porter, 2015) or being attacked by a vicious animal (Porter, Yuille, & Lehman, 1999). These studies demonstrate the malleability of memory and show that even memories of untrue but upsetting experiences can be implanted in unwitting individuals.

After decades of debate about the status of repressed memories in the 1990s, a consensus was reached among academic memory researchers, who concluded that the existence of repressed memories is unsupported by empirical evidence. But while many memory researchers considered this issue settled, there have been recent signs of a resurgence in the debate. Belief in repressed memory—or “dissociative amnesia” within some clinical circles—may be undergoing a revival and gaining popularity among legal agents and clinical psychologists alike (Otgaar et al., 2019), despite the absence of any compelling new evidence for the phenomenon.

Unfortunately, the belief in repressed memory has consequences that extend beyond the therapeutic context. The 1980s and 1990s saw dozens of high-profile cases involving allegations of abuse based on recovered memories, only to later be debunked. For example, in 1988, Paul Ingram was accused by his children of a variety of acts of satanic ritual abuse and sexual abuse, including impregnating one of his daughters and giving her an STD; however, a physician who examined the daughter determined that this was not medically possible (see Herzog, 2019). Mr. Ingram spent over a decade in prison before his release in 2003.

While the practice of recovering memories may be therapeutic for some patients, these “recollections” need to be treated with caution. By seeking to uncover repressed memories and engaging in risky practices linked to false memory creation, misguided clinicians may lead their patients to “remember” horrific events that never actually occurred and create new and real trauma for the patient and the wrongly accused alike. False “recovered” memories have torn apart families, ruined reputations, and led to imprisonment for numerous innocent defendants. It is therefore valuable for clinicians, legal agents, and members of the public to have a rich understanding, not just of the way forgetting *does* occur (through work like Fawcett & Hulbert, 2020), but also of the ways it *does*

not—dispelling damaging notions of forgetting like the myth of repression.

Dampening Traumatic Memories

The “Serenity” virtue of forgetting, as described by Fawcett and Hulbert (2020) illustrates how forgetting can help people overcome the burdens of negative memories and enable people to forgive transgressions. Notably, these benefits can occur with or without conscious intent on the part of the person experiencing troubling memories. But what if a person seeking to forget did not need to actively seek distraction, or wait passively for forgetting to occur, but could instead willfully choose to delete a traumatic experience from memory?

This possibility is not (total) science fiction. Medical researchers have been testing drugs such as propranolol which have the potential to dramatically reduce the formation of traumatic, emotionally-charged long-term memories (and PTSD) when consumed close to the time of a stressful event (Brunet et al., 2008; Pitman et al., 2002; see also Kolber, 2006, 2008). Such drugs may eventually become a regular part of post-trauma medical care, and their potential applications for reducing memory of trauma are fascinating and controversial.

Advocates of the use of memory-dampening drugs assert that this is a method of reducing human suffering and an option that victims deserve to have available to them. However, critics argue that victims of crime may have a duty to hold on to these memories for the sake of justice; successful prosecution of perpetrators could be made difficult if victims chose to forget criminal acts committed against them (see Kolber, 2008), potentially leaving those perpetrators free to harm others.

Interestingly, the limited research that has been done on perceptions of these memory-dampening drugs suggests that the public is reluctant to consider using them. For example, one study by Newman, Berkowitz, Nelson, Garry, and Loftus (2011) provided Americans and New Zealanders with a series of hypothetical scenarios where a memory-dampening drug could be used. Participants were asked to imagine they were either a restaurant manager or a soldier on a peace-keeping mission and were the victim of a violent assault. Overwhelmingly, a large majority of participants in both countries and across all scenarios indicated they would not want to take the memory-dampening drug. This was true even when participants were warned that they had a 40% chance of developing PTSD, and it was true even for participants who reported past experience with traumatic events. In fact, participants who reported past traumatic experiences were significantly *less* likely to want the drug than those who did not report prior traumatic experiences.

This study suggests that victims may be unwilling to dampen their own traumatic memories when given the opportunity to do so, even when warned there is a sizable risk of lasting psychological harm (i.e., developing PTSD). When given the choice to forget a trauma, extending and deliberately controlling the “Guardian” role of forgetting through drugs, it appears many people would prefer not to forget.

Conclusion

Despite the clear “virtues” of forgetting presented by Fawcett and Hulbert (2020), the legal world has not caught on, often harshly judging defendants who forget details about the past. Some in the therapy community have also overlooked the value of forgetting, coaxing patients to remember traumatic experiences that may not have actually occurred. This is not to say that victims of traumatic events should just forget their true experiences of suffering. For many, that is not possible, and for some, forgetting comes at the expense of justice. But we should be careful not to put “remembering” on a pedestal. Forgetting ordinary details should not be such a strong mark of suspicion for suspects, and it should not be seen as the enemy of healing in clinical contexts.

Author Contributions

Both authors contributed to the conceptual content, writing and revision of this commentary.

Conflict of Interest Statement

The authors declare that they have no conflict of interest.

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