Adam Kolber
Professor of Law
Brooklyn Law School

"The Neurolaw Revolution"

Some scholars, like Joshua Greene and Jonathan Cohen, predict that neuroscience will revolutionize the law. They say advances in neuroscience will lead us to recognize free will as an illusion. When we do so, we will stop blaming offenders for their crimes and punish only to deter, incapacitate, and rehabilitate. Others, like Stephen Morse, disagree. Morse doubts there will be a revolution in our treatment of criminal responsibility because the law holds people responsible even when they are caused to behave as they do by mechanistic forces in the universe. I argue that both positions have yet to be defended persuasively.

There will, however, be a neurolaw revolution of a different sort. It will not necessarily arise from radical changes in our beliefs about criminal responsibility but from a wave of new brain technologies that will change society and the law in many ways, three of which I describe here: First, as new methods of brain imaging improve our ability to assess pain and suffering, we will have less reason to treat emotional injuries differently than we treat physical injuries. Second, as neuroimaging gives us better methods of inferring the thoughts of others, we will have more laws protecting thought privacy but less actual thought privacy. And third, as artificial intelligence more closely approximates human intelligence, the law will "concretize," meaning the law will become more clearly expressed and more transparently applied.

NOTE: I already have a preliminary draft of this paper. If you'd like to see it, please let me know.