

Trouble II: What Probability?

- If the PI is a belief, how **strong** a belief ($\Pr(\text{innocent}_m)$)?
 - **1**: no evidence can rationally shift the juror off certainty of innocence
 - ≈ 0.5 : too weak to function as a presumption of innocence
 - $1 - 1/N$ over the suspect pool (Friedman): near-certain, but N is arbitrary
 - **base rate** among trial defendants ($\lesssim 0.4$, per Laudan p. 21), the empirically honest prior: this turns the “presumption” *against* the defendant, since the legal system winnows out the obviously innocent before trial

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Trouble III: The Straw Poll

- Mid-deliberation **straw polls**: routine deliberative procedure where jurors vote informally to see where the room stands
- A juror voting *guilty* in a straw poll has manifestly stopped believing innocent_m
- But PI says: presume innocence *until the jury collectively returns a guilty verdict!*
- Texas Court of Appeals (*Miles v. State*, 2004) offered a reductio:
 - If every juror must believe innocence right up to voting...
 - ...they must believe it *at the moment of voting*...
 - ...so the verdict can *only* be acquittal

The literal reading produces only acquittals, a manifest absurdity

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Trouble IV: Disjunctive Innocence

- To be guilty $_m$, the defendant must **satisfy every element** of the charge: the act, the intent, no justification, no excuse, ...
- So believing the defendant to be innocent_m means the juror cannot believe every element to be true.
- What attitude, then, are they supposed to take in relation to the **specific elements**?
 - **Undecided on all**? Seems strange (for what reason do we think they are innocent_m ?)
 - **All believed false**? Often logically impossible (you can't believe “Jones didn't shoot Smith” *and* “Jones shot Smith in self-defence” at once)
 - **Some specific mix of attitudes** (some taken to be true, others false, others undecided)? Seems arbitrary

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Trouble V: Bias Asymmetry

- In jury selection, prior confidence in *guilt* disqualifies a juror: paradigm bias
- Prior confidence in *innocence* is structurally the same mental state. Yet the material PI **mandates** it
- **Mirror test**: imagine the inverse instruction: “begin the trial believing he did it, unless the defence proves otherwise.” We would recognise this immediately as mandated pro-prosecution bias. The material PI is just its mirror image

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PI as Clean Slate

- The PI should be a presumption of **probatory** innocence: PI and verdict, same shape at both ends of the trial
- Operationally, a **clean slate** directive at the outset:
 - The formal charge is not evidence
 - The defendant's appearance in the dock is not evidence
 - Prior impressions from publicity and gossip are to be set aside
- No belief about whether the defendant did it; only that nothing has yet been shown, and the problems all dissolve

References

- [1] Larry Laudan. *Truth, Error, and Criminal Law: An Essay in Legal Epistemology*. Cambridge University Press, Cambridge, 2006. doi: 10.1017/CBO9780511617515.