THE PRESUMPTION OF INNOCENCE: EFFECTIVENESS FOR UNDERSERVED COMMUNITIES WITHIN THE UNITED STATES CRIMINAL JUSTICE SYSTEM

By
Nathaniel Teng

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APPROVED

Dr. Carl Cranor
Department of Philosophy

Dr. Richard Cardullo, Howard H Hays Jr. Chair
University Honors

Abstract

The criminal justice system in the United States is perceived to work for the benefit of all people regardless of social status or race/ethnicity. There are indications, however, that this is not the case, and minorities going through the system are subjected to several disadvantages. I am seeking to study the presumption of innocence to find out the extent in which it enables the administration of justice for underserved communities within the context of the criminal law. The presumption of innocence is integral to a proper-functioning legal system, so the inadequacy or malpractice of the principle would indicate disproportionate injustice for underserved communities. The central questions I seek to address are: how effective is the presumption of innocence for underserved communities? and what explains the effectiveness/lack of effectiveness? I am seeking to answer these questions through an extended literature review, looking at articles and cases in which the maxim is implicated. I anticipate that although the criminal justice system has written and explicit protections for the presumption of innocence, it is not adequately practiced or enforced to a significant enough degree. The results of this research could help illustrate problems within the justice system, and how they could be addressed or fixed to help mediate the broader problem of inequity for underserved communities.

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PART ONE: HISTORICAL EVOLUTION

Common Law Conception

The presumption of innocence in the United States is a foundational element of the criminal justice system, which states that the accused must be presumed innocent until proven guilty beyond a reasonable doubt. This study seeks to address the degree to which the presumption of innocence is enforced for underserved communities in the United States today. However, to do so, we first need to examine the maxim's historical evolution by comparing the first historical conception to its current practices today, and the relevant social contexts surrounding the circumstances. In doing so, the origins of potentially deep-rooted problems could offer an explanation for the clause's effectiveness today for protecting the rights of the defendant under a system of due process.

Kenneth Pennington, a Professor Emeritus at the Columbus School of Law, explains that the first conception of the maxim is where "'a person is presumed innocent until proven guilty,' and we are looking at the rights of due process that the maxim aphoristically expressed in earlier jurisprudence" (107). The first conception for a maxim such as this can be traced back to the thirteenth century, in the jurisprudence of the *Ius commune*, also known as common law of Europe from the twelfth to the seventeenth centuries. It was also a combination of "Roman law, canon law, and, later feudal law in the schools and courts of medieval Europe" (112). This period was also an age of evolution for the law itself, transitioning to written, legislated, and customary law as opposed to the former unwritten and customary law. However, the *Ius commune* was a version of the former twelfth century *ordo iudicarius*, which transformed the mode of proof from trial by ordeal to a mode of proof based on Roman law particularly in Southern Europe. Trial by ordeal, or the mode of proof that subjected defendants to some dangerous experience as a means

of determining guilt or innocence, would be abandoned in favor of a more argumentative approach (Pennington).

This transformation was not accepted at first but was later legitimized after its origins were attributed to the Bible and the Old Testament. God himself would summon defendants and hear their pleas, doing so while presuming them innocent. If God acted in this way, then ordinary man should as well in their courtrooms. The earliest established conception for the presumption of innocence was therefore a reflection of God's will. As a result, the presumption of innocence would eventually be grounded within natural law itself, where "the fundamental rules of procedure could not be omitted by princes or judges. The right of a defendant to have his case heard in court was absolute, not contingent" (Pennington 114). Even the Pope himself could not transgress these rights. As the law continued to evolve, the presumption of innocence would be used to defend marginalized defendants such as "Jew[s], heretics, and witches… [and later used] as a powerful argument against torture in the sixteenth, seventeenth, and eighteenth centuries" (124). Over time, the presumption of innocence also became intimately intertwined with what we know today as due process. As Pennington illustrates:

> The maxim summarized the procedural rights that every human being should have no matter what the person's status, religion, or citizenship. The maxim protected defendants from being coerced to give testimony and to incriminate themselves. It granted them the absolute right to be summoned, to have their case heard in an open court, to have legal counsel, and to have their sentence pronounced publicly, and to present evidence in their defense. (124)

The features for due process that made its way into the United States constitution is reminiscent of how the presumption of innocence developed under the *Ius commune*.

Although the first conception of the presumption of innocence had similar features that would later be seen in the current justice system in the United States, it is important to note that the maxim was never codified into law until 1895. It was not explicitly included within the Declaration of Independence, the Constitution, or the Bill of Rights. The presumption of innocence would make its way into the United States through the establishment of due process. Therefore, an understanding for how due process was first conceived would be the next step towards evaluating whether the presumption of innocence truly protects the rights of underserved communities in today's justice system. To do so, the rule of law itself will now be examined to determine its influence on due process, and consequently the presumption of innocence. Sullivan and Massaro, President of the University of Vermont and Regents Professor, Milton O. Riepe Chair in Constitutional Law and Dean Emerita at the University of Arizona respectively, explain that "by exploring the historical origins of rule of law principles, we can understand how and to what extent debates over the rule of law influenced the formation and development of the American government and its due process jurisprudence" (118).

The rule of law is defined as the principle that the law should be known, just, and enforceable, a combination of "the values it is meant to preserve, the principles by which governmental institutions must operate in order to preserve those values, the institutions 'responsible for the safeguarding,' and the procedures through which the institutions effectuate the principles" (119-120). Sullivan and Massaro argue that the rule of law has both a procedural and a substantive component. The procedural component requires all institutions, including the government, to adhere to codified laws in every circumstance, whereas the substantive component prohibits laws to be made that violate natural law or accepted morals, even if such a law was passed given legitimate means. In sum, the rule of law is intended to ensure equality for

all before the law while also prohibiting violations of inalienable rights. The rule of law would then serve as a seed of sorts for the presumption of innocence. Given that the first conception for the presumption of innocence was grounded in natural rights, and therefore grounded in inalienable rights, the rule of law laid the foundation for the maxim's development in the United States, most evident through the Constitution itself. Although there is no explicit mention of the rule of law, its core features are exhibited "through the enumeration of powers that limit the power and discretion of the federal government, the structure of which separates the powers of the different branches of government, and through the Fifth and Fourteenth Amendments" (126). In sum, the procedural component for the rule of law is met given the enumeration of powers, and the substantive component is met given the Fifth and Fourteenth Amendments. The importance for these two constitutional amendments can be seen in its explicit establishment for due process. Sullivan and Massaro elaborate:

> …due process expressly connected the concepts of rule of law with a provision of proper procedures; providing for limitations of government search and seizure, protections for criminal defendants, basic notice and hearing opportunities, and a host of other procedural protections for unfair application of the law or deprivation of life, liberty, or property without a firm base in existing law. (126)

Due process as explained here echoes the very same protections given to defendants under the *Ius commune*. It is important to note, however, that there were a variety of interpretations throughout Europe.

United States Conception

There are several notable differences between the United States conceptions for due process and its original conception in Europe. For example, the presumption of innocence is not

present here in the same way that it was under the thirteenth century English common law. Under the *Ius commune*, the presumption of innocence was legitimized by the Bible and consequently God himself. However, in the United States, this justification is absent. Another crucial difference lies in the development of the Supreme Court: "The structure of a government that was constrained by strong institutions and that enforced separation of powers paved the way for an independent judiciary, which provided access to and accountability for an evolving notion of due process" (127). The Supreme Court would then serve as a means of adapting the law according to societal interests in accordance with legislative interest, allowing due process itself to change as time went on. The evolution up to this point – from the rule of law, to due process, to the Supreme Court – would explain how the presumption of innocence arose within the United States despite the clause being explicitly absent from the country's founding.

The presumption of innocence would be explicitly established in 1895, with the Supreme Court case *Coffin v. United States*:

> The law presumes that persons charged with crime are innocent until they are proven, by competent evidence, to be guilty. To the benefit of this presumption the defendants are all entitled, and this presumption stands as their sufficient protection, unless it has been removed by evidence proving their guilt beyond a reasonable doubt.

The presumption of innocence has always embodied the principles stated within the prior legal frameworks; however, it was not explicitly established and codified into the United States until this case.

The presumption of innocence is both integral and a product of due process, ensuring equal treatment under a fair and just system, and ensuring that a mere accusation does not equal a conviction. In *Coffin v. United States*, the court cites a legal scholar to articulate how exactly this

maxim reflects a just and fair legal system, stating: “As men do not generally violate the Penal Code, the law presumes every man innocent; but some men do transgress it, and therefore evidence is received to repel this presumption.” In other words, every man is to be presumed innocent because those who do break the law are within the minority, and therefore those who are accused must be shown to be a part of that guilty minority. For example, in a society where the status quo is made up of individuals who are law-abiding citizens, the assumption of guilt for any accused person would be logically inconsistent given the rarity of deviance. In other words, prior to any evidence, there would be no explicit reason to assume that the accused is guilty given the status quo. The presumption of innocence is hence a protection given to the accused to prevent the misapplication of justice. As the court further explains, “this presumption is an instrument of proof created by the law in favor of one accused, whereby his innocence is established until sufficient evidence is introduced to overcome the proof which the law has created.” In sum, prior to any form of evidence, the accused must be presumed innocent. The presumption of innocence is therefore a critical element of the criminal justice system today, stating that the accused must be presumed innocent until proven guilty beyond a reasonable doubt. Although its initial relevance within the legal system is clear, its inner workings must now be addressed to fully compare its theory with its practice.

Theoretical Basis

The presumption of innocence draws a distinct line between what defines an accusation, and what defines a conviction. An accusation is a claim that someone has committed an illegal act, which requires only a claim be made, regardless of any evidence proving the claim. In contrast, a conviction is a guilty verdict given after evidence has been presented that proves guilt beyond a reasonable doubt. An accusation can evolve into a conviction, but this must only occur

after considerable evidence has been offered to corroborate the claim by meeting a standard of proof. A conviction therefore requires a high standard of proof to be met, whereas an accusation can be made without any evidence whatsoever. These two distinct concepts must not be synonymized with one another, and that is where the presumption of innocence comes into play.

By serving as a gatekeeper, the presumption of innocence prevents an accusation from being synonymized with a conviction. As Thayer, an American legal theorist and educator, explains, "A presumption may be called 'an instrument of proof,' in the sense that it determines from whom the evidence shall come… [but the] presumption itself contributes no evidence, and has no probative quality" (212). The presumption of innocence is therefore a necessary component for interpretation. This is a crucial point, because Thayer seeks to illustrate how the presumption of innocence is often mistaken as a piece of evidence itself, rather than as a means of interpreting it.

To offer an example, consider a case where a defendant is accused of murder. In theory, the presumption of innocence calls for the jury to interpret the evidence while maintaining that the defendant could very well be innocent. However, the presumption of innocence can be eroded if the jury instead chooses to disregard the presumption given the moral wickedness associated with murder itself. They may associate murder with evil and conclude that only an evil person could be accused of murder in the first place. In other words, the social connotation of the act itself can influence how the jury interprets the evidence needed to convict the defendant. By associating the possibility that the accused murdered someone, that possibility alone can be enough for the jury to presume the defendant guilty. In this sense, the presumption of innocence is looked at as a piece of evidence rather than as a means of interpreting it. In an ideal scenario, the jury would presume that the defendant may not be guilty of murder, despite

the social connotations attached to the act. They would then maintain this presumption with the subsequent evidence, using it as a lens to interpret the evidence rather than as a piece of evidence itself. The jury can only come to a fair verdict after all of the facts have been considered.

It is important to distinguish the clause in this manner, because if the presumption of innocence is seen as merely a contributory piece of evidence, rather than as a means of interpreting it, then the clause fails to provide defendants protection from being presumed guilty. In other words, the presumption of innocence is a protection within the law that is intended to prevent the individuals within the jury from using any of their preconceived bias or prejudice against the defendant. A jury is made up of individuals who have all had different life experiences, and some of those experiences could negatively affect their interpretation of the evidence presented in a trial. As Thayer (1897) further explains:

> In criminal cases if the jury were not thus called off from the field of natural inference, if they were allowed to range there wherever mere reason and human experience would carry them, the whole purpose of the presumption of innocence would be balked. For of the men who are actually brought up for trial, probably the large majority are guilty. (p. 199)

Therefore, the presumption of innocence is essential for establishing a context in which to view the evidence presented in a criminal trial. Racial prejudice is one obvious example to illustrate this necessity, because, as Professor of Law at St. John's University Anna Roberts states, "when trial defendants are African American, as is disproportionately the case, they are vulnerable to implicit fact finder stereotypes that threaten the presumption of innocence: unconscious associations linking the defendants with violence, weaponry, hostility, aggression, immorality, and guilt" (1). The presumption of innocence is therefore a necessary component of any criminal

justice system; it seeks to grant the defendant an institutional protection, requiring that the fact finders within a case interpret the evidence within its context.

Practical Connections

The theoretical and historical discussion presented thus far is indicative of a primary conclusion: the rule of law, due process, and consequently the presumption of innocence functions to benefit and protect everyone equally through a just legal system. However, taking a solely theoretical approach neglects the maxim's applications, and subsequent failures, to protect marginalized communities.

In the maxim's original conception under the *Ius commune* during the thirteenth century, notorious crimes "provided the most clear infringement of the right," and when "a crime was heinous and notorious a judge could render a decision against a defendant without a trial" (Pennington 114). Although this occurred before the presumption of innocence was arguably accepted as a norm, similar transgressions would occur during the time of Frederick von Spee, who was a German Jesuit priest, professor, and poet who lived from 1591-1635. Spee witnessed the Würzburg witch trials, where mass executions of hundreds of people occurred. Spee condemned the torture that occurred in these trials, writing that "'no one can be condemned unless his guilt is certain; an innocent person ought not be killed. Everyone is presumed innocent, who is not known to be guilty'" In response, he was "stripped of his academic positions and condemned by his order after the publication of *Cautio criminalis*, his famous treatise on procedure in witchcraft trials" (121-122). Despite the presumption of innocence being well-established as a maxim, it was circumvented to favor the will of the vocal majority at the expense of the vocal minority.

One may argue, however, that the past conception of the presumption of innocence has evolved significantly since its ancient context, and the United States criminal justice system now has a distinct theoretical framework that is fair and just for all. Although I have argued that past conceptions of the presumption of innocence have certainly evolved, there is still a significant discrepancy between the theory and the practice within the United States, with the victims of this discrepancy being primarily marginalized and underserved communities. To illustrate, consider the 1955 murder of Emmett Till, a 14-year-old boy who was murdered by Roy Bryant and J.W. Milam for allegedly flirting with a white woman. In this case, the all-white jury maintained the presumption of innocence for both Bryant and Milam, eventually finding them innocent of their murder charge. It was only until later that both Bryant and Milam confessed to killing Till, however, they could no longer be prosecuted due to double jeopardy. The Emmett Till case serves as an example for when the presumption of innocence was in fact maintained. The issue, however, is that the presumption of innocence disproportionately favors those from privileged communities, such as Bryant and Milam, while excluding those from underserved communities. In other words, the presumption of innocence noticeably applies only when members of privileged communities are accused.

The practice of pretrial detention provides a modern example. According to a 2022 report from the Prison Policy Initiative, "in a typical year, about 600,000 people enter *prison* gates, but people go to *jail* over 10 million times each year" (Sawyer and Wagner). The statistics on the mass incarceration issue within the United States is well-documented, but what must not be overlooked for our current purposes is the population of incarcerated people within jails. Of the estimated 547,000 people in jail, 445,000 of them have not been convicted for a crime and are therefore legally innocent. Outside of jails, "the federal government and other authorities detain

another 88,000 people" before they too have received a trial (Sawyer and Wagner). Notably, however, these individuals do have choices when it comes to their incarceration pretrial, they can post bail. But the choice becomes insignificant when considering that the "median bail amount for felonies is $10,000, which represents 8 month's income for a typical person detained because they can't pay bail" (Sawyer and Wagner). These statistics point to a primary implication for the presumption of innocence: those who can pay for their freedom pretrial are granted their innocence, whereas those who cannot afford it must involuntarily remain incarcerated before they are legally proven guilty by a jury.

The lack of follow-through for underserved communities can partly be explained through the concept of cultural trauma. Professor of law at Boston University School of Law Angela Onwuachi-Willig explains that cultural trauma occurs when "'members of a collective feel they have been subjected to a horrendous event that leaves indelible marks upon their group consciousness, marking their memories forever and changing their future identity in fundamental and irrevocable ways'" (336). To briefly return to the case of Emmett Till, the verdict and acquittal was not a surprise for the African American community because the "history and accumulation of legal injustice essentially led African Americans to expect nothing but the worst possible traumatic outcome" (350). In this sense, Onwuachi-Willig asserts that cultural trauma can occur when "common inequities in society repeat themselves" and when "inequities are reaffirmed by public or official government entities" (352). The cultural trauma, resulting from before Till, was only exacerbated through the acquittal of the two defendants. As time would progress, the lack of justice, and the exclusion of underserved communities, would only continue to reinforce the cultural trauma. Excluding any group from the presumption of innocence violates the same principles in which the maxim is based on – the rule of law and due process.

To address this problem, one may look to the Supreme Court, a largely undemocratic institution. If the presumption of innocence was established and codified through their deliberations on *Coffin*, perhaps the maxim can be reaffirmed to address the issue. However, Sullivan and Massaro explain the inherent weakness of the Supreme Court's struggle to find a balance between (1) procedural protections and fundamental rights, and (2) democratically enacted law with community-based morality. They conclude that, ultimately, "America's moderately 'thick,' or robust form of rule of law as related to due process jurisprudence is heavily dependent on the changing composition of a principled but nonetheless human, and hence imperfect, institution" (150). The underlying problem of humanity's imperfection is alluded to here. No matter what principles may be in place, humanity's frailty can lead to transgressions of the very same principles that we deem essential. Despite theoretical frameworks that idealize equality and fairness, society continues to perpetuate the injustices that occur in the legal system.

In relation to the current political and social climate of today, the issue has yet to be solved. Onwuachi-Willig explains:

> "In far too many ways, today's pattern of police and quasi police killings of African Americans, followed by no indictments or convictions for the officers, has come to resemble the pattern of twentieth-century lynchings that were routinely followed by grand jury findings that the victims died at the 'hands of persons unknown.'" (353)

The problem for why the presumption of innocence may discriminate against the most-in-need groups of society has only become more apparent as years have progressed. Even from the time of the maxim's first conception under the *Ius commune*, the theoretical framework has failed to ensure equality and fairness under what is claimed to be a just system supported by the rule of

law and due process. Perhaps a solution can arise by addressing the gap that exists between holding ideals and practicing them, and through acknowledging the legal structure that is human, and therefore inherently imperfect.

PART TWO: MISCONDUCT AND BIAS

Underserved Community Defined

The question therefore remains as to why such discrepancies between the ideal of the presumption of innocence and its malpractice occur. I am skeptical of the suggestion that the failures seen throughout American history, that are continuing today, can merely be explained by humanity's inherent capacity to make mistakes. Therefore, critically examining the extent to which the presumption of innocence protects underserved communities in today's criminal justice system requires a clear definition of who exactly underserved communities encompass, why they are classified in that way, and the consequent implications for the presumption of innocence. According to *Merriam-Webster's Dictionary*, "underserved" means "provided with inadequate service," which in turn refers to communities that are provided with inadequate service. 34 USC § 12291(a)(39) provides a more narrowly defined legal definition of underserved populations, stating that these populations "face barriers in accessing and using victim services." 34 USC § 12291(a)(44) defines victim services as services provided to victims of various classifications, including, but not limited to: legal advocacy, economic advocacy, advocacy through civil or criminal justice, and advocacy through social support systems. The general and specific definitions stated here help to illustrate this paper's scope of analysis. Underserved communities are therefore communities that have access to the least resources in comparison to other groups in society. The extent to which legal advocacy, economic advocacy,

and other forms of advocacy are measured are therefore in comparison to better-served populations, synonymously referred to as privileged populations.

A clear example of this distinction can be found in a criminal defendant's access to an attorney. The right to counsel is constitutionally guaranteed by the Sixth Amendment. Additionally, Gideon v. Wainwright (1963) held that indigent defendants' right to counsel is also guaranteed by the Fourteenth Amendment, and that that they also have a right to have counsel appointed to them. Public defenders are attorneys who commonly serve this role. The ACLU of Utah estimates that "four out of every five people accused of crimes [in the state of Utah] are eligible for court-appointed public defenders." Although public defenders in Utah are eligible to serve the majority of those accused of crimes, their offices are simultaneously underfunded and overworked, receiving "only 25-35% of the amounts budgeted for County Attorney's Offices (i.e., the prosecution)" with caseloads so high that "they may have only ten hours (or less) to spend on each felony case" (2011). Public defenders are an apparatus of the criminal justice system that seek to provide indigent clients with adequate representation and advocacy when they are accused of a crime. In theory, public defenders also serve as an equalizer for those who are privileged enough to afford a private attorney. Yet, as the data in Utah suggests, the balance of resources is far from equal. Although Utah is only one state of inquiry here, the same problem persists in various other states across the nation. Indigent defendants are a clear example of the broader underserved community. The presumption of innocence must therefore function as an inalienable right for defendants and underserved communities. The inherent disadvantage within these communities outside of the criminal justice system would only be compounded through an ineffective practice of the presumption of innocence.

The extent to which this maxim faithfully or unfaithfully meets its ideals can also be seen in its practices within the courtroom once an indictment has already been made. The criminal justice system, as mentioned prior, is inherently imperfect due to humanity's frailty. Cases in which members of the court engage in misconduct can illuminate the extent to this inherent imperfection, and therefore allude to methods for how justice is circumvented, ultimately implicating violations of the presumption of innocence.

Judge Misconduct

Judges are often seen as the supreme entity within a courtroom as they exercise significant discretion with how cases are conducted under their supervision. Using precedent and legal rules as their guide, they have the capacity to rule on which evidence is permitted, which witnesses are allowed to testify, and are ultimately tasked with ensuring that the trial at hand is fair. However, the law's written rules and expectations are not always a sufficient guide to prevent misconduct. In a recent murder case that took place in Oakland, California, a presiding judge had recused himself after allegations of misconduct surfaced. A recusal, according to the Legal Information Institute of Cornell Law School, is the "self-removal of a judge or prosecutor because of a conflict of interest." The allegations asserted that the judge in question threatened to add an additional fifteen years to a prison sentence "because he was angry with a defense attorney, and that he was unduly influenced by a prosecutor who threatened political retaliation" (Gartrell). Although a recusal does not indicate guilt, it suggests that the judge was aware to some extent of a conflict of interest prior to the allegations surfacing. Another case in the same year arose in the Southern District of New York, where a former Brooklyn Supreme Court Justice was sentenced to fifteen months in prison for "obstructing federal investigation of misconduct at municipal credit union" (United States Department of Justice). The former judge

was provide with “a steady stream of benefits from MCU, including after she was directed to resign from MCU’s board.” These two cases seek to highlight one example for how the current legal system is inherently susceptible to misconduct. Judges, who are legal experts that possess significant authority within a courtroom, are no exception.

Prosecutor Misconduct

Admittedly, however, the prior example is insufficient on its own to highlight the weaknesses of the criminal justice system. Examples for misconduct and corruption can be found in offices as high as the President of the United States. Those in the highest positions of power are not granted immunity from undue influence. These transgressions must be addressed in order to preserve the underlying democratic frameworks, and one remedy for doing so is through criminal prosecution. District attorneys, who represent the state in any given criminal case, function to punish those who break codified laws. Therefore, they are an apparatus of the criminal justice system that also acts as a safeguard if authorities, such as judges, engage in misconduct.

However, district attorneys themselves are also not immune to misconduct. A controlled laboratory experiment by sociologists Lucas, Graif, and Lovaglia examined misconduct in the prosecution of severe crimes. They theorized that an increased pressure to convict encourages misconduct, and cases that are characterized as “serious” increase perceptions of the defendant’s guilt that ultimately allow for the justification of the misconduct (97). To test their theory, they used a sample of university undergraduate students. The results were as follows:

> Participants withheld exculpatory evidence from the defense more often in the murder case than in the assault case. Further, participants prosecuting the murder case expressed a stronger belief in the defendant’s guilt than did the participants in the assault case. (97)

The findings in this study allude to how district attorneys, acting as one of the enforcers of the law, can be exposed to situations that encourage misconduct. Notably, however, the study does not analyze district attorney's themselves, but instead asks undergraduate students to act the role.

But this weakness becomes less impactful when considering recent cases of district attorney misconduct that suggest the validity of their findings in a real-world context. In January of 2022, the San Francisco District Attorney's Office was accused of withholding evidence "in hopes of convicting a San Francisco police officer of excessive force" (Shaban). The allegations surfaced after a criminal investigator for the office testified that she was ordered to withhold such evidence. The case is currently in progress, so it is important again to note that the allegation does not indicate guilt. The allegations come at an interesting time, however, due to the recent spotlight the COVID-19 pandemic has put on the Black Lives Matter movement. Calls for police accountability and budget reallocation have grown in intensity, and the correlation between this case and the movement are suggestive of societal pressures that may influence the alleged misconduct. There are recent examples of district attorney misconduct that are not mere allegations, however. In February of 2022, a North Carolina high court struck down a conviction "because of discrimination against a black juror" (Collins). During the trial, the prosecutor removed a black woman from the jury, claiming that she "did not like the juror's 'body language.'" The trial judge accepted the reasoning, but upon appeal the justices found fault within the prosecutor's reasoning, ultimately ruling it as racial discrimination. Both examples serve to illustrate the inherent weaknesses that district attorneys may fall prey to.

Jury Bias

Judges and prosecutors are two perceived safeguards to prevent and correct for injustice within the courtroom, but as demonstrated, they can fall to the same weaknesses that are inherent

within the system. The previous case involving prosecutorial misconduct in North Carolina points to a different yet important issue: the makeup and consequent bias of the individuals who make up juries in criminal cases. Juries function as the factfinders in every criminal case. Attorneys present evidence and argue for their respective clients, and judges act as a mediator to ensure fairness in the attorneys' pursuit of doing so. Juries, however, are the ultimate decision makers when it comes to a verdict. They choose whether the prosecution has met the highest burden of proof in all the law, beyond a reasonable doubt, as they weigh the evidence. It is therefore absolutely vital that the jury upholds a presumption of innocence in their deliberations. However, the jury is not made up of legal experts. Juries are made up of everyday American citizens that come from diverse backgrounds and therefore possess diverse perspectives. These perspectives, however, can take the form of bias against the defendant in question.

Bias can be either an explicit or implicit phenomenon. However, both can be equally implicatory for a fair jury. Blatantly racist attitudes are one example of explicit bias. For example, a juror who openly and proudly advocates for white supremacist ideals. The pre-trial process of *voir dire* is a safeguard against including such jurors within the final pool. However, a racist juror has no incentive to reveal their attitudes unless they are prompted to do so, making explicit bias a dangerous hazard.

Yet, implicit bias can be an even greater danger due to its hidden influences. Implicit bias here refers to the bias that an individual has of which they are not consciously aware. Raymond C. Marshall, a partner and white-collar crime litigator with Sheppard, Mullin, Richter & Hampton LLP in San Francisco defines implicit bias as an "automatic and unintentional process that occurs in the human mind, and it affects how we respond to different groups in divergent ways and that those different and divergent responses can have unfortunate consequences." The

American Bar Association likewise recognizes the presence of bias in the criminal justice system, explaining how it shows up in charging decisions, client interaction, and sentencing to name a few (*How to confront bias)*. For example, racially profiling a Black man as he goes on a jog near his home, resulting in his subsequent murder. The defendants in the widely discussed 2020 shooting of Ahmaud Arbery claimed that Arbery matched the description of a man who was suspected of several break-ins in the area (Fausset). Assuming that the defendants were truthful in their testimony, which is undoubtedly up for debate, the bias that they had against Black people were evident through their association of Blackness with crime. Implicit bias, however, can be seen in jurors as well.

Various case studies, statistics on conviction rates, death penalty statistics, mock jury studies in relation to race, and other associations between race and sentencing offer "compelling evidence that many prospective [white] jurors walk into the courtroom predisposed to convict Black defendants" (Johnson 1651). Johnson, who is a Professor of Law at Cornell Law School, addresses both explicit and implicit bias in her article, painting a portrait for how race is implicated through both means. Additionally, Johnson calls for an evolution of the law, as "techniques, such as voir dire, that may have aided in the elimination of the openly prejudiced from the jury are largely futile with their modern counterparts… where the manifestation of prejudice has shifted from the overt, and often hostile, to the covert, and often unconscious" (1693). The article, written in 1985, argues that the legal practices and institutions present during the time were inadequate for preventing discrimination. However, much time has passed since then.

To offer a more recent example, a 2013 experiment conducted by Young, Levinson, and Sinnett tested mock juror's racially biased responses to the presumption of innocence jury

instructions. To provide some initial context, jury instructions are instructions given to juries that seek to aid their understanding of the complex elements required to overcome the relevant burden of proof. In other words, jury instructions seek to simplify the law for any layman to understand by outlining steps on what to look for in their deliberations. Jurors, possessing anything from a Ph. D to entirely lacking a high school diploma, therefore require a simplification of the law in order to justly weigh the facts in the relevant case. Jury instructions can be given pertaining to the presumption of innocence, which seeks to explain what the presumption entails. For example, California Criminal Jury Instructions number 220 defines reasonable doubt as "proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt." Notably, however, Professors of Law and Psychology Young, Levinson, and Sinnett found that jury instructions on the presumption of innocence "actually primes attention for Black faces, indicating that this supposedly fundamental protection could trigger racial stereotypes" (1). Participants were asked to complete a computer-based dot-probe priming task, to test latency to Black versus White faces. The results showed that "participants who did not receive presumption of innocence instructions did not show" the same attentional bias as those who were presented with them. Although the study establishes "that a realistic implicit racial cue can alter attention" it notably does not establish a connection with "observable behavior and decision-making." (3). In other words, although they were able to show that a bias existed, the study does not establish how that bias can manifest itself in the form of observable behavior. Therefore, jurors with an implicit bias do not equate with jurors who make decisions under the influence of such biases.

An analysis of judge and district attorney misconduct in combination with the role of bias in its explicit and implicit forms within a jury provide notable implications for the presumption of innocence and its role in protecting both defendants, and underserved communities. The circumstances surrounding each case of misconduct varied greatly. The Oakland misconduct case did not clearly implicate the presumption of innocence but showed how judges can shift away from the guidelines outlined for them within the law through a conflict of interest. The case in the Southern District of New York also showed how a conflict of interest can be implicated, but through a financial gain that favored the defendant. The two cases of district attorney misconduct illustrate how outside influence can affect how they prosecute cases. San Francisco has a so-called "progressive" chief district attorney, and their office was alleged to have withheld evidence in an effort to convict a police officer. North Carolina, which has a long and harsh history of racism, influenced the district attorney to unjustly discriminate against a potential black juror. A jury, which is comprised of everyday citizens, are influenced by biases that produce varying degrees of harm upon the presumption of innocence.

Considering the various cases as an aggregate, however, suggests that the presumption of innocence can be circumvented to harm criminal defendants, regardless of background. Defendants of privileged communities, such as police officers, appear to fall prey to the same violations. The social context in which the trial takes places therefore seems to be a greater factor influencing the maxim's violation than does the defendant's background. Defendants stepping into a courtroom immediately lose the presumption of innocence afforded to them, and the social context in which the trial operates can determine the degree to which it is violated. Although these cases are merely suggestive, it is nonetheless indicative of the weaknesses within the criminal justice system that Sullivan and Massaro alluded to. This is not to say, however, that

underserved communities are not especially impacted by the maxim's failure within the courtroom.

PART THREE: IMPACT ON UNDERSERVED COMMUNITIES

Mass Incarceration

Race plays a critical role in access to resources and is therefore critical in a community's classification as underserved. The disparities in wealth by race and ethnicity have been well-documented, but data from a 2019 Survey of Consumer Finances show that "long-standing and substantial wealth disparities between families in different racial and ethnic groups were little changed since the last survey in 2016." As was the case in 2016, "the typical White family has eight times the wealth of the typical Black family and five times the wealth of the typical Hispanic family" (Bhutta et. al). This discrepancy can be recognized through several factors, including inheritances, family support, homeownership, retirement plans, access to employer-sponsored retirement plans, and number of assets within an emergency savings account.

The criminal justice system is implicated because those who have the least wealth are more likely to be incarcerated, as "individuals incarcerated in their early 30s are much more likely to have grown up in poverty, in single parent families, and in neighborhoods of concentrated economic distress and with large minority populations" (Looney and Turner 2). To offer detailed statistics, the relationship between family income and the estimated number of individuals incarcerated in prison or in jail suggests that "boys from families in the lowest 10 percent are almost 20 times more likely to be incarcerated compared to boys from the top 10 percent," where the boys from the poorest families are "40 times more likely to end up in prison compared to boys from the richest families" (12). Although women are overall incarcerated at a

lower rate, girls from families in the "bottom 10 percent are 17 times more likely to end up in jail… compared to girls from families in the top ten percent" (12-13). Income, and wealth in general, is therefore a critical aspect of which communities fall under the umbrella of underserved.

Race is intimately intertwined within this analysis as well, as Looney and Turner suggest that the "labor market problems and likelihood of incarceration arise[s] much earlier in life and are related to family resources, local environment, and (though we do not examine it directly here) to race" (2). Senior Research Analyst at The Sentencing Project, Ashley Nellis, Ph. D, fills in this gap, showing how "Black Americans are incarcerated in state prisons at nearly 5 times the rate of white Americans" (5). Extending this analysis further, explanations for this disparity "range from variations in offending based on race to biased decision making in the criminal legal system" which includes factors that put African Americans and other minority groups at a disadvantage, such as poverty, education outcomes, unemployment history, and criminal history (10). Nellis also points to various examples for how bias and other factors continue to perpetuate the mass incarceration of Black Americans and other minority groups. However, the connection between race, wealth, and participation within the criminal justice system is clear. In order to draw further conclusions about the implications of the presumption of innocence, it would then be helpful to describe a basis for comparison.

White-Collar Crime

White-collar crime is a complex topic. Consequently, a discussion of white-collar crime within the context of the presumption of innocence will not only be brief, but no more than suggestive. The main issue with the concept is that the definition itself is currently contested within the field of social sciences, resulting in substantial influence on "who and what is studied

as well as general conclusions about the nature of white-collar crime" (Benson et al. 1). Given that the term "white-collar crime" has its original origins within social sciences, it adds additional complexity when taking into consideration that our object of inquiry implicates legal processes (Pollack and Smith 182). The usages of white-collar crime in this paper, therefore, will be limited to the demographics of who tends to commit these crimes, how they are treated within the trial and pre-trial processes, and how these elements compare to underserved communities going through the same judicial processes. Two definitions will be utilized here. In the first sense, white-collar crime refers to the "corrupt, exploitative and socially harmful acts of respectable and powerful individuals and organizations." In the second sense, white-collar crime refers to "economic crimes that involve deception" (Benson 4). Both definitions will play a role in the subsequent discussions.

The demographics for who commit white-collar crimes would be a useful consideration in comparing the previous discussions of race with the presumption of innocence. Based on research by Assistant Professors of Criminal Justice Klenowski and Dodson:

> A considerable percentage of white-collar offenders are gainfully employed middle-aged Caucasian men who usually commit their first white-collar offense sometime between their late thirties through their mid-forties. However, recent research has noted an increase in commission by both females and minority offenders for certain types of white-collar crime. Finally, most offenders appear to hail from middle-class backgrounds, have some level of higher education, are married, and have moderate to strong ties to community, family, and religious organizations. (102)

The portrait of the typical white-collar crime offender can then be thought of as white, middle-class, and possess comparably greater access to resources than those with the least access.

An issue, however, rises when considering the possible disparate treatment of white-collar offenders and offenders from underserved communities within the criminal justice system: the provability of the crimes in question between the two classifications is markedly different. For example, when measuring the costs of the two types of crime, there are several key differences between the two. Firstly, the victims of "street" crime are more obviously identified in comparison to white-collar crimes. A murder, for example, can be known once a corpse is found. However, the victims of white-collar crimes "often do not know that they have been subject to a criminal offense" (Cohen 90). A notable example of this issue is the notorious lawsuit against DuPont, the chemicals company, by Robert Bilott. Although cases are still being litigated, his most widely publicized case involved a family of farmers in West Virginia who were poisoned by a chemical compound manufactured by the company that was shown to have been dumped in a landfill next to their farm. Bilott is currently in the process of litigating other lawsuits as well, as evidence has suggested that the toxicant has contaminated the city's water supply. This type of poisoning can only be understood at a microscopic level and is far from obvious in comparison to a murder victim. There are other key differences between white-collar crime and "street" crime that stem from the more-privileged groups having access to greater resources, which in turn can lead to a more favorable outcome during the trial. To name one other example, the accused have the privilege of dedicating parts of their resources towards conducting their own independent investigations and can therefore present substantially greater evidence pre-trial that can persuade the prosecutors from following through with their indictment (Dervan and Podgor 562).

Provability is therefore difficult to utilize in an even comparison between white-collar offenders and offenders from underserved communities. Regardless of difference, however,

comparisons can still be drawn that implicate the presumption of innocence when considering how the cases are resolved. Although white-collar crimes can be more difficult to prove for reasons that do not implicate the privilege or class of the perpetrators, both types of cases must eventually be resolved once they have been litigated. In the criminal context, this is most often seen as punishment through imprisonment. As indicated earlier, underserved communities' makeup most of the United States prison population. Notably, in the case of white-collar crimes, "the vast majority of cases are resolved by plea agreements. Sentencing in white-collar matters often requires a determination of the amount of loss suffered by the victims" (Dervan and Podgor 562). Ninety seven percent of white-collar crimes, which are commonly adjudicated through the federal system due to the resulting harms not being confined to a singular state, are the result of a guilty plea, where the other three percent is a result of a guilty conviction (572). There are various reasons for why white-collar offenders prefer to take a plea over going to trial. For example, corporations employ hundreds of people, and they maintain partnerships with other companies as well. Therefore, a guilty conviction as opposed to a guilty plea "would cause devastating collateral consequences of the company" (573).

The main point here, however, is that the presumption of innocence does not appear to discriminate between white-collar offenders and offenders from underserved communities. The discrepancy in the prison population, of which white-collar offenders' makeup a tiny minority, cannot be explained through the lens of the presumption of innocence. Due to the complications with provability discussed here, there are too many caveats to draw a convincing conclusion that the legal maxim is implicated. As evident by the statistics on plea bargaining, white-collar offenders overwhelmingly decide to take a plea deal as opposed to going forward with a trial. The case is therefore resolved before the presumption of innocence can be implicated. This

observation is especially interesting, as it suggests that white-collar offenders, and the consequent corporation, have the unique power of mitigating costs. In other words, a violation of their presumption of innocence does not bear as much weight as a violation upon a member of the underserved community would. A corporation, or a collection of individuals, has an interest that supersedes the individual who is accused of a crime. Therefore, it would be comparably less costly for a corporation to settle on a case pre-trial than if they followed through with it. Sole individuals, in contrast, bear the full cost of a guilty resolution, whether it is an admission or a conviction.

Conclusion

Several gaps remain within this paper, which prevent a conclusive judgement from being made. Firstly, the literature on the influence of bias on an agent's decisions is numerous. However, further research is needed to test the role of bias specifically tailored to the presumption of innocence. The experiment conducted by Young, Levinson, and Sinnett referred to earlier provides a useful framework for extending their results to further explain the role of bias in criminal proceedings by explaining why mock jurors reinforced racial cues. Additionally, the role of societal pressures that can affect the actions of a particular agent, regardless of legal expertise, can further be explored to explain how these pressures are characterized. Although the role of race and wealth provided valuable insight, these are only two branches of several that fall under the classification of underserved communities. Albeit important, other avenues for analyzing the disadvantages presented to the worse-off communities within the criminal legal system framework could nonetheless prove useful, such as immigrants.

Despite the gaps in research, the historical process outlined here showcases how the presumption of innocence has evolved from its first conception within the common law, and its historic function of protecting marginalized communities. The maxim also has historical roots that are deeply entrenched within the ideals outlined by the rule of law, that seeks to provide a fair and just trial in accordance with due process. The presumption of innocence has been explored in a theoretical sense within this paper as a means for protecting a criminal defendant from various forms of bias. In a practical sense, though, the maxim has been proven to fail, such as in the case of Emmett Till. As Sullivan and Massaro suggest, failures to uphold the maxim may not be due to an unjust legal system, but instead due to the inherent imperfection within humanity and the subsequent failure to uphold ideals even when they are deemed essential.

This paper, however, aimed to demonstrate how the maxim's failure within the context of the United States criminal justice system tends to be at the greatest expense of underserved communities. Whether such failure can be attributed to humanity's inherent frailty, however, remains conclusively unanswered. Misconduct of judges, district attorneys, and the bias within juries coupled with the mass incarceration of racial minority groups and the obstacles presented with convicting white-collar offenders suggests an undertone of injustice occurring within the criminal legal system. Notably, however, there was also the observation that criminal defendants in general are not presumed innocent, where background does not play a role in the prejudice. But this must not take away from the fact that underserved communities are especially vulnerable when the maxim fails to protect their right to due process. In sum, the evidence presented suggests that there are several contributing factors to the presumption of innocence's failure to protect the rights afforded to underserved communities under a system of due process, measured by the maxim's ideals and the myriad of examples for how those ideals are corrupted.

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