

LSE LAW SCHOOL EVENTS

Workshop: Intermediate verdicts in criminal justice and beyond

Seminars | 15 March @ 8:30 am - 5:15 pm

Please note, due to unforeseen circumstances, the workshop will now be held in the Vera Anstey Room, Old Building, LSE, where step-free access is not available. See [Campus Accessibility Map](#).

The binary verdict system, that is, a decision-making arrangement comprising a single standard of proof and two possible verdicts, is often taken for granted by those operating in jurisdictions that feature this system. England and Wales are such a jurisdiction. There appears to be a widespread view that the reasons for endorsing the binary system are self-evident, such that there is no need for articulating them. The study of intermediate verdicts (the Scottish 'not proven', in *primis*), and of the debates surrounding them, is a healthy reminder that alternatives to the binary system do exist and that, therefore, a justification for such a system should be given, instead of being merely assumed. By addressing the question whether intermediate verdicts can be justified, we aim to overcome the current dogmatism concerning the binary verdict system, that is, we aim to encourage an open discussion about the reasons in favour or against binary verdicts. The workshop will feature leading academics who are currently working on the topic of intermediate verdicts in the contexts of criminal and of civil justice, both in the UK and abroad.

Please note that space for this workshop is limited. If you wish to attend, please register at [this link](#)

Programme

8.30 – Coffee

9.00 – F. Picinali (chair): *Welcome and introduction*

9.30 – J. Chalmers, F. Leverick, V. Munro: *The Case Against Scotland's 'Not Proven' Verdict*

10.30 – Y. Rabin and Y. Vaki: *The Israeli Intermediate Verdict: Its Jurisprudence, Implications and Frequent Use in Practice*

11.30 – Coffee break

11.45 – A. Pundik: *Adding a Third Verdict to Reduce the Risk of False Conviction*

12.45 – Lunch break

14.00 – M. Barneron: *The Powerful Influence of Third Alternatives on Social Decision-Making: Theory and Evidence from Controlled Experiments*

15.00 – G. Tuzet: *Proportional Adjudication and its Discontents*

16.00 – Coffee break

16.15-17.15 – Discussion

All talks will last 25 minutes and will be followed by a 30-minute discussion.

Abstracts

J. Chalmers, F. Leverick, V. Munro: *The Case Against Scotland's 'Not Proven' Verdict*

Scotland, unusually, has three verdicts in criminal trials: guilty, not guilty, and not proven. The not proven verdict, regarded by many as an intermediate option between the other two, has been the subject of a long-running debate as to whether it should be abolished. We argue that it should. Drawing on empirical evidence from two recent studies, we cast doubt on the arguments most often made in its favour – that it serves a valuable communicative function, protects against wrongful conviction, and/or increases juror satisfaction. There is no consensus on its meaning or appropriate application in any given case, and it risks both stigmatising an acquitted accused and diminishing complainers' opportunities for closure. It is doubtful that it prevents wrongful conviction, but even if it does, there are more effective measures in this regard.

Y. Rabin and Y. Vaki: *The Israeli Intermediate Verdict: Its Jurisprudence, Implications and Frequent Use in Practice*

In most common law jurisdictions, a trial ends with a verdict of either an acquittal or a conviction. By contrast, in Scotland and Israel, a trial might also end with a third alternative: a verdict of 'not proven' (Scotland) or 'acquittal for the benefit of the doubt' (Israel, henceforth 'ABD'). We begin the talk by defining the Israeli ABD judgment and describe its historical development in Israeli law. We show that this verdict was not created in a single conscious act of legislation but was rather developed incrementally by the courts. We also show that unlike in Scotland, the ABD in Israel has serious legal implications, for the courts relied on it to violate the acquitted person's rights (e.g. denying them compensation due to acquittal). We then present some data on ABDs in Israel. Intuitively, one might expect that ABDs would constitute

the exception rather than the rule, particularly given their lack of a statutory basis. However, the data we collected shows the opposite. We present the high volume of ABDs and their proportion within group of all acquittals. We then compare this data with that available on the 'not proven' in Scotland.

A.Pundik: *Adding a Third Verdict to Reduce the Risk of False Conviction*

The aim of the current project is to examine whether, to what extent, and why adding a third verdict assists in preventing false convictions. The research will be carried out through 6 randomised controlled experiments on the Israeli 'acquittal for the benefit of the doubt' (henceforth 'ABD') –the first ever to be conducted on this Israeli verdict. We seek to identify the type of wrongful convictions that ABD might assist in preventing and to isolate the psychological and emotional mechanisms that may explain this effect. Our hypothesis is that the availability of the ABD verdict reduces the risk of wrongful conviction by encouraging fact-finders to overcome powerful emotional biases. If our hypothesis is correct, ABD would be particularly useful in preventing false convictions within an important type of case: when the incriminating evidence is too weak to prove guilt beyond reasonable doubt (so the defendant should be acquitted), yet the emotional charge of the case is so strong that it might sway the fact-finder to hand down a guilty verdict nonetheless.

M.Barneron: *The Powerful Influence of Third Alternatives on Social Decision-Making: Theory and Evidence from Controlled Experiments*

Over the years, the psychological literature has identified several factors and biases influencing decision-making processes. In this talk, I will present the results of a recent work focusing on social decisions, that is, decisions impacting not only the lives of the decision-makers themselves but also the lives of other people. In particular, I will focus on one type of social decisions that is of interest for both legal scholars and psychologists: decisions that are made under conflicts of interest. I will show how adding a third alternative dramatically influences the tendency to make self-interested decisions. In controlled laboratory experiments, a group of participants had to choose between two alternatives: one self-interested and a second other-oriented. A different group of participants had the opportunity to choose a third alternative, in addition to the two previous alternatives. The third alternative was worse for the other person and not any better for the participants compared to the self-interested alternative. The results revealed that participants who were given the opportunity to choose the third alternative made more self-interested decisions than did participants who were not given this opportunity. I will discuss the implications of these findings for the legal system in general and intermediate judgments in particular.

G.Tuzet: *Proportional Adjudication and its Discontents*

The work argues that standards of proof and proportional adjudication are different legal responses to the problem of judgment under uncertainty, and compares their features. It focuses in particular on civil cases of two sorts: (1) cases in which liability can be proportionally determined according to the probability of causation or negligence; and (2) cases in which property rights can be proportionally determined according to the strength of the relevant claims. Objections to proportional adjudication are considered, and possible rejoinders are suggested.

DETAILS

Date:

15 March

Time:

8:30 am - 5:15 pm

Event Category:

Seminars

ORGANIZER

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[View Organizer Website](#)

VENUE

Vera Anstey Room (VAR)

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