

The Juror, the Citizen, and the Human Being: The Presumption of Innocence and the Burden of Judgment

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Abstract In this essay, I suggest that the criminal trial is not only about the guilt or innocence of the defendant, but also about the character and growth of the jurors and the communities they represent. In earlier work, I have considered the potential impact of law and politics on the character of citizens, and thus on the capacity of citizens to thrive—to live full and rich human lives. Regarding the jury, I have argued that aspects of criminal trial procedure work to fix in jurors a sense of agency in and responsibility for verdicts of conviction. Here, I draw on those ideas with respect to the presumption of innocence. I suggest that the presumption of innocence works not primarily as legal rule, but rather as a moral framing device—a sort of moral discomfort device—encouraging jurors to feel and bear the weight of what they do. I offer an account of character development in which virtues are conceived of not merely as modes of conduct developed through habitualization and practice, but also as capacities and ways of being developed in part through understanding and experience. The criminal trial, framed by the presumption of innocence, can be an experience through which jurors and their communities, by learning what it means and feels like to carry a certain sort of moral weight, may engender a certain set of moral strengths—strengths valuable to them not just as jurors, but also as citizens, and as human beings.

Keywords Jury · Criminal trial · Character · Presumption of innocence · Thriving

Introduction

The criminal trial, including the presumption of innocence, is not just about the guilt or innocence of the defendant, but also about the character and growth of the jurors and the communities they represent. Some years ago, I suggested that various aspects of the

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