

# Innocent until proven guilty: an evaluation



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This claim is very similar to that of Blackstones ratio, which simply states that “ it is better that ten guilty persons escape, than that one innocent suffer When taken at face value, it simply means that no one should be punished for any alleged crime, unless it can be proven that they are guilty. This is so that justice can be done, where no innocent should suffer for another’s crime. Although it sounds logical and fairly straight forward, before we agree with the claim, we should seek to understand each detail of the claim, where the claim implies, and the consequences of the eventuation of the claim.

### Interpretation and Analysis

As discussed above, the general idea of the claim is that everyone is innocent until proven guilty. The claim implies that as long as there is any doubt, however insignificant, that a defendant is guilty, he should be released, lest he be unjustly ‘ incarcerated’. By using the word ‘ incarcerated’ instead of using more specific words like ‘ imprison’, it opens up several other possible meanings to the claim. The other possible meanings would be confinement or, in other words, placed under detention. The claim also failed to specify the time frame, so it is also implying that innocent persons should not be unjustly incarcerated, even for the shortest period of time. In this context, it can be linked to that of Australia’s detention orders under the anti terrorism law, which allows a person to be detained for 24 hours, with the option for the order to be extended for a total period not exceeding 48 hours. This, in itself, is controversial, as it is said to infringe the personal rights of liberty of individuals.

Sadly, a world where no innocents are unjustly punished is a utopian one. Indeed, it is the ideal scenario when only the guilty is punished, and the innocent walks free. That is what the justice system is about. However, this is not always the case, and there is always a possibility that an innocent person is found guilty. An example of such a case would be *D'Orta-Ekenaike v Victorian Legal Aid*, when the plaintiff was unjustly convicted due to bad legal advice given by the Victorian Legal Aid[2]. In fact, in many criminal cases, there is always a small chance that, however ridiculous the argument or explanation the defence puts up, it could be actually true, and that the defendant is truly innocent. Therefore, in order to ensure that truly no innocent is punished by mistake, the defendant must be allowed to go free in such cases, no matter how probable that he is guilty of the accused crime. This is the exact scenario which the claim seems to suggest at face value, where it is better that fifty guilty persons walk free than a single innocent person be unjustly incarcerated, and this might lead to the breakdown of the justice system, when the accused would simply conjure up some story to use as defence in court, hence raising doubt about their guilt, so that they would get acquitted.

The claim also failed to mention the type of crime which the fifty persons allowed to walk free were guilty of. The scenario the claim suggests might be within limits which are reasonable if it is for relatively minor offences such as littering or parking offences, but it is an entirely different story if the crimes of the fifty guilty people include serious offences such as murder. This raises the question on whether it is worth the personal rights of the person, to uphold justice for this one innocent person, and in turn, opening up the

possibility that fifty violent psychopaths being allowed to walk free to wreak havoc in society. Even if it is argued that it is not necessary that all fifty people are those guilty of serious crimes, the damage that even just one serial murderer can do is very significant. We just cannot afford to let one serial murderer walk free, much less fifty, for the stability and peace within our society.

In light of the terrorist acts on the September 11, 2001, as well as the subsequent acts of terror around the world, it raises another problem to the claim. The damage that a single terrorist could wreak in our society could possibly be beyond what many of us can imagine. Even if just one of the hypothetical guilty people who are released is a terrorist, much less fifty, there would be serious implications to our society as a whole. The terrorist, with an agenda to create as much terror as he can, could detonate bombs in crowded areas like what happened in the Bali bombings, go on a shooting spree or even disrupt important conferences which involves world leaders. Not only will these result in loss of numerous lives, it will also tarnish the nation's reputation in the eyes of other countries, especially if it involved the leaders of other nations, and this, in turn would have negative economic consequences, an example being the decline in the number of tourists.

Therefore, in these times of turmoil and terror, perhaps, if the incarceration, be it temporary or permanent, of one innocent along with the fifty guilty people would be the key factor in preventing a terrorist attacks which would possibly result in numerous loss of lives, perhaps, ignoring the personal rights of the individual, it is the better alternative than letting all of them walk free, with possibly disastrous consequences.

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## Evaluation and Inference

The claim can be related to many of the theories we have learnt in the course, the most prominent one being liberalism, which is linked to human rights. It also can be related to the theory of natural law, as well as utilitarianism, which focuses more on the morals of the consequences rather than that of the action itself.

From the natural law point of view, which focuses on the ethics of one's actions rather than the consequences, the laws of the state which goes against the values set out in God's law, or based on principles of justice, are morally wrong. Laws made by the state should follow the set of values, or they would not be just law. Some things are just plain morally wrong, such as the wartime atrocities under the German law, and most people, if not all, would agree. The punishment of an innocent individual, as suggested by the claim, although nowhere as serious as the former, is still morally wrong in the eyes of most people. It is even stated in the Bible in Genesis 18: 23-32 that God would not punish the innocent, and that if ten innocent and just people are found within the city, God would not destroy the city for their sake.[3]Therefore it can be said that in the eyes of natural law, the claim is perfectly just, and that laws made by the state should adhere to the principles laid down by the claim.

From the liberalism point of view, which emphasises on individual rights, the unjust incarceration of an individual, regardless of the duration, would be an infringement of the rights of the individual. In fact, by the incarceration of the individual, it already goes against a number of rights listed in the United

Nation's Universal Declaration of Human Rights, examples being Article 11, where everyone is presumed to be innocent until proven guilty, and Article 13, where everyone has freedom of movement within the boundaries of each state.[4] These are fundamental human rights which everyone is presumed to have, and it can be disturbing to suggest that some of these rights are being violated in a first world country, such as Australia. Examples would be the preventive detention order, control orders as well as questioning warrants in Australia, where individuals, in some cases even those without suspicion, may be detained for questioning.[5]

However, the two perspectives mentioned above does not take into account the consequences of the actions. From the utilitarianism point of view, the most moral action would be the one which would benefit the most number of people in the end, instead of focusing on the morality of the act itself. This could be seen as for the benefit of communal wellbeing, which brings about the commonly heard phrase "for the greater good". If by detaining the group of people, inclusive of the fifty guilty people as well as one innocent person, and as a result, terrorist attacks could be avoided, then in the eyes of the utilitarian, it is the act that is the most moral. In fact, by the very same Universal declaration of rights mentioned earlier, it is mentioned in Article 2 that Everyone has the right to security of the person.[6] Since in this scenario, it is impossible to be entitled to all the rights listed in the Universal Declaration of Human Rights, it is ultimately better to choose the outcome which end up benefiting the most people. Since somebody is going to suffer in the end, it might as well be that innocent individual, rather than the whole of society being affected as a result.

Of course, some people might point out the individual rights of the hypothetical innocent person. and the justification for the incarceration. They might even enquire how is it even permissible that the innocent can be incarcerated even without being proven that he is guilty. However, looking back in time, when man first came together to form society, they had to give up part of their liberty in exchange for stability when they had to follow the law, so that they are able to live peacefully in turn. In light of the terrorist attacks, each of us should be prepared to give up a bit more of our rights, so that we are able to have the peace of mind and live in security. It is due to the nature of the terrorist attacks, which we have to take extra precautions, as there can be almost no warning when a terrorist will strike, and when it does happen, the damage would be massive. It is not always possible to find sufficient evidence in time to detain the suspected terrorists, and new anti terrorism laws had to be introduced to allow the detention of suspected terrorists without the need for evidence, and it is inevitable that innocents would be detained by mistake as well. This is further justified, when Australia is near the top of the terrorists' hit list, and the danger of such attacks occurring in the country is very real indeed.[7]The possibility of being incarcerated by mistake, along with the actual guilty people is a risk we must be all be prepared to take, so that we can enjoy continued peace.

## Reflection

When I first started working on the essay, my original intention was to write revolving around the issue of human rights. I actually intended to write in support for the human rights of the innocent individual, as in reality, no reasonable person would want to be put under detention even without being

proven to be guilty. This, I believe, would be the more popular mindset, and the more popular perspective. It is also one of the reasons why I chose to study law, which is to fight for the rights of others, and for a small duration of time, I was focused on planning my essay argument solely towards that direction.

Although I am not a fan of the utilitarian perspective, being from a Christian background and having the beliefs that the morality is all about the actions of the individual, throughout the course of planning and writing the essay I have realised that the consequences of the scenario suggested by the claim are also extremely important, and a balance has to be struck between the morality of the action and that of the consequences. Having held leadership appointments in the Singapore Armed Forces, I also understand that some measures, although harsh and unpopular, are necessary for the security and wellbeing of the society. This has also helped me to understand that the threat of terrorism is very real, and that the peace we are living in now should not be taken for granted.

This essay has also revealed myself as a open-minded individual, as I was willing to reconsider my own views and beliefs throughout the course of writing this essay. The essay also revealed showed that I am courageous, by challenging the viewpoints which are commonly taken for granted, as well as taking up an unorthodox perspective.

## Conclusion

Therefore, perhaps in these times of terror, and with Australia running the real risk of being hit by terrorist attacks, letting fifty people go free so that

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no innocents are incarcerated would be inappropriate. Although I support the laws allowing individuals to be detained even without being proved to be guilty due to the sheer necessity, I believe that the authorities should show discretion in doing so and not abuse the power it provides. This is after all, a delicate balance between human rights and the communal wellbeing of the society.