showing how "the creation of ambiguity over the fundamental base of the Hong Kong order … creates constitutional space" (p. 215) and Bell showing how blurring, for instance of borders (creating "porous borders" via various power-sharing schemes, such as giving treaty-making powers to sub-state entities), helps defeat the logic of "winner-takes-all" in territorially-based nation-state sovereignty that is often a key obstacle to peace negotiations (p. 133). Bell is happy to draw on the language of fuzziness here, speaking of "fuzzy statehood", "fuzzy sovereignty" and "fuzzy borders". Others, too, deploy this language; for instance, Perez speaks of "fuzzy normativity" (and "relative bindingness") as well as "fuzzy norms" (offering, in addition, a related model of deliberation based on thresholds and coherence).

I have but scratched the surface here; there are many more themes, and more resources, to be found in this upbeat and suggestive collection. (One voice of scepticism included here is Halpin's who, seeing no need for multivalent logic in law, insists on the importance of law's decisiveness and heteronomy.) There is also more at stake in this collection than meets the eye. Certainly, there is much more at stake than simply the occasional entertaining applicability of non-classical logic to legal thought and practice. While the stakes need to be carefully articulated, it is clear that Glenn and many of the contributors here have a moral and political vision for law and legal thought. This is a vision where "conflict" would be only apparent, and where attitudes and practices of "conciliation" would be the norm. This means showing how law has in the past avoided, but also how it could in the future avoid, the dichotomies and hierarchies that create zero-sum games. At stake is not only which logical tools might best explain certain features of law and legal thought. At stake is what legal concepts and methods might help create a relational ethics and a heterarchical politics. Perhaps one might say, especially in today's global context, that what is at stake is the very relevance of law and legal thought.

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Taming the Presumption of Innocence. By Richard Lippke [New York: Oxford University Press, 2016. viii + 275 pp. Hardback US$105.00. ISBN 978-0-190-46919-1.]

The presumption of innocence was characterised memorably as the "golden thread" running through the criminal law, placing the burden of proof as to the defendant's guilt on the prosecution (*Woolmington v DPP* [1935] A.C. 462, 481). Generally, the presumption is professed and seen to apply in the criminal trial, though this orthodoxy itself is not without controversy: the extent to which the presumption does and should guard against reverse burdens of proof, say, has not been clear. Moreover, there has been a drive to extend the reach and influence of the presumption beyond the criminal trial in numerous ways: to the pre-trial setting, to the circumstances of convicted persons and to the process of criminal law-making itself. While this is predominantly an academic endeavour, the European Court of Human Rights also has expressed sympathy for a more expansive role for the presumption, beyond a strictly procedural guarantee to encompass a "reputational" dimension that guards against any pre-trial "declaration" of guilt. Of course, complex issues arise here, as to the presumption's reach, scope and those it protects and binds.

My own scholarly interest in the presumption of innocence and its meanings was piqued by its use in *S and Marper v United Kingdom* (2009) 48 E.H.R.R. 50, where the Grand Chamber of the European Court of Human Rights held that "blanket and indiscriminate" retention of DNA samples from persons not convicted (that is, legally innocent persons) breached the right to privacy and family life under Article 8. Though the decision ultimately hinged on the implications of the DNA retention scheme for the right to privacy, the Grand Chamber expressed concern that persons not convicted, who "are entitled to the presumption of innocence, are treated in the same way as convicted persons" (at para. [122]). This may have been a mere rhetorical flourish; nonetheless it chimed with the court's widening understanding of the presumption of innocence.

The conceptual issues underpinning the diverging interpretations and apparent expansion of the presumption are explored deftly and comprehensively by Richard Lippke in his book *Taming the Presumption of Innocence*. While there is a rich and growing scholarly literature on the presumption, both doctrinal and theoretical, this is one of few contemporary monographs on the topic. It is a clear, wide-ranging and valuable work, in which Lippke examines the meaning and nature of the presumption, its different forms, what it means to talk of innocence, against whom the presumption falls, and what it requires of them. His lucid analysis moves through the different stages of the criminal process, exploring the relevance of the presumption in and for each, drawing on examples from the US criminal justice system.

Lippke advocates confining the presumption to the trial process. He provides a thorough and systematic defence of his conception, defending a narrow understanding of the presumption of innocence as a rule of evidence that seeks to ensure that trials function as "moral assurance" (p. 110) procedures to establish the guilt or otherwise of the accused. He contends that deploying the presumption beyond this is incoherent. As he notes, in any setting one might ask a range of questions about the presumption. For instance, who must presume the innocence of whom, and why? How can the presumption be rebutted, and to what effect? While the answers are relatively clear in the trial setting, they are less clear in other settings. Should or must the police, say, presume the innocence of suspects of crime while in pursuit of them? What would that mean?

Lippke takes issue with scholars (amongst whom he might include me) who have "cast the presumption of innocence as a panacea, of sorts, for many of the perceived ills of our contemporary approach to crime and punishment" (p. 1). He addresses directly and in detail the work of those who suggest that the presumption does or at least should impose limits beyond the trial, on how the police should act, or as to how defendants should be treated before trial, or regarding what should be criminalised. He engages incisively with this growing literature and presents a persuasive case countering the more expansive claims as to the reach of the presumption of innocence.

He argues convincingly that some of the work that the presumption seems to do outside the trial, such as ensuring criminal suspects are treated with respect, could and should be accomplished by other legal principles and safeguards. Lippke's fundamental and most persuasive point is that invoking the presumption to counter or prevent the ills and issues of criminal justice can be unprincipled and ineffective. Invoking the presumption in the pre-trial and post-conviction settings obscures the real harms and the real wrongs that occur in those settings. Rather than falling back on the presumption, he argues, we should identify the specific right infringed, be that privacy or autonomy for example, and consider directly what the limits of these substantive rights should be. He explores and rejects the possible roles that

the presumption in its different guises could play prior to and following adjudication. Instead he suggests that a "non-presumption of guilt" is more appropriate in many instances, coupled with the protections of existing rights. A non-presumption of guilt provides a more coherent way of thinking of how the police should treat suspects, for example.

Lippke considers the role of the presumption of innocence before trial adeptly. He notes rightly (p. 135) that few scholars who propound a pre-trial presumption of innocence state the sort of innocence it involves, who is supposed to presume it, and what conditions can rebut it. While such commentators might be like-minded in wanting to discourage any rush to premature judgment, Lippke suggests that there is no need for a pre-trial presumption of innocence, and that a non-presumption of guilt, with commitment to full and fair due process, will suffice. He makes the important point that the presumption of innocence is binary (pp. 167–68). Someone is presumed innocent or is not. The presumption does not provide intermediate degrees of protection.

Lippke also examines the presumption of innocence in relation to "incomplete prosecutions", involving those persons who are "entangled" in the criminal justice system but are not convicted. Lippke concedes that "incomplete prosecutions" include diverse experiences and may be "incomplete" in concluding at any of various stages in the criminal justice process. I have misgivings about this terminology. It implies that prosecution is the purpose of arrest or is likely to follow an arrest. In fact many arrests now are made to "disrupt" suspected criminality. Prosecution does not necessarily follow. That said, given that the presumption of innocence is well established in the setting of the trial but not more generally, it is arguable that prosecution should also be foregrounded when discussing the presumption in relation to "incomplete prosecutions" howsoever defined.

In the post-conviction setting, Lippke considers which convicted parties should be presumed innocent, as well as the impact the presumption could have on their treatment after conviction. He argues persuasively that understanding is advanced and individuals are better protected by recognising and reaffirming the rights of individuals to full and equal citizenship through the protection of anti-discrimination law. He imagines these people as on a continuum, which is interesting given the binary character of the presumption of innocence. He suggests that post-conviction "collateral consequences" – state-imposed restrictions that limit or prohibit people with criminal records from accessing employment, housing, voting and the like – should be assigned prospectively. This is less convincing, since not all such negative consequences are state-imposed or predictable.

At times it feels as though Lippke is presenting a straw man to counter. As noted, he overstates the extent to which the presumption of innocence needs to be "tamed", at least in adjudication. His debate is primarily with other scholars, rather than with state actors. Moreover, he considers whether the right to a fair trial requires governments to do everything to avert error of mistaken convictions, no matter what the costs. While ably refuted, the refuted position is not a position that many would advocate.

On occasion the discussion diverges from the presumption of innocence, such as in ch. 7 where the analysis of the pre-trial presumption turns into a broader examination of pre-trial detention. The account of the Scottish "not proven" verdict in relation to the disambiguation of acquittals (p. 188) is rather cursory, as is the brief allusion to the idea that an acquitted person could petition a jury for a further finding that the person is or is likely to be innocent.

Antony Duff has suggested that there may be many presumptions of innocence, including a "civic" presumption of innocence which affects how we treat each

other as citizens, as well as the conventional procedural protection. It may be that the term presumption of innocence is used to encompass a variety of aspirations and principles as well as constituting a rule of evidence. Lippke addresses this issue directly throughout, though there is some slippage (on p. 73) as to whether whether it is the person or the conduct that is innocent, bringing another fascinating yet under-explored ingredient into the mix.

Overall, I have much sympathy for the view that the presumption of innocence should be limited to the trial process, and that we need to reframe or re-characterise the principles on which we base any opposition to pre-trial detention or reputational harm, or to overly enthusiastic criminalisation of less harmful behaviours. Indeed, in my own work ((2013) 76 M.L.R. 681) I have sought to determine whether the doctrinal interpretation of the presumption of innocence can be reconciled with its rhetorical use by the European Court of Human Rights, and whether either doctrine or rhetoric is helpful in making sense of the intuitive unease among some at the practices by which a state may suggest someone is guilty. My conclusions as to this, and the interpretation of the presumption of innocence, are more circumspect than Lippke suggests in his book.

Throughout, Lippke defends an account of the presumption of innocence as a purely procedural right. This is described as a "controversial thesis" on the dust jacket and Lippke may be swimming against the academic tide. But his is not a radical claim and in fact is the approach of the US Supreme Court. In the US, the presumption has been described not as a presumption "in the strict sense of the term [but] … simply a rule of evidence which allows the defendant to stand mute at trial and places the burden upon the government to prove the charges against him beyond a reasonable doubt": Mitchell (1969) 55 Va.L.Rev. 1223, at 1231. A more frank acknowledgment of this would not weaken his arguments, in this vital and stimulating book.

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The common law has known many critics, but one surely rises above the rest. Jeremy Bentham spared nothing and no one. Of William Blackstone he said that "the welfare of mankind, were inseparably connected with the downfall of his works" (J. Bentham, *Works* (1843), vol. 1, p. 227). And yet one feature of Blackstone's *Commentaries* exasperated Bentham more than all others: Blackstone's tolerance of legal fictions. To these Bentham reserved his shrillest denunciations: "Fiction of use to justice? Exactly as swindling is to trade." Fictions were "conclusive evidence of intellectual weakness, stupidity, and servility"; a "pestilential breath" that "poisons" everything – and so on (*Works*, vol. 7, p. 283; vol. 9, p. 77; vol. 1, p. 235).

When Bentham wrote these words the forms of action still throve and fictions were the bread and butter of English law. Two centuries later, fictions are less common and even less in vogue. Judicial opinion has by and large come round to Bentham's point of view. Lord Nicholls thought we had "outgrown" fictions (*OBG Ltd. v Allan* [2007] UKHL 21; [2008] 1 A.C. 1, at [229]). Toulson L.J., as