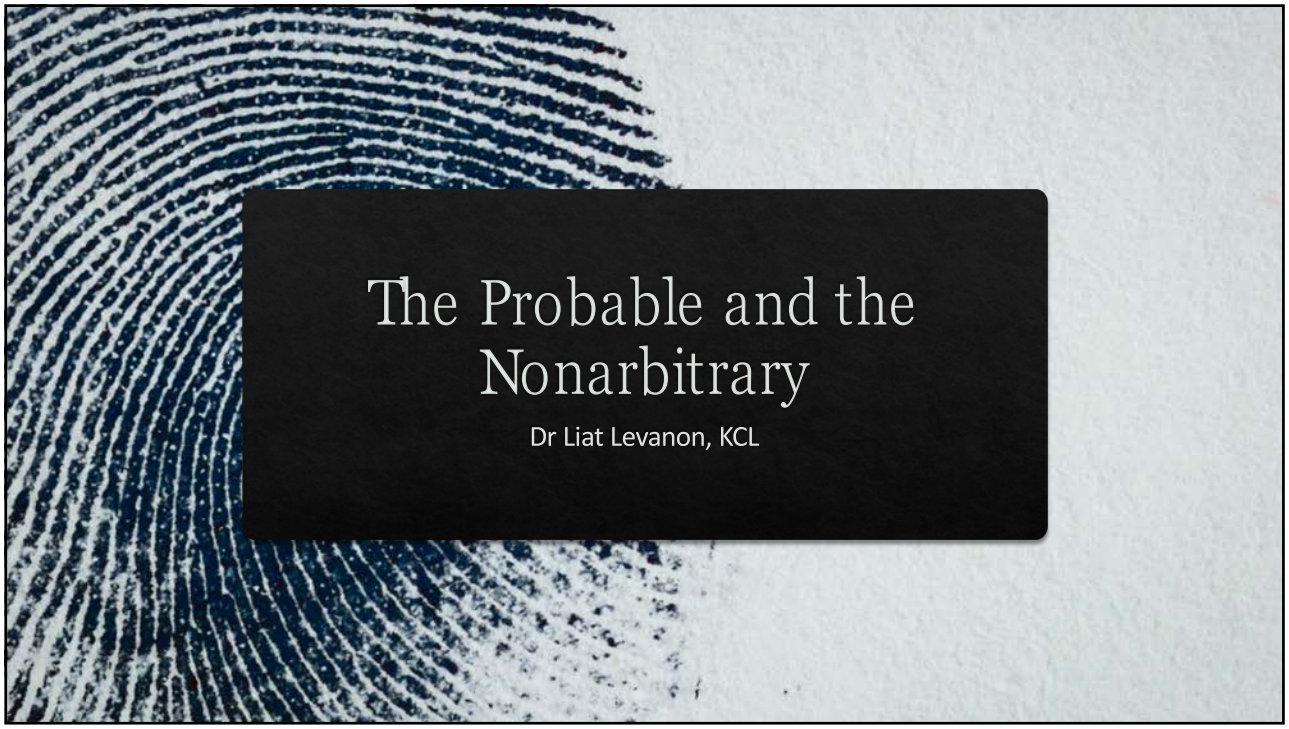


1

## Controversial and Uncontroversial Generalisations

**Any inductive inference is based on a generalisation that can be phrased in statistical terms**

- Eyewitness testimony: X% of such strong testimonies are truthful
- DNA evidence: X% of Ds with such a level of match are guilty perpetrators
- But what about *gatecrashers / prisoners*?
- And what about likelihoods within a socio-economic class?

2

# Controversial Generalisations in Practice

- The Criminal Justice Act 2003, sec. 98 seems to allow admission of statistical propensity evidence (see Federico Picinali, "Generalisations, causal relationships and moral responsibility", The International Journal of Evidence & Proof 20 (2016) 121); does it also allow conviction?
- Cases where all other evidence is proven weak, and we are left with a 'prisoners paradox' (recent Israeli example)

3

# But why should we be suspicious about some generalisations?

- Well, some think that we shouldn't be – just the same way we make medical decisions based on statistics
- Autonomy?
- Lack of knowledge?
- Incentives?
- Preference for eliminative induction?

4

# Nonarbitrariness

**Judgments based on controversial generalisations contain arbitrary propositions; this is illegitimate**

- A criminal judgment includes its main proposition and affirming propositions (D rather than A is responsible and guilty)
- Probable truth of main proposition cannot alone justify condemnation
  - 'Why have you concluded that it was D rather than A?'
- Rather, all the propositions of the judgment (main and affirming) should be defensible with reasons demonstrating they are likely to be true
- Otherwise the judgment includes illegitimate random/arbitrary propositions

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# Why Not Randomness/Arbitrariness?

- Objection to moral luck
- Considerations that are specific to moral judgment in the criminal justice system
  - Nonarbitrariness as a legal concept that demands reasons for all aspects of legal decisions –
    - So that all aspects can be reviewed
    - So that certainty is promoted
    - So that the defendant can defend herself with reference to these reasons

6

## Controversial Generalisations entail Arbitrariness

- 'Out of 20 prisoners, 18 participated in aggravated assault': the generalisation 'such prisoners are guilty' essentially captures 2 cases for which it is not valid
- There are reasons supporting high likelihood of main proposition (D participated in aggravated assault')
- There are no reasons supporting the affirming 'D rather than A' proposition (it was D rather than another prisoner A who did not belong with the innocents)

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## Uncontroversial Generalisations entail Nonarbitrariness

- 'Testimonies with XXX signs of truthfulness are reliable': the generalisation does not necessarily capture cases for which it is not valid – it is *logically possible* that it does not
- There are reasons supporting the main proposition (this testimony is reliable)
- As XXX is open to virtually all values, there would also be **available reasons supporting any affirming propositions** (this rather than another testimony is the reliable one) –

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# Recap

Controversial generalisations can only provide basis for judgments that include arbitrary propositions

Arbitrariness is not a solid foundation for condemnatory judgment

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