


CHALLENGES AND PROPOSALS TO SAFEGUARD THE PRESUMPTION OF INNOCENCE WITHIN THE SCOPE OF JURY VERDICT SOVEREIGNTY

**DESAFIOS E PROPOSTAS PARA GARANTIA DA PRESUNÇÃO DE INOCÊNCIA NA
SOBERANIA DOS VEREDITOS DO TRIBUNAL DO JÚRI**

Arthur Phillippe Milanez Santa Cecília¹  

Universidade de São Paulo, USP, Brasil 
arthur.pmsc@hotmail.com

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Abstract: The Court of Jury in Brazil judges intentional crimes against life with the popular participation of jurors. It must balance the sovereignty of verdicts and the presumption of innocence, ensuring a fair trial. The sovereignty of verdicts, though essential, can be influenced by extrajudicial factors. Measures such as the role of the presiding judge and the decision review are necessary to protect the defendant's rights.

Keywords: fundamental rights and criminal law; intentional crimes against life; due process.

Resumo: O Tribunal do júri no Brasil julga crimes dolosos contra a vida com a participação popular dos jurados. Ele deve equilibrar a soberania dos vereditos e a presunção de inocência, garantindo um julgamento justo. A soberania dos vereditos, embora essencial, pode ser influenciada por fatores extrajudiciais. Medidas como a atuação do juiz-presidente e a revisão das decisões são necessárias para proteger os direitos do acusado.

Palavras-chave: direitos fundamentais e direito penal; crimes dolosos contra a vida; devido processo legal.

1. Introduction

The Jury Court plays a fundamental role in the Brazilian legal system, judging intentional crimes against life. Its main characteristic is popular participation, in which randomly selected ordinary citizens form a jury to decide on the guilt or innocence of the accused. Within this context, two highly relevant constitutional principles stand out: the sovereignty of verdicts and the presumption of innocence. The sovereignty of verdicts

ensures that the jurors' decisions are final, except in legally defined exceptions. At the same time, the presumption of innocence guarantees that every defendant is treated as innocent until proven guilty. The balance between these two principles represents one of the most significant challenges of Brazilian criminal law, requiring the guarantee that, although the jurors' decision is sovereign, it respects the accused's fundamental rights, such as the protection of their dignity and liberty.

¹ Master's candidate in Law (Area of concentration: Philosophy and General Theory of Law) at the Law School of the University of São Paulo (<https://ror.org/036rp1748>). Specialist in Economic Criminal Law from the Law School of the Pontifical Catholic University of Minas Gerais. Bachelor summa cum laude in Law from the Faculty of Applied Social Sciences of the Federal University of Lavras. Researcher at the Government Laboratory and at the Research Group Legal Interpretation and Institutional Innovations: Law, Democracy and Development, both at the Law School of the University of São Paulo. Member of the Sectional Commission of Philosophy of Law, and of the Sectional Commission of Economic Criminal Law, both Brazilian Bar Association – Minas Gerais Section. Lawyer. ORCID: <https://orcid.org/0009-0001-5230-0270>. Lattes CV: <http://lattes.cnpq.br/9795413074176139>. LinkedIn: [linkedin.com/in/arthur-milanez-00b7b9145/](https://www.linkedin.com/in/arthur-milanez-00b7b9145/).

2. The Jury Court and the sovereignty of verdicts

The Jury Court occupies a privileged position in the Brazilian legal system, being the competent body to judge intentional crimes against life, those specified between articles 121 and 128 of the Penal Code, as outlined by Article 5, item XXXV of the 1988 Constitution of the Federative Republic of Brazil. Essentially, the legal institution of the Jury Court seeks to ensure popular participation in the administration of justice, allowing ordinary citizens, randomly selected, to decide on the guilt or innocence of the accused. This judgment mechanism, where the decision does not lie with a judge but with a jury, finds its foundation in the constitutional principle of popular sovereignty.

The sovereignty of verdicts is one of the central characteristics of the Jury Court, guaranteed by a constitutional provision¹ considered a clause of irreformability, as they can only be subject to appeal in strictly limited situations defined by legal norms². In other words, this sovereignty indicates that the decision made by the jury is final, with appeals being admissible only in exceptional circumstances.

This sovereignty is related to historical demands for the democratization of justice and calls for popular participation in verdicts of socially and criminally significant cases. From this perspective, this body represents a “[...] paradigmatic institution of political society, in which individuals act collectively under the guidance of the State to mediate between laws and the actions of civil society” (Vale, 2014, p. 304, free translation).

The jurors’ decision, in this context, is considered a direct expression of the popular will, which, in theory, grants the Jury Court a unique democratic legitimacy, especially in cases of more significant social impact. The idea is that, in this sense, the heterogeneous composition of the jury acts as “containment of individual discretion, which protects the content of the provision of jurisdiction against the risks that could arise from the magistrate’s own conduct [...]” (Sokal, 2012, p. 101, free translation).

The sovereignty of the verdict also reflects trust in the jury body. To some extent, this principle stems from the idea that

the sensitivity and popular understanding confront the criminalizing norm, breaking with the legal armor that obstructed the judge from a decision more consistent with social reality, and, in the end, transferring the responsibility to the members of society, justice is done” (Nassif, 2008, p. 35, free translation).

On the other hand, this trust should not be viewed naively. The composition of the jury by ordinary citizens without specialized legal training raises debates about the influence of extrajudicial factors, such as social pressures or personal biases, on the verdicts.

In this sense, the sovereignty of the Jury Court’s verdicts is a fundamental principle of this body, but it must be analyzed from the perspective of the defendant’s right to defense. In order for the Jury Court to function as a democratic and just institution, the jurors’ decisions must be guided by the presumption of innocence and, above all, that the procedures and rules of these trials are based on directives that aim to strengthen this presumption of innocence for the accused.

3. The presumption of innocence and its implications in the Jury Court

The presumption of innocence is a fundamental principle of contemporary criminal law and, in the Brazilian legal system, is enshrined in Article 5, item LVII³, of the 1988 Constitution, which states that “no one shall be considered guilty before the issuing of a final and unappealable penal sentence” (Brazil, 2013, p. 16). Any individual accused of a crime must be treated as innocent until their guilt is proven. This provision protects against premature convictions and ensures a fair and impartial

trial for those criminally charged. In this way, it is a cornerstone of the Democratic Rule of Law, aiming to preserve the defendant’s fundamental rights, such as their dignity and freedom.

In the context of the Jury Court, the presumption of innocence takes on fundamental importance, considering the involvement of ordinary citizens in the process of reaching the verdict. The jury, composed of lay jurors, decides on the guilt or innocence of a defendant accused of an offense against a highly valued legal interest—life. In this case, strict adherence to the presumption of innocence must be upheld to protect the defendant from convictions based on popular sentiment or external pressures and to ensure that the judgment is based on an objective analysis of the evidence presented in the case.

However, the implementation of this constitutional principle presents specific challenges within the context of the Jury Court. Since it is a popular trial, it is difficult to shield the decision from external influences such as public opinion, media sensationalism, or even personal prejudices that could affect the jurors’ judgment. The absence of legal training among the jurors and the often-emotional nature of the cases represent risks to the principle of presumption of innocence, given the possibility of extrajudicial factors influencing the judgment, which have no direct connection to the evidence presented during the trial.

It should also be emphasized that the presumption of innocence principle applies not only when the sentence is handed down but must be respected throughout the entire judicial process. In cases under the jurisdiction of the Jury Court, the defendant must be presumed innocent from the moment of the accusation until the final decision is rendered, with any eventual conviction being based on robust and irrefutable evidence, as stipulated by due process of law.

Thus, the Jury Court must effectively respect the presumption of innocence. This implies that the evidence of guilt, in cases of conviction, must be sufficiently strong to convince the jurors without any reasonable doubt. The presumption of innocence requires the prosecution to provide unequivocal evidence of the defendant’s guilt, a requirement that cannot be substituted by assumptions or subjective interpretations of the jurors.

Given this context, the interaction between the presumption of innocence and the sovereignty of verdicts is crucial. Although the decision of the Jury Court, by its sovereignty, is, as a rule, nonreviewable in terms of its merits, this does not mean it is permissible to ignore the presumption of innocence. The sovereignty of the jury’s verdict cannot be used to violate the principle of presumption of innocence. On the contrary, the Federal Constitution ensures that the trial fully respects this principle to guarantee justice and fairness in the criminal process (Costa Júnior, 2007). Therefore, even with the sovereignty of verdicts, the presumption of innocence is essential to uphold the legitimacy of the Jury Court.

Finally, the Brazilian legal system provides measures to ensure the observance of the presumption of innocence in the Jury Court. Among these measures, the role of the presiding judge is paramount, as the judge must always instruct the jurors on the presumption of innocence and ensure that the trial is not influenced by external factors and is based solely on the evidence presented during the process. Moreover, the judicial system includes provisions of revising decisions in cases where violations of the defendant’s fundamental rights, such as the presumption of innocence, are identified.

To ensure the effectiveness of the presumption of innocence, it is important for judges to clearly instruct the jurors about the principle, and for the trial to be based solely on the evidence presented. The review of decisions by higher courts is also essential, as well as

controlling external influences, such as the media, to prevent prejudgments from affecting the impartiality of the court.

4. Conflicts between the sovereignty of verdicts and the presumption of innocence

The sovereignty of verdicts and the presumption of innocence are fundamental constitutional principles that, upon superficial analysis, may seem incompatible. While the sovereignty of verdicts ensures that the judgment issued by the Jury Court regarding the defendant's guilt or innocence is final, the presumption of innocence guarantees that the defendant is treated as innocent until their guilt is unequivocally and definitively proven. Balancing these two principles can be seen as one of the significant challenges of Brazil's criminal justice system.

Guaranteed by the constitutional text, the sovereignty of verdicts means that the judgment rendered by the jurors is irreversible, except in exceptional cases, such as material errors or flagrant injustice. Nevertheless, this does not mean that the jurors are immune to external influences or premature decisions that could disregard the presumption of innocence. Popular participation in the trials of serious crimes can, in some cases, increase the possibility of emotionally driven verdicts, which contradict the principle that the defendant must be treated as innocent until proven guilty.

The central conflict between the sovereignty of verdicts and the presumption of innocence arises when the Jury Court's decision is based on factors that are not strictly legal. This occurs when the jurors, influenced by extrajudicial elements such as media sensationalism, personal prejudices, or social pressures, form convictions about the defendant's guilt without robust evidence to support this belief. In this way, there is an evident risk of violating the presumption of innocence, as the jury's decision may be based on subjective or emotional perceptions rather than an impartial analysis of the evidence.

The sovereignty of the verdict, being immune to review of its merits, cannot be used to justify disregarding the principle of presumption of innocence, which requires that the defendant be treated as innocent until their guilt is proven by unequivocal and robust evidence. Thus, the sovereignty of verdicts cannot occur at the expense of protecting the defendant's constitutional rights, especially the presumption of innocence.

A deeper analysis of the conflict between the sovereignty of the verdict and the presumption of innocence can consider the norms of principle type and their characteristics. Principles, unlike rules, are norms that require the realization of their commands in a proportional and balanced manner (Alexy, 2017). In this context, dogmatic and theoretical solutions suggest that it is possible to reconcile these principles through a balance that prioritizes the protection of fundamental rights, without disregarding the effectiveness of jury decisions. The use of interpretative techniques, such as the weighing of principles and the application of proportionality clauses, can be crucial to resolve the conflict in a more harmonious way and ensure the effectiveness of both the sovereignty of the verdict and the presumption of innocence.

Another critical point that warrants attention is the issue of judicial error. Given that the jury comprises lay citizens, there is a heightened risk that legally incorrect decisions, which cannot be later modified, may be rendered. This risk increases in cases where the analysis of the evidence is not thorough enough or the jurors are not adequately instructed regarding the defendant's constitutional rights, such as the presumption of innocence.

Therefore, the Jury Court should not be seen as an exceptional court where the verdict is so sovereign that it ignores the defendant's

fundamental rights. There must be a balance between the sovereignty of the verdict and the protection of the defendant's fundamental rights. This balance is achievable through continuous education of the jurors and guidance from the presiding judge, who must ensure that decisions are based on the evidence and not on extrajudicial elements.

From this perspective, although quite limited, the review of the Jury Court's decisions appears to be an important tool in preserving the presumption of innocence. However, these reviews should not be viewed as a way to challenge the sovereignty of the verdict; they are a mechanism for controlling legality aimed at correcting material errors or apparent violations of the defendant's rights.

Finally, the great challenge lies in finding the balance between the sovereignty of verdicts and the presumption of innocence so that the decisions of the Jury Court are genuinely just and respect the constitutional rights of the accused. Achieving this balance requires careful involvement from all parties in the process.

5. Procedural guarantees and mechanisms for protecting the defendant's rights in the Jury Court

The Jury Court, in its democratic essence, must guarantee the fundamental rights of the accused, genuinely the presumption of innocence. The sovereignty of the verdicts, a principle that grants the jurors the final decision on the defendant's guilt or innocence, must be balanced with constitutional guarantees, such as the right to broad defense and due process of law. In this context, the guidance of the presiding judge is crucial, as it ensures that the jurors understand the premise of the principle *in dubio pro reo*, which favors acquittal in cases of doubt regarding the defendant's guilt.

One mainly debated issue in the Jury Court is the number of jurors that make up the jury. There has been notable discussion about the proposal to increase the number of jurors to eight, as opposed to the current seven, advocated by **Aury Lopes Jr. and Marco Aurélio Costa Moreira de Oliveira** (2020). They argue that the current system, with seven jurors, allows convictions to be rendered based on only four votes, or 57.14% consensus. For them, doubt is inherently present when the jurors decide to convict by a 4–3 vote, which may result in convictions based on a fragile consensus that is susceptible to judicial errors.

Lopes Jr. and Oliveira (2020) propose adopting an even number of jurors, such as eight, to prevent decisions based on narrow margins. With eight jurors, a conviction would only occur if there was a minimum difference of two votes (5–3), thus ensuring greater consistency and robustness in the verdict.

Furthermore, the *in dubio pro reo* principle, which is essential in preventing convictions without robust evidence, becomes compromised in a system where the decision of a single juror can influence the outcome. **Lopes Jr. and Oliveira** (2020) criticize this situation, arguing that doubt often favors conviction, which contradicts the *in dubio pro reo* principle. Therefore, altering the number of jurors could mitigate this issue by providing greater solidity to the decision-making process.

Other forms of protection for the defendant's rights include strictly guaranteeing the impartiality of the jurors. The defense has the right to challenge jurors with biases or prejudices, preventing the influence of external factors on the construction of the verdict. Judicial review is also an important tool to ensure that the sovereignty of the verdicts does not override the defendant's constitutional rights.

Another mechanism for protecting the defendant in the Jury Court is the rigorous evaluation of evidence. Jurors must focus solely

on the evidence produced during the trial and not be influenced by emotions, rumors, or external pressures. The principles of adversarial proceedings and broad defense must be respected at all stages of the process to ensure that the defendant can contest the accusations and defend themselves appropriately.

In summary, the Jury Court must balance the sovereignty of the verdicts protecting the defendant's rights, such as the presumption of innocence. The proposal to increase the number of jurors to eight aims to ensure more consistent decisions and avoid convictions based on fragile consensus. Furthermore, the impartiality of the jurors, the rigorous evaluation of evidence, and respect for the adversarial system and broad defense are essential to ensuring a fair and balanced trial.

6. Conclusion

By allowing popular participation in the trial of serious crimes, the Jury Court faces the challenge of balancing two fundamental constitutional principles: the sovereignty of the verdicts and the presumption of innocence. Although the decision of the jurors is jurors' decision is final, as a rule, final, it is crucial that the defendant's rights, such as the presumption of innocence and broad defense, are respected throughout the process. The impartiality of the jurors and careful analysis of the evidence are essential to prevent external influences that could compromise the trial. In this way, the balance between these principles guarantees a fair trial, preserving the legitimacy of the Jury Court without violating the accused's fundamental rights.

Additional information and author's statements (scientific integrity)

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Notes

- 1 "Article 5: All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property, on the following terms:
[...]
XXXVIII - the institution of the jury is recognized, according to the organization which the law shall establish, and the following are ensured:
a) fullness of defense; b) secrecy of the voting; c) sovereignty of verdicts; d) power to judge willful crimes against life" (Brazil, 2013, p. 15).
- 2 Code of Criminal Procedure of 1941: Article 593. An appeal may be filed within 5 (five) days: [...] III - against decisions of the Jury Court, when:
a) a nullity occurs after the indictment; b) the sentence of the presiding judge is contrary to express law or to the decision of the jurors; c) there is an error or injustice regarding the application of the penalty or the security measure; d) the decision of the jurors is manifestly contrary to the evidence in the case files (Brazil, 1941, own translation).
- 3 "Article 5: [...] LVII - no one shall be considered guilty before the issuing of a final and unappealable penal sentence" (Brazil, 2013, p. 16).

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